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The Extension of Social Protection to Informal Farm Workers in South Africa

by

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3757224

A RESEARCH PAPER SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF M. PHIL: COMPARATIVE LABOUR LAW IN
THE DEPARTMENT OF MERCANTILE AND LABOUR LAW, UNIVERSITY OF THE
WESTERN CAPE

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28 February 2023

PLAGIARISM DECLARATION

I, Wendy Charles, declare that the research paper entitled, ‘The Extension of Social Protection to Informal Farm Workers in South Africa’, is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Signed by Wendy Charles



ACKNOWLEDGEMENTS

I wish to thank our almighty Father for the strength, courage, and wisdom to complete this degree.

To my mom, I am truly thankful for your unwavering support. I love you endlessly.

A huge thank you to my supervisor Dr Abigail Osiki for your insight, guidance, patience, and support throughout this journey.



ABSTRACT

Social protection is regarded as a means to alleviate poverty. It provides workers with protection against socio-economic risks. However, not all workers have access to social protection. An example is informal farm workers. These workers are prone to precarious working conditions which exposes them to hazardous chemicals, extreme weather conditions and intensive physical labour. However, many of these workers have limited access if any to social protection. This research paper explores the nature and characteristics of the informal economy within South Africa, with informal farm workers acting as reference for the research. The study reveals that informal farm workers, like many other informal workers are left without social protection, specifically social insurance schemes, which are contributory. In addition, this research paper investigates the barriers which hinder social protection coverage, especially the limitations placed on informal farm workers through the definition and interpretation of the term ‘employee’ in relevant social security legislation. Within the context of the International Labour Organisation’s Social Protection Floors Recommendation 202 of 2012, this research paper proposes some pathways to extend social protection to informal farm workers.



KEYWORDS

Agricultural Sector
Employee
Informal Economy
Informal employment
Informal farm worker
Informal workers
Poverty
Social Insurance
Social Protection
Social Security



ABBREVIATIONS

COIDA	The Compensation for Occupational Injuries and Diseases Act
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ILC	International Labour Conference
ICLS	International Conference of Labour Statisticians
ILO	International Labour Organisation
LRA	Labour Relations Act 66 of 1995
OHSA	Occupational Health and Safety Act
R202	Recommendation 202 of 2012
R204	Recommendation 204 of 2015
SRD Grant	Social Relief of Distress Grant
TERS	Temporary Employer/Employee Relief Scheme
UDHR	Universal Declaration of Human Rights
UIA	The Unemployment Insurance Act
UIF	Unemployment Insurance Fund



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CHAPTER 1: INTRODUCTION

1.1.BACKGROUND

Informal employment accounts for roughly 58.2 per cent of employment globally.¹ The agricultural sector is estimated to have the highest level of informal employment with over 91 per cent.² One of the major characteristics of informal employment is the lack of access to social protection. Social protection, broadly defined, encompasses endeavours to reduce and prevent poverty and social risks.³ While it is recognised as a fundamental right, informal farm workers however, enjoy limited access, if any to social protection.⁴ These workers are often exposed to high levels of poverty, vulnerability, and precarious working conditions.⁵ Consequently, adequate social protection is crucial to alleviate the harsh socio-economic conditions they face.⁶ It is against this background that the question arises as to what extent informal farm workers are adequately protected under the current social security framework.

1.2.PROBLEM STATEMENT

Informal workers do not have secure employment contracts, work benefits, social protection nor do they enjoy trade union representation.⁷ These workers are plagued by decent work deficits including lack of access to social protection, specifically social insurance.⁸ This raises the question, as to what shape and form law reform should take if social protection would be extended to informal workers in South Africa? Social protection is recognized as a fundamental

¹ ILO ‘Women and men in the informal economy: A statistical update’ (2023) available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_869188.pdf (accessed on 17 July 2023)

² ILO ‘Women and men in the informal economy: A statistical update’ (2023) available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_869188.pdf (accessed on 17 July 2023)

³ ILO ‘Africa Regional Social Protection Strategy, 2021-2025: Towards 40 % – a social protection coverage acceleration framework to achieve the SDGs’ (2021) available at https://www.ilo.org/wcmsp5/groups/public/---afrika/---ro-abidjan/documents/publication/wcms_828423.pdf (accessed on 17 July 2023).

⁴Jäckering L, Meemken EM, Sellare J & Qaim M ‘Spoken words fly away, written words remain: Employment contracts between farmers and farm workers’ (2020) 143 *Global Food Discussion Papers* 2. See also ILO ‘Work for a brighter future’ Global Commission on the Future of Work (2019) available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf (accessed on 31 July 2022).

⁵ILO ‘Agriculture: a hazardous work’ available at https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm (accessed on 30 July 2022).

⁶ Osabohien R, Matthew O, Ohaleté P & Osabuohien E ‘Population–poverty–inequality nexus and social protection in Africa’ (2020) 151 *Social Indicators Research* 2 580.

⁷King A & Shackleton CM ‘Working in poverty: Informal employment of household gardeners in Eastern Cape towns, South Africa’ (2022) 39 *Development Southern Africa* 6 1008.

⁸ King A & Shackleton CM ‘Working in poverty: Informal employment of household gardeners in Eastern Cape towns, South Africa’ (2022) 39 *Development Southern Africa* 6 1008.

right.⁹ It is defined as a set of policies with the aim of reducing and preventing poverty and vulnerability.¹⁰

In South Africa, an estimated 30 per cent of total employment is informal which equate to at least 4.8 million workers.¹¹ These workers are found in various sectors which include mining, construction, hospitality, and agriculture.¹² This research paper focuses on informal farm workers who have been classified as one of the most vulnerable groups, ranking as some of the poorest people in South Africa, making research on this category of workers significant.¹³ They tend to be marginalised and are often exposed to precarious work that are physically labour intensive, having to endure outdoor exposure of extreme heat or cold, long working hours, hearing loss from operating machinery, and exposure to chemicals and pesticides used in the orchards, fields, and vineyards.¹⁴ Yet, many informal farm workers remain excluded from social protection schemes.¹⁵

1.3. RESEARCH QUESTION

The main research question posed is ‘what shape and form should law reform take if social protection would be extended to informal farm workers in South Africa?’ This requires a consideration of the specific questions below:

⁹ ILO ‘Work for a brighter future’ Global Commission on the Future of Work (2019) 10 available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf (accessed on 31 July 2022). See also Article 9 of the International Covenant on Economic, Social and Cultural Rights, 1966.

¹⁰ ILO ‘World Social Protection Report: Universal social protection to achieve the Sustainable Development Goals 2017–19’ available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_604882.pdf (accessed on 30 July 2022).

¹¹ Statista: ‘Number of people employed in the informal sector in South Africa from 2010 to 2020’ (23 April 2023) available at <https://www.statista.com/statistics/1296024/number-of-informal-sector-employees-in-south-africa/> (accessed on 17 July 2023). See also Rogan M ‘Informal Workers in Urban South Africa: A Statistical Snapshot’ (2019) *WIEGO Statistical Brief No 19* available at <https://www.wiego.org/sites/default/files/publications/files/Informal%20Workers%20in%20Urban%20South%20Africa%20SB%2019.pdf> (accessed on 30 July 2022).

¹² The South African Law Reform Commission ‘Maternity and Parental Benefits for Self-Employed Workers in the Informal Economy Project 143’ (2021) *Discussion Paper 15 323* xxiii available at <https://www.justice.gov.za/salrc/dpapers/dp153-prj143-MaternityParentalBenefits-July2021.pdf> (accessed on 31 July 2022).

¹³ Devereux S, Hall R and Solomon C ‘The farm workers who produce our food are the most vulnerable to hunger’ (2019) available at <https://mg.co.za/article/2019-10-08-00-the-farm-workers-who-produce-our-food-are-the-most-vulnerable-to-hunger/#:~:text=A%202014%20Oxfam%20report%20found,directly%20engaged%20in%20producing%20food> (accessed on 11 August 2022).

¹⁴ ILO ‘Agriculture: a hazardous work’ available at https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm (accessed on 30 July 2022).

¹⁵ Razavi S ‘Making the Right to Social Security a Reality for All Workers’ (2022) 65 *The Indian Journal of Labour Economics* 2 270.

