



Options for Organizing Waste Pickers in South Africa

By Jan Theron

WIEGO Organizing Briefs

The global research-policy-action network Women in Informal Employment: Globalizing and Organizing (WIEGO) contain analysis of organizing strategies and practices in the informal economy. This series aims to support organizing efforts and disseminate better practices. They complement worker education materials produced by WIEGO's Organization and Representation Programme.

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Section 1: Introduction

This booklet is for waste pickers in South Africa. Waste pickers (who are also known as reclaimers) are workers engaged in collecting recyclable materials gathered from refuse, landfill sites and elsewhere, which they sell for a living.

Although there are some waste pickers who work for someone else, most waste pickers have created their own jobs, and work for themselves: in other words they are self-employed.

One of the reasons workers have created their own jobs is because there are so few job opportunities in what we shall call the “formal economy” nowadays. This does not mean the work waste pickers do is unimportant. In fact the work waste pickers do is very important, and it is not sufficiently recognized.

Purpose

If waste pickers were organized, they would be better able to win recognition for the work they do. The main purpose of this booklet is to help waste pickers organize themselves, by explaining the different options for workers in their situation.

Although directed at waste pickers, the arguments advanced in this booklet should also apply to other self-employed workers who want to organize themselves.

Outline

To decide what form of organization is best for them, it is important to understand the difference between employment and self-employment.

A big difference between employed workers and self-employed workers is that there are numerous laws that protect workers who are employed, whereas there are few protections for self-employed workers.

In the next section of the booklet, section 2, we explain in more detail about the laws that apply to employed workers, and the distinction between employment and self-employment, as well as between the “formal” and “informal economy”. We go on to consider the different ways self-employed workers could operate: as individuals working on their own, as an employer, or working collectively as part of an organization or group.

In section 3 we consider how workers go about forming an organization or group, distinguishing between different stages: deciding what the organization’s objective is, determining the kind of provisions it would need to have in a constitution or equivalent document, and developing a well-thought out strategy or plan as to how the workers will work together as an organization. Whatever organization waste pickers form, we suggest it will have to be prepared to struggle for recognition. We detail in this section what recognition might entail.

In section 4 we discuss in more detail the different kinds of groups or organizations that may be formed, and the advantages as well as disadvantages of each.

On the following page we give a case study of waste pickers that we will draw from to illustrate the challenges waste pickers face in organizing themselves.

Case Study: Waste Management in Sasolburg

In the Free State town of Sasolburg there are many more people needing work than there are jobs in factories or businesses in the town. When some of the people looking for work realized that there was money to be made out of reclaiming waste on the landfill site outside of the town, they became self-employed.

Prior to about 2006 these waste pickers operated individually, selling what they collected (mainly scrap metal and plastic) to middlemen. Then some of the waste pickers decided it would make more sense for them to work together, rather than compete with one another. They also thought they would be able to get a contract with local government to manage the landfill site if they did so. So they registered as two close corporations (CCs).

Unfortunately the local authority decided to award the contract to a company owned by two African men, with full-time jobs elsewhere, without giving the two CCs a chance to tender for the contract. We shall refer to this company as X.

Company X forced the waste pickers to sell the recyclables to it at lower prices than they had been getting from the middlemen. Then it realized it did not have the money to buy all the recyclables the waste pickers had to deliver, so it brought in a waste-management company from Johannesburg to help it operate the landfill site.

The waste pickers were then forced to sell to this company, until the waste-management company and company X fell out with one another. Their fight went to the courts, and the courts eventually decided in favour of company X.

In the meantime the members of the two CCs decided it would be better to form one group, and that this should be registered as a cooperative. In late 2009 the cooperative had 49 members that were divided into two teams: one that picked the recyclables and another that sorted the recyclables.

However because company X still had the contract to manage the landfill site, the local authority was not prepared to recognize the cooperative, or acknowledge the right of its members to be on the site. This made it very difficult for the cooperative to operate.

To make matters worse, the driver of a front-end loader employed by the local authority had adopted a hostile attitude towards the members of the cooperative as well as other waste pickers operating on the site. Two waste pickers operating individually were run-over, and one was killed.

The future of the cooperative is now uncertain. It had hoped to strengthen its position by linking up with other cooperatives of waste pickers in nearby towns. But to become established it must first overcome the challenges it faces on the ground, in the town where it is based.

What Can We Learn from This Case Study?

This case study shows that there is money to be made out of selling recyclables. It also shows how much competition there is amongst individuals trying to make a living from recyclables. It is an indication of the desperate nature of this competition that a waste picker lost his life.

In this case waste pickers have tried to overcome this competition by establishing an organization in which they will work together. But it is never easy to establish an organization, and others can learn from the challenges they have confronted.

One of the challenges the cooperative faced was that although the members were no longer competing with each other, they were still competing with waste pickers outside the organization, who were operating individually. This weakened the organization.

Another challenge was that they were not able to secure a better price from the businesses that bought their recyclables: first it was the middlemen, then it was company X.

Of course businesses such as this will pay the waste pickers as little as they can get away with. However if waste pickers are united they should be in a position to bargain a better price. In fact it was the local authority that undermined the bargaining position of the organization, by awarding the contract to company X. So getting local authorities to recognize organizations of waste pickers is another challenge.

Recognition by local authorities is also important for another reason: The work waste pickers do is insecure and dangerous. At the same time it is necessary and useful, and it should be the local authority's responsibility to provide them with a safe working environment. In other countries, for example, local authorities have issued waste pickers with identity documents and granted them access to such sites and agreed to safer ways of working.

The case study also illustrates the misuse of government's policy of empowerment. The local authority "empowered" the two members of company X, whereas empowerment is supposed to be broad-based. However merely forming an organization and registering with the government is not enough. An organization needs a well thought out strategy. It needs to set goals in terms of that strategy, and be prepared to struggle to achieve them.