- a) Who is protected under the existing social protection framework in South Africa and why?
- b) To what extent can the regulatory framework be developed further to ensure inclusion of informal farm workers in the social protection system in South Africa?
- c) What are some of the practical implications of extending the various forms of social protection to informal farm workers and how should these be implemented in South Africa?

1.4.SIGNIFICANCE OF THE PROBLEM

Most informal workers work in precarious and low paid jobs whilst having little to no access to social protection, thus leaving them vulnerable to the harsh realities of poverty and increased living costs.¹⁶ Farm workers have been identified as one of the poorest and most vulnerable groups, making research on this category of informal workers significant. These workers face a plethora of challenges which exposes them to various social risks and vulnerabilities.¹⁷ Yet there is limited research on the practicalities of implementing a social protection system that adequately covers informal farm workers in South Africa. This research is therefore significant because it adds to literature on the creation of a legal framework for the extension of a social protection system for informal farm workers. Furthermore, civil organisations and other relevant stakeholders in the labour market will find this research useful as an advocacy tool to enhance decent and productive work for informal farm workers.

1.5.RESEARCH METHODOLOGY

This research paper adopts a desktop research methodology which consists of an analysis of primary and secondary sources. The primary sources used in this research paper include the Constitution of the Republic of South Africa, 1996,¹⁸ Statutes such as the Unemployment Insurance Act 63 of 2001,¹⁹ the Compensation for Occupational Injuries and Diseases Act 130

¹⁶King A & Shackleton CM ‘Working in poverty: Informal employment of household gardeners in Eastern Cape towns, South Africa’ (2022) 39 *Development Southern Africa* 6 1008. See also Alfes L, Lund F & Moussié R ‘Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches’ (2017) 70 *International Social Security Review* 4 67.

¹⁷Devereux S ‘Violations of farm workers’ labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 400. See also Barrientos A & Barrientos SW ‘Extending social protection to informal workers in the horticulture global value chain’ (2002) *Washington DC World Bank* 20.

¹⁸ Constitution of the Republic of South Africa, 1996.

¹⁹ Unemployment Insurance Act 63 of 2001.

of 1993,²⁰ and international labour instruments which include Social Protection Floors Recommendation 202 of 2012 and *Recommendation concerning the transition from the Informal to the Formal Economy (Recommendation 204)* and case law. These were used to understand the extent to which South Africa's legal framework regulates social protection for informal farm workers. Furthermore, the paper relies on secondary sources such as journal articles, textbooks, internet publications and working papers to highlight and identify the views expressed by the various authors on the subject of social protection for informal workers.

1.6.STRUCTURE OF THE RESEARCH PAPER

The research paper consists of 6 chapters.

Chapter one broadly introduces the study and provides the problem statement, the significance of this study, research questions and methodology.

Chapter two provides an overview of the informal economy and informal workers. The contents of this chapter include a brief overview of the history and characteristics of the informal economy. In addition, a synopsis of informal workers, specifically informal farm workers and the factors which contribute to informality in South Africa are provided.

Chapter three explores the legislative framework of social protection in South Africa. The chapter begins by examining the evolution of the concept of social security to social protection. The chapter discusses the constitutional right to social security and examines the applicability of South Africa's social security system to informal farm workers. In this chapter, specific discussion on the right to social security is done with reference to social insurance measures and schemes.

Chapter four examines the scope and implementation of social protection within the context of the Social Protection Floors Recommendation 202 of 2012, and *Recommendation concerning the transition from the Informal to the Formal Economy (Recommendation 204)*. Furthermore, the chapter highlights the difference in approach of both recommendations in terms of how social protection floors can be implemented. Finally, the chapter argues that the directive approach in Recommendation 202 is more applicable to the context of South Africa.

²⁰ Compensation for Occupational Injuries and Diseases Act 130 of 1993.

Chapter five explores pathways to extending social protection to informal workers in South Africa. It examines Recommendation 202 in a quest to extend social protection to informal farm workers.

Chapter six concludes the research paper in respect of extending social protect to informal farm workers in South Africa.



CHAPTER 2: INFORMAL ECONOMY AND INFORMAL FARM WORKERS IN SOUTH AFRICA

2.1. INTRODUCTION

The informal economy is heterogeneous and consists of an array of workers dispersed in different sectors. It is described as a major source of employment for half of the global labour force and more than 90 per cent of micro-and-small enterprises are found in the informal economy.²¹ Furthermore, there are diverse groups of workers which consists of an estimated 64 per cent employees working in informal enterprises such as hair salons or small spaza shops and informal employees in formal firms or private households.²² However, many workers in the informal economy are susceptible to poverty and not covered by social protection.²³

Against this background, this chapter provides an overview of the informal economy and informal workers. The chapter consists of three broad sections. The first section presents a brief historical overview of the informal economy. Section two provides the context of the informal economy in South Africa. Under this section, the definition, size, and characteristics among others, of the informal economy in South Africa are explored. The final section discusses the nature, characteristics and constraints faced by informal farm workers in South Africa.

2.2. AN OVERVIEW OF THE CONTEXT OF THE INFORMAL ECONOMY

2.2.1. Historical overview, current definition, and realities of the Informal Economy

The term ‘informal economy’ is much debated, as some argue that it is a pool of entrepreneurial talent whilst others view it as a cushion during economic crises.²⁴ This can be translated to suggest, for some, a means of avoiding regulation and tax, whilst for others, the informal economy is a source of livelihood.²⁵ The International Labour Organisation (ILO) describes the informal economy as “all economic activities by workers and economic units that are- in

²¹ILO ‘Informal Economy’ available at <https://www.ilo.org/employment/units/emp-invest/informal-economy/lang--en/index.htm> (accessed on 17 July 2023).

²²“Informal economies are diverse: South African policies need to recognise this” available at <https://theconversation.com/informal-economies-are-diverse-south-african-policies-need-to-recognise-this-104586> (accessed on 26 December 2022).

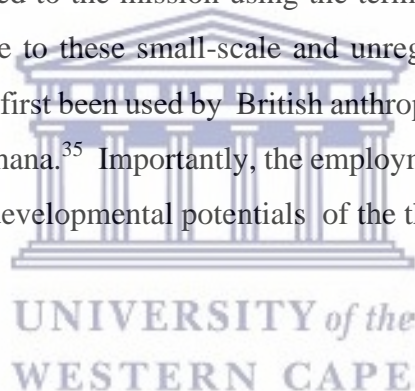
²³ ILO ‘Agriculture: a hazardous work’ available at https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm (accessed on 30 July 2022).

²⁴ WIEGO ‘Informal Economy: History and Debates’ available at <https://www.wiego.org/informal-economy/history-debates> (accessed on 20 October 2022).

²⁵ WIEGO ‘Informal Economy: History and Debates’ available at <https://www.wiego.org/informal-economy/history-debates> (accessed on 26 December 2022).

law or in practice not covered or insufficiently covered by formal arrangements".²⁶ It is characterized by high levels of poverty and decent work deficits. Informal work is described by unsafe working conditions, long working hours and low skill levels coupled with irregular incomes and lack of access to information, training, and technology.²⁷ Nonetheless, the informal economy is expanding, currently representing an estimated 61 per cent of the global workforce.²⁸

During the 1950s, WA Lewis developed a theoretical model to explain economic growth in third world countries.²⁹ It was assumed that low-income traditional sectors such as petty traders, small-scale production and casual jobs would be absorbed into a modern industrial economy.³⁰ However, during the 1960s and 1970s, contrary to the predictions made by economists influenced by the Lewis theory, unemployment and labour problems persisted in developing countries.³¹ This led to the ILO launching exploratory missions to various developing countries to investigate the employment trends and challenges.³² In 1972, the employment mission to Kenya showed that the traditional sector had expanded to include profitable enterprises.³³ This led to the mission using the term “informal sector” rather than “traditional sector” in reference to these small-scale and unregistered economic activities.³⁴ The term “informal sector” had first been used by British anthropologist Keith Hart to describe unskilled migrant workers in Ghana.³⁵ Importantly, the employment mission report and Hart’s study raised awareness on the developmental potentials of the then informal sector.



²⁶ ILO ‘Informal Economy’ available at <https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/lang-en/index.htm> (accessed on 17 October 2022).

²⁷ ILO ‘Informal Economy’ available at <https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/lang-en/index.htm> (accessed on 17 July 2023).

²⁸ Schwettmann J ‘Covid-19 and the informal economy. Impact and response strategies in Sub-Saharan Africa’ (2020) *Berlin: Friedrich Ebert Stiftung (FES) 2*. See also WIEGO ‘Informal Economy: History and Debates’ available at <https://www.wiego.org/informal-economy/history-debates> (accessed on 20 October 2022).

²⁹ Chen M & Carré F ‘*The informal economy revisited: Examining the past, envisioning the future*’ (2020) Taylor & Francis 1.

³⁰ Chen M & Carré F ‘*The informal economy revisited: Examining the past, envisioning the future*’ (2020) Taylor & Francis 1.

³¹ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 16.

³² Chen MA ‘*The informal economy: Definitions, theories, and policies*’ (2012) 1 WIEGO working Paper 26 2.

³³ Chen M & Carré F ‘*The informal economy revisited: Examining the past, envisioning the future*’ (2020) Taylor & Francis 1.

³⁴ Chen M & Carré F ‘*The informal economy revisited: Examining the past, envisioning the future*’ (2020) Taylor & Francis 1.

³⁵ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 16.

As informality expanded, the term informal sector was becoming inadequate and misleading as it failed to reflect the heterogeneous characteristics of informality which is not a sector in a specific industry.³⁶ This led to the process of broadening the concept and definition of informality to encompass informality in all its forms in both developing and developed countries.³⁷ Subsequently, the International Labour Conference (ILC) at its 90th session in June 2002 adopted the *Resolution concerning decent work and the informal economy* which captured the broadened concept of informality.³⁸ Consequently, the term informal economy was officially introduced to include the expanding and diverse group of workers and enterprises who operate informally in both rural and urban areas.³⁹

2.3. TRENDS AND CONTEXT OF THE INFORMAL ECONOMY IN SOUTH AFRICA

2.3.1. Informal Economy in South Africa

Every country is different in applying an accepted definition of the term ‘informal economy’.⁴⁰

According to Kope, the informal economy is described as:

“all economic activities by workers and economic units that are- in law or in practice- not covered or insufficiently covered by formal arrangements”⁴¹

The informal economy is heterogeneous, significant in scale and includes domestic workers, informal farm workers, home-based workers, waste-pickers, street vendors, undocumented migrant workers in informal employment and those in self-employment.⁴² This paper addresses



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³⁶ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 24.

³⁷ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 24.

³⁸ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 24.

³⁹ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 24.

⁴⁰ Khuong NV, Shabbir MS, Sial MS & Khanh THT ‘Does informal economy impede economic growth? Evidence from an emerging economy (2021) 11 *Journal of Sustainable Finance & Investment* 2 103.

⁴¹ Employment and Labour establishes informal economy National Labour Inspection Task Team’ available at <https://www.gov.za/speeches/employment-and-labour-establishes-informal-economy-national-labour-inspection-task-team-17> (accessed on 28 February 2023).

⁴² Sexual Harassment In The Informal Economy: Farmworkers and domestic workers available at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Discussion-paper-Sexual-harassment-in-the-informal-economy-en.pdf> (accessed on 08 January 2022).

the experiences of the unrecognised and unprotected with a focus on informal farm workers who harvest and pick the food that fills the shelves of supermarkets.⁴³

The informal economy in South Africa is regarded as an important part of the economy with the potential to reduce the high levels of poverty which stands at an astounding 55 per cent, and the high unemployment rate at an estimated 32.9 per cent.⁴⁴ The informal economy in South Africa has been estimated to contribute roughly 6 per cent of the Gross Domestic Product (GDP) and account for a projected one-third of the national total, thereby proving the significance in reducing poverty.⁴⁵ However, South Africa's informal employment rate is much lower at 36 per cent compared to other Sub-Saharan African countries (SSA).⁴⁶ The rate of entry into informal employment is not consistent with the rate of unemployment, and scholars attribute this phenomenon to historical limitations placed on black entrepreneurial activity, the perception of low earnings below decent wage, and social grants as a source of income for the unemployed among others.⁴⁷

2.3.2. Size of the Informal Economy in South Africa

Although South Africa's informal economy participation is lower in comparison with other African countries, it remains a vital source of income for the poor.⁴⁸ Currently, an estimated 4.8 million people are employed in the informal economy in South Africa.⁴⁹ Despite the low participation in the informal economy, it does provide accessible low-priced goods and services

⁴³Sexual Harassment In The Informal Economy: Farmworkers and domestic workers available at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Discussion-paper-Sexual-harassment-in-the-informal-economy-en.pdf> (accessed on 08 January 2022).

⁴⁴Khambule I 'The effects of COVID-19 on the South African informal economy: Limits and pitfalls of government's response' (2020) 34 *Loyola Journal of Social Sciences* 1 95 109. See also StatsSA 'South Africa Unemployment rate' available at <https://www.statssa.gov.za/publications/P0211/P02111stQuarter2023.pdf> (accessed on 17 July 2023). See also Masuku B & Nzewi O 'The South African informal sector's socio-economic exclusion from basic service provisions: A critique of Buffalo City Metropolitan Municipality's approach to the informal sector' (2021) 32 *Journal of Energy in Southern Africa* 2 59 71.

⁴⁵IOL 'Informal sector sadly neglected' IOL News 30 May 2023 available at <https://www.iol.co.za/dailynews/opinion/informal-sector-sadly-neglected-84d99fb6-3f3a-4a37-8a5a-1c3ceab02ec3> (accessed on 18 July 2023).

⁴⁶Rakabe E 'The informal economy is necessary to deal with the unemployment crises' (2020) available at <https://mg.co.za/article/2020-02-19-the-informal-economy-is-necessary-to-deal-with-the-unemployment-crisis/> (accessed on 22 October 2022). See also Neves D & Du Toit A 'Money and sociality in South Africa's informal economy' (2012) 82 *Africa* 1 131 149.

⁴⁷Rogan M & Skinner C 'The COVID-19 crisis and the South African informal economy: A stalled recovery' (2022) WIDER Working Paper 2.

⁴⁸The Borgen Project 'The informal economy of South Africa' available at <https://borgenproject.org/the-informal-economy-in-south-africa/> (accessed on 22 October 2022).

⁴⁹Statista: 'Number of people employed in the informal sector in South Africa from 2010 to 2020' (23 April 2023) available at <https://www.statista.com/statistics/1296024/number-of-informal-sector-employees-in-south-africa/> (accessed on 17 July 2023).

for the poor.⁵⁰ According to Deputy President David Mabuza, although the informal economy is growing, obstacles persist which deter its growth.⁵¹ In an effort to address this issue, creating an enabling policy and regulatory environment has been identified as critical in the development of the informal economy.⁵²

2.3.3. Importance of the Informal Economy

Many South Africans rely directly or indirectly on the informal economy for survival.⁵³ This is because the informal economy provides cheaper goods and services that the poor can afford.⁵⁴ Likewise, the informal economy offers employment opportunities to vulnerable groups such as migrants and women who cannot find jobs in the formal economy due to barriers of entry such as formal qualifications, skills, and experience among others.⁵⁵ In South Africa, an approximate 30 per cent of total employment is informal.⁵⁶ This amounts to an estimated 4.8 million workers, thus its contribution toward employment remains significant.⁵⁷ Furthermore, the informal economy is a significant contributor to the nation's GDP, contributing an estimated 6 per cent.⁵⁸



⁵⁰ ILO 'Conclusions concerning decent work and the informal economy' (2002) International Labour Conference, 90th Session para 6.

⁵¹ SABC News 'An enabling economy, regulatory environment key for developing an informal economy' (2022) available at <https://www.sabcnews.com/sabcnews/an-enabling-economy-regulatory-environment-key-for-developing-an-informal-economy/> (accessed on 22 October 2022).