Section 2: Employment Versus Self-Employment; Working on Your Own Versus Working Collectively

What Does It Mean to Be “Employed”?

When the government counts how many people are employed as opposed to unemployed, it counts everyone who is working for a living, including both the self-employed and the employed. But usually, when people refer to “the employed” they mean someone who has a job with an employer.

Legally, someone is employed if there is a contract of employment between that person and an employer. The employer is supposed to provide the work and control the way in which it is carried out. The worker who carries out the work is an employee. The self-employed are not employed in this sense. They work for themselves.

But because of changes in the way in which employers have structured employment, it has in fact become increasingly difficult to tell whether someone is employed, and who the employer is. For example local authorities often engage contractors to collect waste in certain areas. Such contractors employ their own workforces. Although such contractors are supposed to be the employer, you could say the workers are actually employed by the local authority.

For a worker what really matters is that there is someone who is accountable for the conditions under which she or he works, and for what he or she earns.

If there is someone who is accountable, then there is someone with whom the worker can negotiate over wages and working conditions.

The right of a worker to negotiate with her or his employer is protected by labour legislation. But it is not realistic for a worker to negotiate on her or his own, so labour legislation also protects the right of workers to organize into trade unions.

However labour legislation only applies to workers who are employed, and it excludes workers who are self-employed. Amongst the rights protected by labour legislation in South Africa are the following:

- **job security**, in that workers who are employed cannot be unfairly dismissed;
- the **right to associate and to organize**, in that workers may belong to a trade union and trade unions have certain rights in the workplace of the employer;
- the **right to safe and conducive working conditions**, in that there is legislation regulating health and safety standards in the workplace and legislation that prescribes what the basic conditions of employment regarding hours of work, annual leave, sick leave and the like should be;
- **Income security**, in that there are mechanisms whereby workers (through their trade unions) can negotiate wages, and through which minimum wages can be determined. (Minimum wages are determined by government in sectors where only a small proportion of workers are organized, by means of sectoral determinations¹).

If employers are registered with the Department of Labour and the tax authorities (SA Revenue Services) then their workers are entitled to some social protections such as maternity benefits or compensation for injury sustained while on duty.

Registration with the Department of Labour is to ensure that the employer (and worker) contributes to the Unemployment Insurance Fund (UIF). This means that workers receive money

¹ Sectoral determinations are published in terms of the Basic Conditions of Employment Act, No 75 of 1997.

if they are dismissed for any reason and are unable to find alternative employment. It also ensures that the employer contributes to the Compensation Fund, to provide compensation in the event of accidents or diseases contracted at work.

Registration with SARS is so that if the worker earns above a threshold set by government, the employer deducts tax from her or his wages, as well as a skills development levy. SARS forwards the skills development levy to the relevant Sectoral Education and Training Authority (SETA), which is responsible for providing education and training in the sector in which the employer is located. Workers employed in the sector are supposed to benefit from this training.

In short, workers in employment are relatively well-protected. Although the legislation requires that the employer provide workers with particulars regarding their employment, they are protected even if she or he does not do so, or the contract of employment is not in writing. It is for this reason when people say they want jobs, they usually mean jobs with an employer that is ongoing, for a monthly salary or a weekly wage.

The Difference Between the “Formal” and “Informal Economy”?

A job with an employer that is ongoing, for a monthly salary or a weekly wage, is what is sometimes called a standard job, or formal job. But this kind of job is becoming increasingly hard to come by in South Africa and elsewhere. More and more workers nowadays are employed in jobs that are not standard.

Workers employed by a contractor collecting waste, for example, are probably in temporary jobs, rather than a job that is ongoing. That is because the local authority would have engaged such a contractor for a fixed period of time. When that period expires, or the local authority terminates the contract, the workers are without a job. In this situation workers will also not be able to claim they have been unfairly dismissed².

There are different definitions of what constitutes the “formal economy.” Most would consider the contractor who is engaged to collect waste as part of the “formal economy” so long as his or her business is registered and pays taxes.

But from the point of view of workers what matters is whether the rights protected by labour legislation apply.

In the example above, the workers seem to be protected by labour legislation, but in fact the protection is not effective. The workers lack job security. It is also difficult for them to exercise the right to associate and organize³.

The “formal economy” is usually contrasted with the “informal economy”. In the “informal economy” legislation is regarded as not effective, but as the above example shows, the distinction between “formal” and “informal” is not at all clear-cut. It also shows that workers collecting waste may be better off self-employed than employed on a temporary basis.

Most people regard the “informal economy” as comprising those who are self-employed, such as waste pickers or street traders or car guards, or employed in very small businesses. However not all self-employed persons are in the informal economy.

Doctors and lawyers and skilled workers such as plumbers and electricians operating as contractors are examples of persons who may be self-employed but are part of the formal

² In terms of the Labour Relations Act (LRA) the only circumstance in which a worker whose fixed term contract expires can claim to be dismissed is where the worker had a reasonable expectation it would be renewed. See section 186(b), Act 66 of 1995.

³ In terms of the LRA, a trade union has to be sufficiently representative of workers in the workplace of their employer to qualify for organizational rights, such as access to the workplace. However the workplace where the workers get to know each other, and where they might want to meet with their trade union official and so on, is the workplace of the client ie the local authority.

economy. Because of people such as these, it is argued that the self-employed are independent and able to provide for their own social protection. It is therefore argued there is no need to extend to the self-employed the kind of protections that apply to employed workers.

What Does It Mean to Be Self-Employed?

It is of course untrue that most self-employed persons are independent and able to provide for their own social protection. Waste pickers, for example, are independent insofar as they control their own working hours and decide for themselves what to collect. But they are not truly independent.

First and foremost waste pickers are dependent on the local authority as well as other divisions of government who can facilitate their work in ways we will discuss below, or restrict them. In the case of Sasolburg, as we have seen, local government has restricted the operation of waste pickers.

Waste pickers are also dependent on being able to sell what they collect to middlemen and others, who pay them according to the volume of material delivered. One of the objects of organizing waste pickers would be to lessen this dependence.

Legally, the difference between employment and self-employment is that the self-employed do not have a contract of employment. Labour legislation only applies to workers who have a contract of employment, although this does not have to be in writing.

Although the self-employed worker does not have a contract of employment, the worker may have another kind of contract with the person they work for. This kind of contract is called a commercial contract, and the worker is normally referred to as an “independent contractor” in such contracts.

The main difference between a commercial contract and an employment contract is that the worker is usually paid a lump sum or fee for completing the task, and it is left up to the worker how he or she does so. Commercial contracts are also easy to terminate.

It is the person to whom workers are contracted who will usually terminate the contract, sometimes because they can get someone else to work for them for less. This means such workers do not have job security.

Workers are also at a disadvantage in entering such contracts because they are generally not able to have access to a lawyer in the drawing up of such a contract. Such contracts are also difficult to enforce without access to a lawyer.

Sometimes people who are really employers enter into commercial contracts with workers because they want to disguise the true nature of their relationship with the workers, or because they consider commercial contracts advantageous. The Labour Relations Act provides a procedure whereby workers in this situation can be declared employees⁴.

Benefits and Risks of Individual Self-Employment

The benefit of working on your own is that you are your own boss, and able to take full responsibility for the work you do. You also do not have to accept responsibility for the failings of others, and there is no issue of sharing income with others.

The risk of working on your own is that you are more vulnerable than you would be if you were part of a group. The case study of the Sasolburg waste pickers illustrates this. As individuals, waste pickers are far more vulnerable to competitors: in fact every other waste picker may be a competitor.

⁴ Section 200A, LRA, No 66 of 1995.

As an individual you are also more vulnerable in the event of ill-health or injury or a temporary drop in income. A group may not be able to prevent these things happening, but collectively the group can take steps to limit the impact on the individual worker.

There are also limits to how much a self-employed individual can do on her or his own i.e. there is a problem of capacity. If, therefore, an individual is successful, she or he will need to overcome problems of capacity. One way of doing so is to employ someone to assist her or him. Another way is to link up with others, and operate collectively.

There are two other disadvantages of operating as an individual that highlight the importance of organization:

- It is unrealistic for waste pickers to negotiate as individuals. It will not be possible to improve the situation of waste pickers without negotiations with local authorities, for example, regarding the rights to collect recyclables, or with buyers for better prices.
- To secure more protection for waste pickers, it will be necessary to change the attitude of the government towards self-employed workers, as well as changing attitudes internationally. It will of course not be possible for individuals to bring about these kinds of changes.

Benefits and Risks of Becoming an Employer

The benefit of becoming an employer is that you are able to remain your own boss while overcoming problems of incapacity, through employing workers to assist you. Whatever surplus you make you keep for yourself. (The term “surplus” is explained on the next page.)

But as an employer there may be a conflict with your workers over how much you retain for yourself and how much you pay them as wages. You are also obliged to assume the responsibilities of an employer, including registration with SARS and the DoL, and the management and discipline of the workers. Discipline includes not dismissing your workers unfairly.

Individual employers often find it onerous to comply and sometimes attempt to evade their responsibilities. They also often lack skills to manage and discipline workers. So they run the risk of becoming embroiled in disputes with their workers, and falling foul of the law. Becoming an employer should only be an option for those who are able and willing to assume these responsibilities.

Benefits and Risks of Working Collectively

There are a number of benefits to working together with others in an organization:

- You are less vulnerable to the risks that an individual who is self-employed faces.
- As an organization you have the capacity to take on bigger jobs.
- By working together waste pickers are able to pool resources to buy machinery such as bailing machines and trucks, that will help them get higher prices for their materials.
- As an organization waste pickers are able to negotiate better terms and conditions with buyers and local authorities.
- As an organization, waste pickers can mobilize for changes in legislation affecting them, and self-employed workers more generally.
- As an organization waste pickers can provide for their own social protection through medical coverage, funeral schemes and the like.

But there are also challenges associated with working together with others collectively. An organization cannot be managed in the same way as when there is a boss, and waste pickers would need to develop collective ways of dealing with issues such as discipline.

Decision-making in an organization is obviously more complex than when decisions have to be taken by a single boss. So there is always a risk that disagreements or disputes may arise. The constitution or equivalent document should provide guidance as to how to deal with disagreements or disputes.

What Is a “Surplus”?

A surplus is the money a business makes after paying all its expenses. But there are different ways of calculating a surplus.

If you are an employer, for example, the wages you pay will be an expense.

Also in the case of a workers cooperative where members are paid a wage, as discussed below, wages are an expense. The members will be owed that wage even if there is no money to pay them.

However in the case study of the Sasolburg waste pickers, there is no regular payment to the members. Whatever money is left over after paying other expenses is divided amongst the members, and there is no money retained for the business itself.

The problem with not retaining any money for the business itself is that there are always unforeseen expenditures a business has to meet. So it is always wise to have some money in reserve. This is true for all businesses.

For some people there is no difference between a surplus and a profit. But cooperatives regard the distinction as important, since a portion of any surplus may not be distributed to the members for the time being, but is kept in reserve. This is explained in more detail below. Profit refers to what is distributed to individual members.

Section 3: What to Consider when Forming an Organization

Forming an organization involves a lot of hard work. The starting point is usually when someone has the idea of forming an organization, and identifies other individuals who might be interested in being members.

The next stage is to call a meeting, to clarify what the objective of the organization or group would be, and perhaps the principles its members would subscribe to. Based on these discussions, some kind of plan will be developed as to how the organization should operate.