⁵² SABC News 'An enabling economy, regulatory environment key for developing an informal economy' (2022) available at <https://www.sabcnews.com/sabcnews/an-enabling-economy-regulatory-environment-key-for-developing-an-informal-economy/> (accessed on 22 October 2022).

⁵³ Etim E & Daramola O 'The informal sector and economic growth of South Africa and Nigeria: A comparative systematic review' (2020) 6 *Journal of Open Innovation: Technology, Market, and Complexity* 4 134 1.

⁵⁴ ILO 'Conclusions concerning decent work and the informal economy' (2002) International Labour Conference, 90th Session para 6.

⁵⁵ Aryeetey E 'The informal economy, economic growth, and poverty in Sub-Saharan Africa. Economic growth and poverty reduction in Sub-Saharan Africa: Current and emerging issues' (2015) 159 27.

⁵⁶ Statista: 'Number of people employed in the informal sector in South Africa from 2010 to 2020' (23 April 2023) available at <https://www.statista.com/statistics/1296024/number-of-informal-sector-employees-in-south-africa/> (accessed on 17 July 2023). See also Rogan M 'Informal Workers in Urban South Africa: A Statistical Snapshot' (2019) *WIEGO Statistical Brief No 19* available at <https://www.wiego.org/sites/default/files/publications/files/Informal%20Workers%20in%20Urban%20South%20Africa%20SB%2019.pdf> (accessed on 30 July 2022).

⁵⁷ Statista: 'Number of people employed in the informal sector in South Africa from 2010 to 2020' (23 April 2023) available at <https://www.statista.com/statistics/1296024/number-of-informal-sector-employees-in-south-africa/> (accessed on 17 July 2023). See also The Borgen Project 'The informal economy of South Africa' available at <https://borgenproject.org/the-informal-economy-in-south-africa/> (accessed on 22 October 2022).

⁵⁸ IOL 'Informal sector sadly neglected' IOL News 30 May 2023 available at <https://www.iol.co.za/dailynews/opinion/informal-sector-sadly-neglected-84d99fb6-3f3a-4a37-8a5a-1c3ceab02ec3> (accessed on 18 July 2023).

2.3.4. Characteristics of the Informal Economy

Generally informal economic activities in South Africa are characterized by the following:

2.3.4.1. Gender segmentation

There are roughly 740 million women in the informal economy with women occupying the lowest ranks.⁵⁹ According to Osiki, there are significant gender differences in the informal economy.⁶⁰ Women are primarily in feminised jobs such as domestic work, home-based work, and garment and textile work, making up majority of low wage workers.⁶¹ In South Africa, women make up an estimated half of all informal own-account work compared to their male counterparts, which include street-vending, waste picking and operating spaza shops and other home businesses.⁶² The level of vulnerable employment, which include own-account work and unpaid family contributory employment is higher for women than for men.⁶³ Prevalently in South Africa, factors contributing toward this phenomenon include the need to balance childcare responsibilities with paid work.⁶⁴ The nature of women's work at home, is often regarded as everyday duties and result in a lack of worker identity.⁶⁵

Related to this is the challenge of gender hierarchies in the informal economy. Gender hierarchies exist where men are predominantly employers or permanent wage workers with higher wages and lower poverty risks, and women are more prevalent as casual wage workers,

⁵⁹ILO 'The COVID-19 response: Getting gender equality right for a better future for women at work' (2020) 2 available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_744374.pdf (accessed on 18 July 2023). See also Sexual Harassment In The Informal Economy: Farmworkers and domestic workers available at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Discussion-paper-Sexual-harassment-in-the-informal-economy-en.pdf> (accessed on 09 January 2022).

⁶⁰Osiki, AE 'The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria' (unpublished doctoral dissertation, University of Cape Town, 2018) 2.

⁶¹Sexual Harassment In The Informal Economy: Farmworkers and domestic workers available at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Discussion-paper-Sexual-harassment-in-the-informal-economy-en.pdf> (accessed on 08 January 2022).

⁶²International Monetary Fund 'Five Things to Know about the Informal Economy' 28 July 2021 available at <https://www.imf.org/en/News/Articles/2021/07/28/na-072821-five-things-to-know-about-the-informal-economy> (accessed on 18 July 2023). See also Rogan M and Alfery L 'Gendered inequalities in the South African informal economy' (2019) 33 *Agenda* 4 100.

⁶³International Monetary Fund 'Five Things to Know about the Informal Economy' 28 July 2021 available at <https://www.imf.org/en/News/Articles/2021/07/28/na-072821-five-things-to-know-about-the-informal-economy> (accessed on 18 July 2023). See also Orobe N 'Gender and the informal economy key challenges and policy response' (2017) *ILO Working Papers* 7.

⁶⁴Olu-Owolabi FE, Amoo E, Samuel O, Oyeyemi A & Adejumo G 'Female-dominated informal labour sector and family (in) stability: The interface between reproduction and production (2020) 7 *Cogent arts & humanities* 1 3. See also Rogan M and Alfery L 'Gendered inequalities in the South African informal economy' (2019) 33 *Agenda* 4 100.

⁶⁵Fourie E 'Voice, Representation and Women Workers in the Informal Economy' (2019) 2 *ILJ* 40 1402.

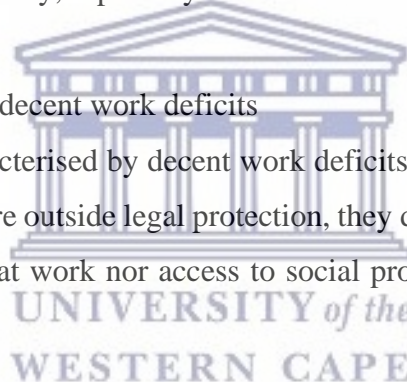
and homeowners where wages are low.⁶⁶ In addition, the gendered structure of earnings and occupations in the informal economy contribute toward inequalities which often go unnoticed.⁶⁷ This places woman at a disadvantage which exacerbates poverty. Accordingly, the overrepresentation of women in informal employment has been identified as the main source of gender inequality.⁶⁸ This poses challenges seeing that almost an estimated third of the South African female workforce is in informal employment.⁶⁹

2.3.4.2. Low literacy levels

According to Palmer, a person's educational level affects the chances of working in the informal economy.⁷⁰ Workers in the informal economy are three times more likely to possess only primary education or no education at all, compared to formal economy workers.⁷¹ Similarly, Osiki provides that more informal workers are illiterate and unschooled and can be connected to the low or no skills requirement within the informal economy.⁷² However, due to the flexibility provided by the informal economy, people with formal education also actively participate in the informal economy, especially as an additional source of income.⁷³

2.3.4.3. Lack of protection and decent work deficits

The informal economy is characterised by decent work deficits and lack of legal protection.⁷⁴ Because many of the workers are outside legal protection, they do not enjoy any representation by unions, have limited rights at work nor access to social protection.⁷⁵ Consequently, these



⁶⁶ Fourie E 'Gender and race in the informal economy: the South African framework' (2019) In *Social Security Outside the Realm of the Employment Contract* Edward Elgar Publishing 60.

⁶⁷ Rogan M and Alfors L 'Gendered inequalities in the South African informal economy' (2019) 33 *Agenda* 4 91.

⁶⁸ Rogan M and Alfors L 'Gendered inequalities in the South African informal economy' (2019) 33 *Agenda* 4 91.

⁶⁹ Rogan M and Alfors L 'Gendered inequalities in the South African informal economy' (2019) 33 *Agenda* 4 97.

⁷⁰ Palmer R 'Lifelong learning in the informal economy: A literature review' (2020) ILO Geneva Switzerland v.

⁷¹ Palmer R 'Lifelong learning in the informal economy: A literature review' (2020) ILO Geneva Switzerland 4.

See also Rogan M & Skinner C 'The nature of the South African informal sector as reflected in the quarterly labour-force survey, 2008-2014' (2017) *Cape Town: University of Cape Town* 17.

⁷² Osiki, AE 'The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria' (unpublished doctoral dissertation, University of Cape Town, 2018) 39.

⁷³ Osiki, AE 'The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria' (unpublished doctoral dissertation, University of Cape Town, 2018) 39. See also Tshuma MC & Jari B 'The informal sector as a source of household income: The case of Alice town in the Eastern Cape Province of South Africa' (2013) 5 *Journal of African studies and development* 8 255.