Further meetings may be necessary, to achieve some consensus as to how the organization should be constituted, and who its founding members will be. At this stage it may also be necessary to approach an outside person or agency to assist with drawing up a constitution or similar document.

It is usually only once there is a constitution or a similar document is drafted that a founding meeting is held, and the organization is formally launched. However organizations and groups do also operate without a formal constitution or similar document, as discussed below.

The more discussion that takes place prior to launching the organization the better. That way the future members will get to know each other, and possible problems or disagreements can be identified and resolved.

What Is the Objective of the Organization or Group?

To decide what kind of organization you want to form you need first of all to decide what its objective will be. A group may of course have many objectives, but we are concerned with the primary or most important objective.

All organizations should represent the interests of their members. However it is important to differentiate between an organization whose main objective is to represent its members in some or other way without itself operating as a business or enterprise, and an organization having the objective of operating as an enterprise or business.

If, for example, a group of waste pickers wanted to operate individually, and only wanted an organization that could negotiate with the local authority and others in order to establish their right to do so and the like, the objective would not be to operate as a business or enterprise.

On the other hand where waste pickers intend to work together, as in the case of Sasolburg, and perhaps tender for contracts with the local authority, the objective would be to operate as a business. This would of course not prevent it also negotiating with the local authority, or having other (secondary) objectives.

Principles

The principles the members subscribe to are closely related to the objective of organization, and would determine the kinds of provisions it would need to have in its constitution, or equivalent document.

If, for example, the organization was intending to be as broadly representative as possible, it would be important to emphasize that membership was open to all persons regardless of race, gender, nationality, religious or political affiliation.

At the same time criteria for membership would have to be spelled out. Depending on the objective of the organization, these might be based on where people live or work, or the jobs they do, or both.

It is generally understood that organizations should operate democratically but the problem is to ensure that this happens in practice. One way to do so is to ensure that important decisions can only be taken by the members in the most representative meeting possible.

Developing a Plan for the Organization

Any organization or group needs to have a plan or strategy as to how it will operate. In practice it may be difficult to be clear about the group's objective without at the same time developing a plan as to how to achieve it.

Such a plan is not a legal requirement of any kind of group, and it also does not have to be written down. But a plan that is written down is often more complete, and it also enables present and future members to understand what is in it.

If the plan is written down, however, it does not mean it cannot be changed. Unlike a constitution, a plan needs to be flexible and to be adapted as circumstances change.

SWOT Analysis

One of the tools that can be utilized in developing such a plan is a so-called SWOT analysis, where one analyses the strengths, weaknesses, opportunities and threats (hence the letters S-W-O-T) facing the group.

In the case study of waste pickers, for example, the strengths of a group might consist of the experience and skills of its members. Equally, the weaknesses might concern a lack of experience and skills in certain areas, as well as lack of resources. These should be identified, so that the group can take steps to address such weaknesses.

Another weakness is that the waste pickers are not able to secure access to recyclables, because of problems of access to the landfill site. They also are not able to command a decent price for the recyclables they collect. This is because the prices of recyclables are dictated by the buyers or the middlemen.

An analysis of the strengths and weaknesses of the group should give rise to an analysis of opportunities. There is greater awareness of the importance of waste management in the community today than ever before. This means there is potential to mobilize community support for groups of waste pickers. This represents an opportunity.

If waste pickers are well-organized, they should be able to negotiate a better price from the middlemen or intermediaries who buy their recyclables, and to work out strategies for doing so. One possible strategy would be to by-pass the middlemen altogether.

The fact that waste management is primarily the responsibility of local government also represents an opportunity, because local government is supposed to be accountable to the community.

Local government is also supposed to implement policies to minimize waste. Waste pickers can argue that they play an important role in minimizing waste, which big waste management companies are not interested in doing.

National government is committed to a policy of "broad-based" economic empowerment. This represents an opportunity, because organizations are potentially broad-based. In the case study outlined above, by way of contrast, local government "empowered" two individuals who already had jobs.

Waste pickers that are operating individually outside the organization might pose a threat. This threat could be overcome by recruiting them into the organization. The middlemen or businesses who buy the recyclables from waste pickers will probably be threatened by any organization of waste pickers, and may try to undermine the group.

Another threat may be from individuals in local government who see recycling as an opportunity to enrich themselves, or to build a political power-base for themselves, without empowering the waste pickers.

Based on such an analysis, it should be possible to formulate a clear plan as to how the organization aims to achieve its objective. It should be noted that the best plans are those that have been tested in practice. So it is important in developing a plan that all its members share their experience.

The Struggle for Recognition

However an organization of waste pickers defines its objective and whatever plan it adopts, it will doubtless want to raise awareness of the situation of its members amongst the community, and with the local authority and national government, amongst others. This can be seen as part of a struggle for recognition for waste pickers.

Recognition could take various forms, such as recognition of the right to be consulted regarding waste management policies and recognition that waste pickers are fulfilling a necessary and useful function for the local authority.

Waste pickers are not in the same position as employees in the formal economy, in that there is not an employer who determines the conditions under which they work. On the other hand although the local authority does not determine the conditions under which waste pickers work in the same way an employer would, it certainly does so indirectly.

So the struggle for recognition also means getting local government to accept greater responsibility, and perhaps even acknowledging that for certain purposes it can be regarded as an employer.

The rights of workers in the formal economy therefore provide a guideline as to what greater recognition from the local authority could mean:

- **job security**, in that waste pickers are not arbitrarily barred access to landfill sites and the like, and local authorities adopt policies that facilitate access to the waste-stream;
- the **right to associate and to organize**, in that organizations of waste pickers would have certain rights in the workplace of the local authority;
- the **right to safe and conducive working conditions**, in that that the local authority is obliged to provide a safe working environment for waste pickers (on landfill sites, for example);
- **Income security**, in that the local authority intervenes to prevent an exploitative situation, such as in the case of company X in the case study, or to stipulate minimum prices for the purchase of recyclables recovered from municipal waste;
- **Social protection**: Perhaps the only form of social protection waste pickers have is where they are part of a group that will cover for them in the event of ill-health, injury and so on. This is another argument as to why the local authority should recognize organizations of waste pickers. Local authorities may also be able to facilitate improvements in social protection through the policies they adopt.

Section 4: What Different Kinds of Organizations or Groups May Be Formed?

There is no magic in the title groups adopt for themselves. What matters is what kind of group they actually are, and how they operate, no matter what the group is called. However a group is not supposed to call itself a cooperative or company or close corporation unless it has registered as such with government.

Association is a generic name for all kinds of membership-based organizations. For example **trade unions** are a kind of association, as discussed below.

In terms of the law as it stands at present, an association is not supposed to operate as an enterprise or business unless it is registered with the government⁵. The only such association that can register with government is a cooperative.

If the objective of an organization or group is to operate as a business, the different options are as follows: a **partnership**, a **close corporation**, a **company** and a **cooperative**⁶.

Which of these is best for your group will depend on a number of factors: for example how many members there are is one such factor. These factors are discussed in more detail below.

It may also be that the members of your group have different objectives. For example it may be that some want to work together as an enterprise while others only want to belong to an association that represents the interests of waste pickers. In these circumstances your group may want to form more than one organization.

The starting point for considering what kind of organization or group is best for you should always be with what has been shown to work in practice, and gives best expression to what the members have decided the primary objective should be. An organization or entity that is imposed on the group is not likely to succeed.

Does Your Organization or Group Need to Be Registered?

Registration is optional for some kinds of organizations or groups and compulsory for others. In the case of associations, registration is optional, except in the case of an association operating as a business.

Registration is currently compulsory for all organizations or groups operating as a business except a partnership. However this prohibition, and the prohibition on associations operating as a business unless registered, may be dropped. It is in any event not enforced in the “informal economy.”

Even so, there are important benefits for organizations or groups that register, particularly those operating as a business. The most important benefit is that the organization acquires the status of a “legal person” separate from its members. This means if a business runs into financial difficulties and is sued, it must be sued in its own name. The members of the organization are not liable for its debts. Similarly, if the organization needs to take legal action, it can do so in its own name.

A legal person also has “perpetual succession.” This means the entity has a life of its own, and will continue to exist until it is dissolved or liquidated, even though its members have changed⁷.

⁵ In terms of section 31 of the Companies Act (61 of 1973). However this Act is due to be replaced by a new Act, as discussed later in this section. Currently there is no equivalent section in the new Act. If the Companies Act comes into effect in its current form it will no longer be illegal for an association to operate as a business without being registered.

⁶ It is also possible to form a business trust. However for various reasons a trust cannot be considered a suitable form of entity for the readership for whom this book is intended.

⁷ Thus where the members of a company sell their shares to someone else or even to members of the public on the stock exchange, it does not affect the status of that company.

A “legal person” can even join certain kinds of organizations, such as a company. However the membership of a close corporation is limited to natural persons. Currently the membership of a primary cooperative is also limited to natural persons, although this may change. A natural person is an individual human being as opposed to a legal person.

Another important benefit of registration is that the general public has some assurance that the organization has a constitution or equivalent document that complies with standards set by government, and that there are some safeguards that the organization complies with its constitution.

Amongst these safeguards is a requirement that the organization submits annual returns to the relevant government office, including returns showing that proper financial statements are kept. Usually financial statements have to be audited.

For the above reasons government and funders generally are only prepared to deal with registered organizations.

Associations

An association is any group of persons who have joined together under some agreement or constitution or rules for the purpose of carrying out some common object. It is thus the object that defines the nature of the association.

For example, associations are commonly used to advance a sporting or educational or cultural or charitable object. Associations are also used to represent the interests of the members of groups of all kinds, including members operating businesses.

Any association having what the legislation refers to as a “non-profit objective” may register, either in terms of the Non Profit Organizations (NPO) Act⁸ or Companies Act⁹, in which case it will become a legal person. The other benefits of registration have been referred to above.

So in the case of waste pickers, for example, it would be possible to register an association whose members included self-employed individuals and even groups operating a business, as long as this association was itself not operating as a business, “for profit”. The fact that the association employs staff does not affect its non-profit status.

To register, an association would either have to have a constitution that complies with the requirement of the NPO Act or a memorandum (and articles of association or rules, as discussed below) that complies with the Companies Act. However even if an association did not want to be registered, it would always be advisable to have a properly drafted constitution.

Associations may in addition register with SARS as a Public Benefit Organization (PBO), in order to qualify for certain tax benefits.

Associations Operating as a Business

As already pointed out, it is currently unlawful for a group that is not registered and is not a partnership to operate as a business, “for profit”, but this prohibition may be dropped. It is also not enforced in the informal economy.

As a result there are associations operating as businesses despite what the law says, and providing a livelihood to their members. Some of these organizations also have the potential to become established businesses. It can therefore be argued that they should not be discouraged.

⁸ Act 17 of 2000.

⁹ In terms of section 21, Act 61 of 1975, and Schedule 1 of Act 71 of 2008.

But the risk such a group faces is that it will not be regarded as a legal person. Instead it will probably be regarded as a partnership, and each member would be jointly and severally liable for the whole of the debts of the business.

Where the individual members own no assets such as a car or a house this is not much of a risk, but if even one member has assets, she or he stands to lose them to cover the debts of the business.

An association engaging in a business activity is not likely to be able to benefit from any policies or schemes of government, such as procurement policies that promote “broad-based black economic empowerment”, unless it is registered.