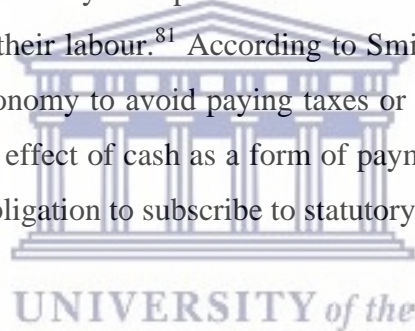
⁷⁴ Razavi S 'Making the Right to Social Security a Reality for All Workers' (2022) 65 *The Indian Journal of Labour Economics* 2 274. See also ILO 'Conclusions concerning decent work and the informal economy' (2002) International Labour Conference, 90th Session para 6.

⁷⁵ King A & Shackleton CM 'Working in poverty: Informal employment of household gardeners in Eastern Cape towns, South Africa' (2022) 39 *Development Southern Africa* 6 1007 1020. See also Lund FJ and Srinivas S

workers experience exploitation, poor working conditions and low wages which contribute toward indecent work.⁷⁶ Specifically, informal farm workers are exposed to hazardous working conditions, yet they are unable to access social insurance due to not being recognised as an ‘employee’ with an identifiable employer.⁷⁷ These workers move between jobs as harvest seasons fluctuate or project work becomes available, thereby making it challenging to access social protection provisions to link employer contributions.⁷⁸ As such, these workers, and similarly all others within the informal economy are left vulnerable without the necessary labour and social protection.

2.3.4.4. Cash as a form of exchange

Cash is the most accepted form of exchange between parties as opposed to a payroll statement, to avoid any record of activities.⁷⁹ The terms frequently used to describe these types of transactions are called ‘off the books’ or ‘under the table’, which recalls a payment that is not traceable.⁸⁰ Another form of payment prevalent among farm workers during the early 1900s, and which is now banned, was that they were provided with alcohol (known as the dop-system) and food instead of wages for their labour.⁸¹ According to Smit and Mpedi, people prefer to operate within the informal economy to avoid paying taxes or any other statutory obligation required to trade legally.⁸² The effect of cash as a form of payment is that there is no official record of transaction thus no obligation to subscribe to statutory licences or tax provisions.⁸³



‘Learning from experience: A gendered approach to social protection for workers in the informal economy’ (2000) International Labour Organization.

⁷⁶ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 38.

⁷⁷ Schneider F, Morkunas M & Quendler E ‘An estimation of the informal economy in the agricultural sector in the EU-15 from 1996 to 2019’ (2023) 39 *Agribusiness* 2 408. See also Smit N and Mpedi LG ‘Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?’ (2010) 14 *Law, Democracy & Development* 1 1.

⁷⁸ Lund F & Nicholson J ‘Chains of production, ladders of protection: Social protection for workers in the informal economy’ (2003) *School of Development Studies University of Natal* 34.

⁷⁹ Losby JL, Else JF, Kingslow ME, Edgcomb EL, Malm ET and Kao V ‘Informal economy literature review’ (2002) 1 *ISED Consulting and Research* 55 6.

⁸⁰ Losby JL, Else JF, Kingslow ME, Edgcomb EL, Malm ET and Kao V ‘Informal economy literature review’ (2002) 1 *ISED Consulting and Research* 55 6.

⁸¹ Gossage JP, Snell CL, Parry CD, Marais AS, Barnard R, De Vries M & May PA ‘Alcohol use, working conditions, job benefits, and the legacy of the “Dop” system among farm workers in the Western Cape Province, South Africa: hope despite high levels of risky drinking’ (2014) 11 *International journal of environmental research and public health* 7 7407.

⁸² Smit N and Mpedi LG ‘Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?’ (2010) 14 *Law, Democracy & Development* 1 7.

⁸³ Losby JL, Else JF, Kingslow ME, Edgcomb EL, Malm ET and Kao V ‘Informal economy literature review’ (2002) 1 *ISED Consulting and Research* 55 6.

2.3.4.5. Freedom of entry and exit

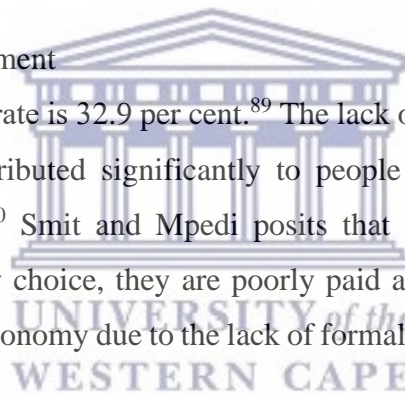
Entry into the informal economy is relatively easy as there are no stringent barriers to entry. The informal economy has the potential for job and income generation because of the relative ease of entry and low requirements for education, technology, skills, and capital.⁸⁴ Furthermore, it can be classified as attractive due to a lack of unions or government requirements.⁸⁵ Similarly, those that have the necessary skills or capital can access the informal economy unrestricted.⁸⁶

2.3.5. Factors contributing to informality in South Africa

As earlier mentioned, South Africa's informal economy is a means of providing income for the country's poor and most vulnerable groups.⁸⁷ It also contributes significantly toward the country's GDP and provides cheap goods and services.⁸⁸ These have contributed to the continued expansion of the informal economy in South Africa. However, there are additional factors aiding the expansion and continuous persistence of the informal economy.

2.3.5.1. High rate of unemployment

South Africa's unemployment rate is 32.9 per cent.⁸⁹ The lack of employment opportunities in the formal economy has contributed significantly to people seeking jobs in the informal economy to earn an income.⁹⁰ Smit and Mpedi posits that most workers in the informal economy do not work there by choice, they are poorly paid and have a small percentage of hope to migrate to the formal economy due to the lack of formal skills.⁹¹ Although the informal



⁸⁴ ILO 'Conclusions concerning decent work and the informal economy' (2002) International Labour Conference, 90th Session para 6.

⁸⁵ Osiki, AE 'The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria' (unpublished doctoral dissertation, University of Cape Town, 2018) 39.

⁸⁶ Osiki, AE 'The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria' (unpublished doctoral dissertation, University of Cape Town, 2018) 39.

⁸⁷ The Borgen Project 'The informal economy of South Africa' available at <https://borgenproject.org/the-informal-economy-in-south-africa/> (accessed on 22 October 2022).

⁸⁸ The Borgen Project 'The informal economy of South Africa' available at <https://borgenproject.org/the-informal-economy-in-south-africa/> (accessed on 22 October 2022).

⁸⁹ StatsSA 'South Africa Unemployment rate' available at <https://www.statssa.gov.za/publications/P0211/P02111stQuarter2023.pdf> (accessed on 17 July 2023). See also Rakabe E 'The informal economy is necessary to deal with the unemployment crises' (2020) available at <https://mg.co.za/article/2020-02-19-the-informal-economy-is-necessary-to-deal-with-the-unemployment-crisis/> (accessed on 22 October 2022).

⁹⁰ Smit N and Mpedi LG 'Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?' (2010) 14 *Law, Democracy & Development* 17.

⁹¹ Smit N and Mpedi LG 'Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?' (2010) 14 *Law, Democracy & Development* 17.

economy provides lower wages and precarious working circumstances, it allows people an alternative source of livelihood.⁹² Consequently, the informal economy will likely remain and expand in size due to rising unemployment in South Africa.⁹³ This poses further challenges as these individuals remain without social protection provisions.

2.3.5.2. Inequality and poverty

South Africa is one of the most unequal countries in the world, with almost half of South Africans living in poverty.⁹⁴ The slow rate of economic growth coupled with the impact of higher wage gaps between racial groups and the high unemployment rate have led to the high Gini Index/Coefficient for the country.⁹⁵ This has resulted in people being unable to meet their basic living needs or those of their families.⁹⁶ A large share of poor and unskilled workers are more inclined to accept lower wages and precarious working conditions than skilled workers because they have fewer employment opportunities, implying that informal economic activities will continue to grow as inequality increase.⁹⁷ Consequently, there is an inference between poverty and informality in that poverty forces people to engage in informality and working in the informal economy signals poverty.⁹⁸

2.3.5.3. Globalisation

Globalisation refers to new patterns of global trade, capital flows, international migration of workers and the transmission of technology, which all have substantial implications for the informal economy.⁹⁹ Globalisation has been attributed to the increase of informal economies.¹⁰⁰

⁹² Aryeetey E 'The informal economy, economic growth, and poverty in Sub-Saharan Africa. Economic growth and poverty reduction in Sub-Saharan Africa: Current and emerging issues' (2015) 159 27.