Trade Unions and Unions

In some countries associations of self-employed workers call themselves “unions” because they see themselves as workers, and because they regard “unions” as organizations of workers.

This illustrates how different kinds of organization have their own traditions and, in the case of trade unions, form a movement that is committed to certain principles. Thus these waste pickers identify with the traditions and principles of the trade union movement.

There is nothing to prevent a group in South Africa from calling itself a “union” for this reason. It would also be understandable for waste pickers to call themselves a union if they regarded the local authority as the employer, and their plan was to hold it accountable for conditions under which waste pickers work, in much the same way a trade union would. Another reason for doing so might be to link up with the trade union movement. In some countries informal workers’ associations or unions are affiliated to or have associate status within the trade union federation.

However “union” is generally understood to be a short form of “trade union” and in South Africa a trade union, as defined by law, is an association whose members are employees. All workers, as noted above, are not employees.

Some would also argue that it only makes sense for a group to call itself a “union” if there was a legally recognized employer who was accountable for the conditions under which waste pickers work, and for what they earn. It should also be understood that an organization of waste pickers calling itself a union could not register as a trade union. To register, a trade union must adopt a constitution and be a trade union in compliance with the Labour Relations Act. A registered trade union has certain rights in terms of the Labour Relations Act, such as organizational rights in terms of which it has access to the workplace of the employer¹⁰.

The term “union” is also commonly used to describe a secondary cooperative (ie a cooperative whose members are cooperatives). This is explained in more detail below.

Business Groups

The different kinds of group that may operate as a business are discussed in more detail below.

Partnership

A partnership exists where two or more people agree to work together, and share their profits and losses. It is thus the simplest way in which people can work together, in that it is not even necessary to have a written agreement to constitute a partnership.

However it is generally advisable to put agreements in writing, and especially where there are assets involved, or where there are more than two or three partners. This is because decisions in a partnership are by consensus, and the more partners there are, the more difficult it is to reach consensus.

¹⁰ In terms of the Labour Relations Act, a trade union that is sufficiently representative of employees in the workplace is entitled to certain organizational rights, and (whether or not it is sufficiently representative) may refer disputes to the Commission for Conciliation Mediation and Arbitration (CCMA).

Most waste pickers do not have access to lawyers to draft and interpret such agreements. So the partnership would not be a suitable form to adopt for a larger group of waste pickers. The law also does not permit a partnership exceeding twenty persons, although this limitation may be dropped¹¹.

There is another risk associated with partnerships, which has already been referred to in the context of associations that are not registered. Each partner is jointly and severally liable for the debts of the partnership. This means that one partner can be sued for the whole of the debts of the partnership. Where one partner has assets such as a house or car, these can be sold to pay the debts of the partnership.

Close Corporations

A close corporation ("CC") is an entity registered in terms of the Close Corporations Act. This Act states that a CC may comprise no more than ten members, and those members must be natural persons¹².

On application for registration, the Act requires that the members specify the principle business of the corporation, in a document called a founding statement. It does not limit the kind of business for which a corporation may be formed, but it is generally understood that close corporations are intended to cater for small businesses operating for profit.

As well as certain other particulars, the founding statement must also specify each member's interest in the corporation, as well as the details of any other contribution the member has made¹³. This is the equivalent of a share in a company, and may be transferred to someone else with the consent of the other members¹⁴.

Otherwise there are very few formalities regarding the formation of close corporations. This makes it very easy to form a close corporation but may give rise to problems later on, because there are no rules regarding how they are managed, how decisions are taken, and so on.

The Act allows a close corporation to adopt an Association Agreement at any stage. This Agreement is the equivalent of a constitution in an association or cooperative, or the articles of association (or rules) of a company.

The government is now planning to phase out close corporations, in terms of the new Companies Act¹⁵. Although it is not yet in effect, it is expected to come into effect in 2010. Thus even though it is still possible to register a close corporation (at the time of writing of this booklet) it does not seem sensible to do so.

Close corporations that are already registered will be able to continue operating or to convert to another form of entity, such as a company or cooperative.

As noted above, the Free State waste pickers who initially formed two close corporations subsequently formed a cooperative. Their main reason for switching away from close corporations was because they were not comfortable with the tradition that close corporations represented, which is essentially the same as that of companies.

Companies

A company is an entity registered in terms of the Companies Act. Both the current and the new Act provide for various kinds of companies, including non-profit organizations wishing to register

¹¹ In terms of section 30 (1), Act 61 of 1975.

¹² However trustees may in certain circumstances be members, in terms of section 29(2) of Act 69 of 1984.

¹³ Section 12, Act 69 of 1984.

¹⁴ Section 37, Act 69 of 1984.

¹⁵ The Companies Act (71 of 2008). It replaces the current Companies Act (61 of 1973) and the Close Corporations Act (69 of 1984).

as a company¹⁶, state-owned companies and public companies, being companies whose shares are traded on the stock exchange.

The fact that there is a new Act creates a degree of uncertainty. However as the new Act itself indicates, the company is primarily a vehicle “for the aggregation of capital for productive purposes, and for the investment of that capital in enterprises...”¹⁷

Given the purpose of this booklet and the fact that vulnerable workers generally do not have access to capital, the only form of company that could be relevant here is a private company having share capital.

A share gives the holder a right to an interest in the company, its assets and dividends. The number of shares a member may hold in such a company will be specified in a document called a memorandum of association (MOA) or memorandum of incorporation (MOI) in the new Act.

The MOA (or MOI, once the new Act comes into force) is equivalent to the founding statement of a close corporation, and is submitted upon application for registration.

A member of a company is thus a shareholder. Currently the number of members in a private company is restricted to fifty¹⁸. The right of members to transfer shares in a private company must also be restricted.

Unlike a close corporation, in a company there is supposed to be a clear separation between the management of the company and the control. The management is the responsibility of a Board of Directors, whereas control is exercised by the members at an Annual General Meeting (AGM).

Currently the Act requires that in addition to the memorandum of association a company also adopt articles of association. This is the equivalent of a constitution of an association or cooperative, and would apply to the conduct of meetings of the Board of Directors, decision-making in AGMs and the like.

At the AGM, voting is according to shareholding. If therefore one member owns a majority of shares, the outcome of the vote in an AGM is a foregone conclusion.

In terms of the new Act the articles of association are referred to as rules, and it is no longer obligatory that a company adopt separate rules. It may instead rely on the relevant provisions of the Act.

Cooperatives

As is the case with the company, cooperatives have a long history both within South Africa and internationally. As is the case with trade unions, cooperatives are regarded as forming a movement that is committed to certain principles.

A cooperative is an association that operates as a business or enterprise, in accordance with cooperative principles. Cooperative principles are the principles adopted by the international cooperative movement, and are outlined on the next page.

These principles flow from an approach to business that is based on cooperation rather than competition amongst its members. Sometimes there are groups operating according to cooperative principles without knowing what they are, or that do not call themselves cooperatives for one or other reason, although that is what they are.

Unfortunately there are also groups that call themselves cooperatives, usually to get some benefit, although they are not operating as such. These bogus cooperatives give cooperatives a bad name.

¹⁶ In terms of the current Companies Act (61 of 1973) this is the so-called “section 21 company”, also known as an association not for gain. In terms of the new Companies Act (71 of 2008) this kind of company will be known as a non-profit company (NPC).

¹⁷ Purposes of the Act, Section 7(g), Act 71 of 2008.

¹⁸ Currently there is no limitation on the number of members in a private company in the new Act.

The Cooperatives Act provides for the registration of cooperatives that have adopted a constitution that complies with cooperative principles¹⁹. A minimum of five members is required to form a cooperative, and there is no maximum number stipulated.

Cooperative Principles²⁰

1st Principle: Voluntary and Open Membership

Cooperatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2nd Principle: Democratic Member Control

Cooperatives are democratic organizations 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 cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are also organized in a democratic manner.

3rd Principle: Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.

4th Principle: Autonomy and Independence

Cooperatives are autonomous, self-help organizations, self-propelled and controlled by their members. If they enter into agreements with other organizations, including Governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.

5th Principle: Education, Training and Information

Cooperatives provide education and training for their members, elected representatives, managers, and employees so that they can contribute effectively to the development of their cooperatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6th Principle: Co-operation among Cooperatives

Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.

7th Principle: Concern for Community

Cooperatives work for the sustainable development of their communities through policies approved by their members.

¹⁹ Act 14 of 2005.

²⁰ Extract from the statement on the cooperative identity, adopted by the General Assembly of the International Cooperative Alliance in 1995.

There are two ways in which a cooperative can operate as a business. One way is to provide services to its members. The other way is for the cooperative to provide employment to its members. A cooperative whose objective is to provide employment to its members is defined in the law as a workers' cooperative²⁰.

In the case of waste pickers, for example, a cooperative providing services might comprise members that operate on their own, but who have decided to market their recyclables through the cooperative. The cooperative would therefore pay the member according to the volume of recyclables delivered.

The difference between this situation and a member selling to a middleman, is that the worker owns the cooperative together with other workers, and has a say in the price the cooperative pays. Because the cooperative would be able to sell recyclables in bulk, it should also be able to negotiate better prices than members could get individually.

Cooperatives providing marketing services are amongst the most successful form of cooperative, especially in agriculture. Often such cooperatives provide other services as well: in the case of waste pickers, for example, such a cooperative could provide services to improve access of waste pickers to recyclable materials, protective clothing and the like.

In some countries cooperatives that started out providing marketing services have developed the capacity to produce as well. In the case of recycling, this would entail the cooperative itself acquiring the machinery to process recyclables.

The difference between a cooperative and a workers cooperative is that in a workers cooperative the members would not operate individually, but collectively as a group. The members of the cooperative would also earn a wage, as opposed to being paid for recyclables delivered.

The principle of voluntary and open membership does not mean that a cooperative is not entitled to limit the number of members for practical reasons, and in the case of workers' cooperatives it is often sensible to do so. The larger the group the more difficult it becomes to work together.

Cooperatives also operate at different levels. At the primary level, the members are mostly natural persons, usually residing or working in a defined area²¹. A secondary cooperative is a cooperative whose members are cooperatives. Higher levels of cooperation are also possible.

In the case study of the Sasolburg waste pickers, a secondary cooperative would be an appropriate structure to bring together the different cooperatives in the same area, in accordance with the cooperative principle that cooperatives cooperate with one another.

As indicated, another name for a secondary cooperative is a cooperative union. As a union of cooperatives it is possible to take up certain issues affecting all members which a cooperative could not do as easily, such as issues concerning waste management policy. Such a union or secondary cooperative could also provide services to the primary cooperative, that a primary cooperative on its own might not be able to afford, or acquire, such as equipment that all members could all utilise.

An important difference between a primary and a secondary cooperative concerns voting, in accordance with the principle of democratic member control. In a primary cooperative each member has one vote in an AGM, regardless of the number of shares the members has, or the amount of money the member may have loaned the cooperative. This is also an important difference between a cooperative and a company.

²⁰ Section 1, Act 14 of 2005. A separate schedule of the Act applies to workers' cooperatives, to prevent the abuse of this kind of cooperative. See Part 2, Schedule 1 of Act 14 of 2005.

²¹ The South African legislation currently restricts a primary cooperative to natural persons, but this may change. See section 1, Act 14 of 2005.