⁹³ Aryeetey E 'The informal economy, economic growth, and poverty in Sub-Saharan Africa. Economic growth and poverty reduction in Sub-Saharan Africa: Current and emerging issues' (2015) 159 27.

⁹⁴ Dell'Anno R 'Inequality and informality in transition and emerging countries' available at <https://wol.iza.org/articles/inequality-and-informality-in-transition-and-emerging-countries/long> (accessed on 22 October 2022).

⁹⁵ Etim E and Daramola O 'The informal sector and economic growth of South Africa and Nigeria: A comparative systematic review' (2020) 6 *Journal of Open Innovation: Technology, Market, and Complexity* 4 134 15.

⁹⁶ ILO 'Inequalities and the world of work' (2021) International Labour Conference 109th Session available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_792123.pdf (accessed on 22 October 2022).

⁹⁷ Dell'Anno R 'Inequality and informality in transition and emerging countries' available at <https://wol.iza.org/articles/inequality-and-informality-in-transition-and-emerging-countries/long> (accessed on 22 October 2022).

⁹⁸ Aryeetey E 'The informal economy, economic growth, and poverty in Sub-Saharan Africa. Economic growth and poverty reduction in Sub-Saharan Africa: Current and emerging issues' (2015) 159 28.

⁹⁹ Verick S 'The impact of globalization on the informal sector in Africa' (2006) *Economic and Social Policy Division, United Nations Economic Commission for Africa (ECA) and Institute for the Study of Labor (IZA)* 10.

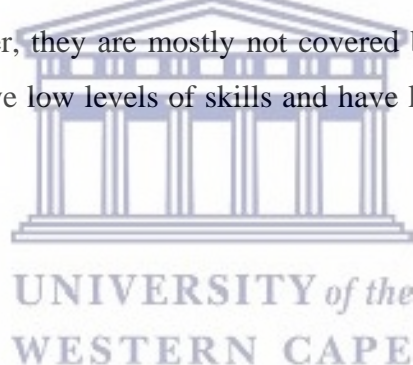
¹⁰⁰ Borgen project 'Informal economies quelling the tide of globalisation' available at <https://borgenproject.org/informal-economies-globalization/> (accessed on 22 October 2022).

Formal employment has been transformed by globalisation and shifts in economic incentives and policies, as a means to reduce operational costs and increase profitability.¹⁰¹ This is because global competition and trends encourage firms to shift from formal employment to informal employment, thereby, avoiding payment of minimum wage or providing benefits and offering little to no social protection coverage.¹⁰² Furthermore, the competitive drive of globalisation has led to increasing informalisation of work, especially within sectors linked to formal exports such as agriculture, and the shift to more flexible labour patterns.¹⁰³

2.4. INFORMAL ECONOMY WORKERS

2.4.1. Informal Workers

As discussed in chapter one, informal employment comprises of both self-employed and waged workers who are without the necessary legal protection.¹⁰⁴ These workers are found in various sectors including agriculture, construction, hospitality, and mining among others.¹⁰⁵ They operate either with one or multiple employers; for example, informal farm workers moving from one farm to another as the harvest seasons fluctuate.¹⁰⁶ These workers have irregular or uncertain incomes.¹⁰⁷ Moreover, they are mostly not covered by labour legislation, work in unsafe working conditions, have low levels of skills and have limited access, if any to social



¹⁰¹ Etim E & Daramola O ‘The informal sector and economic growth of South Africa and Nigeria: A comparative systematic review’ (2020) 6 *Journal of Open Innovation: Technology, Market, and Complexity* 4 134 1.

¹⁰² Informality and globalisation: In search of a new global contract (2023) 113 OECD Publishing available at <https://www.oecd-ilibrary.org/docserver/c945c24f-en.pdf?expires=1689720419&id=id&accname=guest&checksum=CC5D32A6BEF1E3F592D634B269DD30A>

[F](#) (accessed on 19 July 2023). See also Carr M & Chen MA ‘Globalization and the informal economy: How global trade and investment impact on the working poor’ (2002) Geneva International Labour Office 92.

¹⁰³ Kritzinger A, Barrientos S & Rossouw H ‘Globalisation and livelihoods in South Africa fruit–The experience of contract workers’ (2002) In *XI International Agrarian Perspectives Conference* 25 6.

¹⁰⁴ ILO ‘Informal Economy Workers’ available at https://www.ilo.org/global/topics/wages/minimum-wages/beneficiaries/WCMS_436492/lang-en/index.htm#:~:text=By%20doing%20so%2C%20they%20defined,in%20an%20income%2Dproducing%20enterprise. (accessed on 30 July 2022).

¹⁰⁵ The South African Law Reform Commission ‘Maternity and Parental Benefits for Self-Employed Workers in the Informal Economy Project 143’ (2021) *Discussion Paper 15 323 xxiii* available at <https://www.justice.gov.za/salrc/dpapers/dp153-prj143-MaternityParentalBenefits-July2021.pdf> (accessed on 31 July 2022).

¹⁰⁶ Devey R, Skinner C & Valodia I ‘Informal economy employment data in South Africa: A critical analysis’ (2003) *Report prepared for the Employment Data Research Group, Human Sciences Research Council* 33.

¹⁰⁷ Devey R, Skinner C & Valodia I ‘Informal economy employment data in South Africa: A critical analysis’ (2003) *Report prepared for the Employment Data Research Group, Human Sciences Research Council* 36.

protection.¹⁰⁸ As a result, many informal workers experience high levels of socio-economic vulnerability.¹⁰⁹ This research paper focuses on informal farm workers.

2.4.2. Informal Farm Workers

Farm workers fall under the ambit of the agricultural sector. A farm worker is classified as

“any person who is involved in farming activities which includes a general worker on a farm, all domestic workers who work in a house on a farm and security guards not employed by a private security company, who is employed to safeguard the farm and areas where farming operations take place”.¹¹⁰

The agriculture sector is known for having a high degree of informal employment, most of whom are employed at entry-level as general labourers, and who cannot afford private insurance.¹¹¹ These workers who provide general labour, require low skills to perform their work and entry into the workplace is easily accessible.¹¹² Indeed, this makes farm work attractive to vulnerable groups such as migrants and women among others.¹¹³

The challenges experienced by informal farm workers are further aggravated by their hazardous working conditions, as agriculture is deemed as one of the most hazardous form of work, alongside construction and mining.¹¹⁴ Yet, these workers are not covered in the event of an injury at work as they are not recognised as employees in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA),¹¹⁵ which provide insurance against income shocks resulting from being incapacitated and unable to work either temporarily or permanently.¹¹⁶ Frequently located in rural areas, with no hospital or immediate medical care

¹⁰⁸ Smit N & Mpedi LG ‘Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?’ (2010) 14 *Law, Democracy & Development* 1 4.

¹⁰⁹ Smit N & Mpedi LG ‘Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?’ (2010) 14 *Law, Democracy & Development* 1 4.

¹¹⁰ Sectorial Determination 13: Farm Workers s (1)(3) definition of farm worker.

¹¹¹ ILO ‘Agricultural wage workers: The poorest of the rural poor’ available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008067/lang--en/index.htm (accessed on 09 October 2022).

¹¹² Tagliacozzo S, Pisacane L and Kilkey M ‘The interplay between structural and systemic vulnerability during the COVID-19 pandemic: migrant agricultural workers in informal settlements in Southern Italy’ (2021) 47 *Journal of Ethnic and Migration Studies* 9 1908.

¹¹³ Tagliacozzo S, Pisacane L and Kilkey M ‘The interplay between structural and systemic vulnerability during the COVID-19 pandemic: migrant agricultural workers in informal settlements in Southern Italy’ (2021) 47 *Journal of Ethnic and Migration Studies* 9 1908.