However at a secondary level it would not be democratic for each member to have one vote, because that would mean a cooperative with many members would have the same number of votes as one with few members. Usually, therefore, cooperatives have a number of votes in proportion to the number of members.

How members contribute to the capital of a cooperative is something that needs to be specified in its constitution. In terms of the Cooperatives Act, there are various options. The member may pay an entrance fee, on joining. In addition the member may either take out shares in the cooperative or pay a subscription. Members can also contribute by way of loans²².

A share in a cooperative attaches to the member, and is not transferable to someone else unless that person is willing to become a member. This is one of the differences between a cooperative and a company. A subscription is a regular payment the member makes, usually monthly or annually.

It is also important to emphasize that cooperatives should set aside a portion of any surplus they make to develop the cooperative or establish reserves, in accordance with the principle of member economic participation. This helps to ensure the long-term sustainability of the cooperative. The law requires the amount set aside to be not less than five percent of any surplus²³. If the cooperative does not make a surplus (if it breaks even, or makes a loss) then of course it is not required to set anything aside.

At least a portion of the surplus should not be divisible amongst the members. This means the present members cannot simply divide it amongst themselves because the cooperative is not simply there to benefit present members, but is also intended to benefit future generations. The provision of education and training and projects to support the community would be examples of the kind of uses to which a cooperative might put this indivisible portion.

Although, as noted, one of the reasons waste pickers may form an association might be to negotiate with the local authority, there is no reason why a cooperative cannot also negotiate with the local authority. One could also argue that if the service a cooperative provides is seen as useful, a cooperative should have greater bargaining power than a mere association would.

The Department of Trade and Industry also provides a grant to certain kinds of cooperatives, subject to certain conditions.

Where Do You Go for Help?

If you want general information on starting a business, or assistance in applying to register a company, close corporation or cooperatives, you can approach the Small Enterprise Development Agency (SEDA). SEDA is an agency established by the Department of Trade and Industry and has branches or information centres in all provinces of the country.

There are many institutions and individuals that provide information and advice to businesses, including financial institutions when they lend businesses money. There are far fewer persons that will assist a group of self-employed workers: for example, to develop a plan for your organization, or to provide education and training.

The following are amongst the non-governmental organizations (NGOs) you may wish to approach:

- In Johannesburg, the Cooperative and Policy Alternative Centre (COPAC) is a NGO providing training and advice to cooperatives.
- In Pretoria, the DGRV South Africa (a project of the German Cooperative federation, the DGRV) provides training and advice to cooperatives.

²² Section 43, Act 14 of 2005.

²³ Section 3(1)(e), Act 14 of 2005.

- In Cape Town, Tembeka Social Investment Company provides assistance to various initiatives to empower people in poor communities.
- In the Eastern Cape, the Funda Education and Training Cooperative provides education and training to cooperatives.
- In Pietermaritzburg, groundWork is a NGO that is concerned with recycling and waste management.

Conclusions

Working on your own is always possible, but this booklet argues you will always be able to achieve more working with others, and especially if you are from a poor or disadvantaged background.

That has also been the experience of waste pickers in countries such as Brazil, India and Colombia, where they have been developing a collective voice and the capacity to act collectively, whether through associations or unions or cooperatives.

You often hear people say this or that kind of organization or group works or does not work, or is good or bad. However an organization or group is only as good, or works as well, as its members enable it to. This requires members take an active part, that they elect leaders they can trust, and that they hold these leaders to account.

Appendix

Contact details of some organizations that provide support to groups wanting to form cooperatives, associations and close corporations:

COPAC: Box 1736, Killarney 2041. Email: copac@icon.co.za; Tel: 011-447 1013; Fax: 011-252 6134

DGRV South Africa: PO Box 2701, Brooklyn Square, Pretoria, 0075. Email: dgrvsa@worldonline.co.za; Tel: 012-346 6020; Fax: 012-346 5891

Funda Education Cooperative: PO Box 7054, East London, 5200. Email: ranayeke@yahoo.com.

groundWork: PO Box 2375, Pietermaritzburg, 3200. Email: team@groundwork.org.za; Tel: 033-342 5662; Fax:033-342 5665

SEDA: www.seda.org.za; Helpline: 0860 7663 729

Tembeka Social Investment Company: PO Box 13859, Mowbray, 7705. Email: info@tembeka.co.za; Tel / Fax 021-447 8138

Options for Organizing Waste Pickers in South Africa

About Inclusive Cities: The Inclusive Cities project aims to strengthen membership-based organizations (MBOs) of the working poor in the areas of organizing, policy analysis and advocacy, in order to ensure that urban informal workers have the tools necessary to make themselves heard within urban planning processes. Inclusive Cities is a collaboration between MBOs of the working poor, international alliances of MBOs and those supporting the work of MBOs. For more information visit: www.inclusivecities.org.

About WIEGO: Women in Informal Employment: Globalizing and Organizing is a global research-policy-action network that seeks to improve the status of the working poor, especially women, in the informal economy. WIEGO builds alliances with, and draws its membership from, three constituencies: membership-based organizations of informal workers, researchers and statisticians working on the informal economy, and professionals from development agencies interested in the informal economy. WIEGO pursues its objectives by helping to build and strengthen networks of informal worker organizations; undertaking policy analysis, statistical research and data analysis on the informal economy; providing policy advice and convening policy dialogues on the informal economy; and documenting and disseminating good practice in support of the informal workforce. For more information visit: www.wiego.org.

About Umphilo waManzi: Umphilo waManzi is a nonprofit organization formed in 2008 with the objective of helping to improve the livelihoods of and services to poor communities through research, advocacy, liaison, and accessible communication. Its work to date has involved issues of water and sanitation, climate change, waste pickers, xenophobia, and public participation. Umphilo waManzi managed the “Visibility and Voice for Decent Work for Waste Pickers Project South Africa, 2009/2010” for WIEGO.