¹¹⁴ ILO ‘Agriculture: A Hazardous work’ available at https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm (accessed on 05 October 2022).

¹¹⁵ Compensation for Occupational Injuries and Diseases Act 130 of 1993.

¹¹⁶ The Compensation for Occupational Injuries and Diseases Act 130 of 1993.

nearby, these workers are often subjected to exploitation and their working conditions go undetected by labour officials.¹¹⁷

Furthermore, a major characteristic of the agricultural sector is its high levels of flexibility which enables workers to move from one employer to another during or between farming seasons.¹¹⁸ This flexibility stems from the seasonal nature of farm work and practices adopted by employers to reduce/avoid their obligations in terms of labour laws.¹¹⁹ Within this context, informal farm workers do not have contracts of employments or work that is guaranteed. Consequently, informal farm workers are largely excluded from social protection coverage which favour those in more stable or permanent employment with an attachment to one employer.¹²⁰ Whilst farm work is a source of income for many, this lack of access to social protection aggravates the vulnerability of many informal farm workers.

The working conditions stated above are exacerbated for certain categories of informal farm workers. This is discussed below.

2.4.2.1. Women and vulnerabilities as informal workers on farms

Women play a significant role in the agricultural sector as they account for an estimated one third of South Africa's farm labour.¹²¹ Seasonal farm women, are amongst the poorest and most vulnerable categories of workers in South Africa.¹²² They are particularly vulnerable as they are to a large extent engaged in what is termed 'atypical' forms of employment because of the history of marginalisation in the labour market which has left them excluded.¹²³ Majority of

¹¹⁷ ILO "Agriculture: A Hazardous work" available at https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm (accessed on 05 October 2022).

¹¹⁸ Barrientos A & Barrientos SW 'Extending social protection to informal workers in the horticulture global value chain' (2002) *Washington DC World Bank* 19.

¹¹⁹ Barrientos A & Barrientos SW 'Extending social protection to informal workers in the horticulture global value chain' (2002) *Washington DC World Bank* 19.

¹²⁰ Barrientos A & Barrientos SW 'Extending social protection to informal workers in the horticulture global value chain' (2002) *Washington DC World Bank* iv.

¹²¹ 'Women's work on African farms' *The farming portal* 12 August 2021 available at <https://farmingportal.co.za/index.php/farminglifestyle/agri-women/1776-women-s-work-on-african-farms> (accessed on 19 July 2023). Also see 'Role of women in agriculture' *Agbiz* 05 October 2018 available at <https://www.farmingportal.co.za/index.php/farminglifestyle/agri-women/438-role-of-women-in-agriculture-south-africa#:~:text=Despite%20this%2C%20women%20continue%20to%20play%20a%20significant,quarter%20of%20this%20year%2C%20Statistics%20South%20Africa%20indicates.> (accessed on 14 October 2022).

¹²² Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 385.

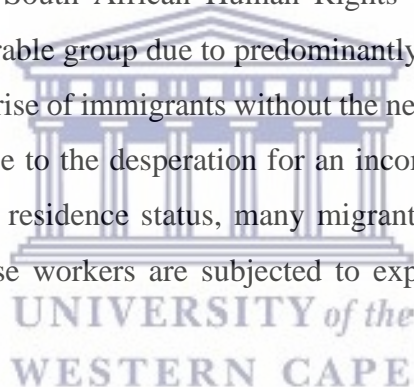
¹²³ Kaseke E 'The role of social security in South Africa' (2010) 53 *International social work* 2 163.

farm women workers are household breadwinners, exceeding men by at least 37 per cent.¹²⁴ These women are often paid less than men, are not likely to be given employment contracts, the housing on farms are majorly registered to men than women and pregnant women are often denied employment and/or not granted paid maternity leave.¹²⁵

In addition, farm women's rights are violated by a lack of toilet facilities in orchards, their dignity is compromised coupled with exposure to negative health implications from their lack of access to clean drinking water and washing their hands after toilet breaks and before eating.¹²⁶ Likewise, they are at risk of sexual harassment or worse as majority of times they must use the bush to relieve themselves and walk in groups for their safety.¹²⁷ Finally, these farm women are particularly vulnerable as they are more likely than men to be casualised, evicted from farmhouses and not reemployed for upcoming seasonal work.¹²⁸

2.4.2.2. Migrants and vulnerabilities as informal workers on farms

According to a report by the South African Human Rights Commission (SAHRC), farm workers are deemed as a vulnerable group due to predominantly low income, low educational levels and skills and may comprise of immigrants without the necessary authorisation to reside or work in South Africa.¹²⁹ Due to the desperation for an income, the lack of knowledge on their rights, and mostly illegal residence status, many migrant workers work informally on farms in South Africa.¹³⁰ These workers are subjected to exploitative and unsafe working conditions on farms.¹³¹



¹²⁴ Hart T & Aliber M 'Inequalities in agricultural support for women in South Africa' (2012) *Human sciences Research Council* 3. See also ¹²⁴ 'Women's work on African farms' *The farming portal* 12 August 2021 available at <https://farmingportal.co.za/index.php/farminglifestyle/agri-women/1776-women-s-work-on-african-farms> (accessed on 19 July 2023).

¹²⁵ Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 385.

¹²⁶ Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 385.

¹²⁷ Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 385.

¹²⁸ Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 385.

¹²⁹ A report by the South African Human Rights Commission (SAHRC) on 'Farm Workers and Human Rights' available at <https://www.sahrc.org.za/home/21/files/FINAL%20Farm%20Workers%20and%20Human%20Rights%20Educational%20Booklet.pdf> (accessed on 29 April 2022).

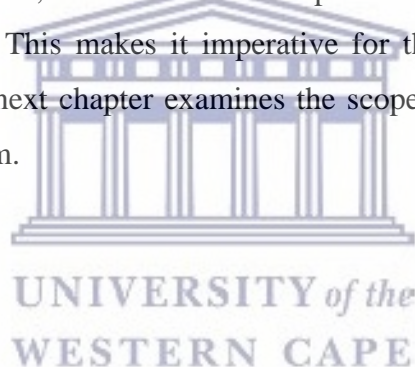
¹³⁰ Thebus S 'Working and living conditions of migrant farm women reminiscent of apartheid' (2021) available at <https://www.iol.co.za/capeargus/news/working-and-living-conditions-of-migrant-farm-women-reminiscent-of-apartheid-989268b4-6ea8-4c94-b162-6bc93bdf65a> (accessed on 29 April 2022).

¹³¹ Thebus S 'Working and living conditions of migrant farm women reminiscent of apartheid' (2021) available at <https://www.iol.co.za/capeargus/news/working-and-living-conditions-of-migrant-farm-women-reminiscent-of-apartheid-989268b4-6ea8-4c94-b162-6bc93bdf65a>

In addition, they experience xenophobia, which is defined as “a deep dislike of non-nationals by nationals of a recipient state”.¹³² An example is the 2009 xenophobic attack within the rural farming community of De Doorns, which left an estimated three thousand migrant farm workers destitute when they were chased from their homes which were torched and destroyed.¹³³ The motive of the attack was due to the perceived notion that migrant farm workers were taking jobs from South Africans, thereby creating a deepened dislike.¹³⁴

2.5. CONCLUSION

Chapter two explored the context of the informal economy in South Africa and provided an overview of the working conditions of informal farm workers. The chapter has shown that the informal economy contributes to alleviating poverty, creates jobs for individuals who are unable or refuse to enter the formal economy and a source of cheaper goods and services for many South Africans. However, informal workers particularly informal farm workers, experience decent work gaps. This makes it imperative for them to have access to social protection. In this regard, the next chapter examines the scope and limitations of the South African social protection system.



[apartheid-989268b4-6ea8-4c94-b162-6bc93bdf65a](https://www.ilo.org/wcmsp5/groups/public/--africa/documents/publication/wcms_385959.pdf) (accessed on 29 April 2022). See also Visser M & Ferrer S ‘Farm Workers’ Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural problems’ (2015) Pretoria International Labour Organization available at https://www.ilo.org/wcmsp5/groups/public/--africa/documents/publication/wcms_385959.pdf (accessed on 29 April 2022).

¹³² Obisie-Orlu DC ‘*You are a stranger here: a comparative study on the experiences and expressions of social exclusion, xenophobia, and unbelonging towards African immigrants in South Africa and France*’ (unpublished doctoral dissertation, University of Pittsburgh, 2023) 124. See also Adeogun T & Faluyi O ‘Xenophobia, racism, and the travails of ‘black’ immigrants in South Africa’ (2018) *The political economy of xenophobia in Africa* 126.

¹³³ Hagensen L ‘*Understanding the causes and the nature of xenophobia in South Africa: A case study of De Doorns*’ (2014) Doctoral dissertation Stellenbosch University 53.

¹³⁴ Hagensen L ‘*Understanding the causes and the nature of xenophobia in South Africa: A case study of De Doorns*’ (2014) Doctoral dissertation Stellenbosch University 53.

CHAPTER 3: SOCIAL SECURITY AND PROTECTION IN SOUTH AFRICA: SCOPE AND LIMITATIONS

3.1. INTRODUCTION

Social security relates to the mechanisms of support available to protect against socioeconomic insecurity. However, the increasing levels of informal employment and non-standard forms of work suggest that social security- which is mostly linked to work performed in the formal economy, does not provide adequate social protection, particularly in the context of developing countries.¹³⁵ Hence the use of the broadly understood term ‘social protection’ to provide a system that protects all workers including those beyond the traditional employment structure. In this regard, this chapter sets out the legal framework of the social protection system in South Africa, its scope and limitation.

The chapter is divided into four major sections. The first provides an overview of the social protection system in South Africa. The second part outlines the constitutional and legislative provisions of the right of access to social security. Thirdly, the chapter examines some social insurance measures in South Africa. Section four explores the applicability of the existing social protection system to informal farm workers.

3.2. FROM THE CONCEPT OF SOCIAL SECURITY TO SOCIAL PROTECTION

Social security is defined as a range of mechanisms put in place to mitigate against the potential loss of income, because of unemployment, pregnancy, disability, old age, and other circumstances that result in either temporary or permanent loss of income.¹³⁶ According to Kaseke, the scope of social security in South Africa should be understood within the context of national endeavours to create a democratic society following the abolishment of apartheid in 1994.¹³⁷ Such racial differentiation, which formed the cornerstone of social security provisions during apartheid has since been removed.¹³⁸

¹³⁵‘ILO International standards on social security’ available at <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm> (accessed on 28 January 2023).

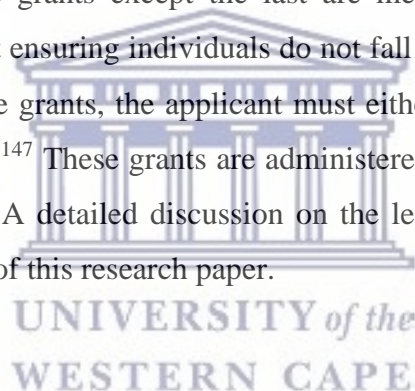
¹³⁶ Tshoose CI ‘Appraisal of selected themes on the impact of international standards on labour and social security law in South Africa’ (2022) 25 *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1 3.

¹³⁷ Kaseke E ‘The role of social security in South Africa’ (2010) 53 *International social work* 2 160.

¹³⁸ Kaseke E ‘The role of social security in South Africa’ (2010) 53 *International social work* 2 160.

Social security in South Africa is premised on a two-pillar system made up of state revenue funded social assistance (grants) and contributory social insurance.¹³⁹ An estimated two out of three households receive social assistance in the form of a social grant and an estimated 60 per cent of the workforce is covered by social insurance.¹⁴⁰ Social insurance measures are restricted to formal employment and comprises of contributory schemes that provide income related benefits to employees in the event of a specific social risk occurring such as illness, injury, and unemployment benefits payable upon loss of income.¹⁴¹ The latter part of this chapter examines in more detail the regulatory framework of social insurance in South Africa.

At the core of South Africa's social security system is social assistance which replaced poor relief in South Africa in the early twentieth century, initially reserved for white and coloured people only.¹⁴² Social assistance schemes are schemes in which selected categories of persons receive need-based social grants from public funds.¹⁴³ Social grants as regulated by the Social Assistance Act,¹⁴⁴ include an old age persons' grant, disability grant, child support grant and foster child grant.¹⁴⁵ All these grants except the last are means-based. In essence, social assistance is primarily aimed at ensuring individuals do not fall below a basic minimum level of existence.¹⁴⁶ To access these grants, the applicant must either be a South African citizen, permanent resident, or refugee.¹⁴⁷ These grants are administered by the South African Social Security Agency (SASSA).¹⁴⁸ A detailed discussion on the legislative framework of social assistance is beyond the scope of this research paper.



¹³⁹Tshoose CI 'Appraisal of selected themes on the impact of international standards on labour and social security law in South Africa' (2022) 25 *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1 2.

¹⁴⁰ Patel L 'Social security is the bedrock of SA's Human Rights protection, but it has gaps' available at <https://ewn.co.za/2022/03/25/social-security-is-the-bedrock-of-sa-s-human-rights-protection-but-there-are-gaps> (accessed on 15 January 2023).

¹⁴¹ Malherbe K & Wakefield L 'The effect of women's care-giving role on their social security rights' (2009)13 *Law, Democracy & Development* 47.

¹⁴² Gronbach L, Seekings J and Megannon V 'Social Protection in the COVID-19 Pandemic: Lessons from South Africa' (2022) 4.

¹⁴³ Tshoose CI 'Appraisal of selected themes on the impact of international standards on labour and social security law in South Africa' (2022) 25 *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1 3.

¹⁴⁴ Social Assistance Act 13 of 2004.

¹⁴⁵ Malherbe K & Wakefield L 'The effect of women's care-giving role on their social security rights' (2009)13 *Law, Democracy & Development* 47.

¹⁴⁶ Smit N and Mpedi LG 'Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?' (2010) 14 *Law Democracy & Development* 1 12.

¹⁴⁷ Section 5(1) of the Social Assistance Act 13 of 2004.

¹⁴⁸ILO Social protection floor available at <https://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=25710> (accessed on 29 October 2022).

Nonetheless, the concept of social security is evolving to the broader concept of social protection. Social protection emerged as a response to the ‘safety nets’ discourse of the late 1980s and early 1990s as an approach to combat poverty.¹⁴⁹ These initiatives were conceptualised as minimalist social assistance in countries too poor and administratively too weak to introduce social welfare programs.¹⁵⁰ During the 1990s, the nature of poverty became more nuanced and safety nets were criticised as residualist and paternalistic and thus more alternatives began to be proposed.¹⁵¹

The term ‘social protection’ is broader and more inclusive than ‘social security’ because it incorporates non-statutory or private measures which are of particular relevance to informal workers in many developing countries.¹⁵² Social protection includes measures to reduce and prevent poverty and social risks.¹⁵³ It is regarded as a fundamental right and instrumental in promoting human welfare and social harmony whilst ensuring individuals are adequately protected against social, economic, and other risks.¹⁵⁴ Furthermore, social protection, which consists of collective instruments to protect against risks and challenges, is recognised as one way to eliminate inequality and reduce working poverty.¹⁵⁵

3.2.1. The importance of Social Protection

The UN Commission on Social Development highlights the purpose of social protection schemes:

“The ultimate purpose of social protection is to increase capabilities and opportunities and, thereby, human development. While by its very nature social protection aims at providing at least minimum standards of well-being to people in dire circumstances enabling them to live with dignity, one should not overlook that social protection should not simply be seen as a residual policy function of assuring the welfare of the poorest, but as a foundation at a societal level for promoting social justice and social cohesion,

¹⁴⁹Devereux S & Sabates-Wheeler R ‘Transformative social protection’ (2004) *IDS Working Paper 232 1*.

¹⁵⁰Devereux S & Sabates-Wheeler R ‘Transformative social protection’ (2004) *IDS Working Paper 232 1*.

¹⁵¹Devereux S & Sabates-Wheeler R ‘Transformative social protection’ (2004) *IDS Working Paper 232 1*.

¹⁵² Bonilla Garcia A & Gruat JV ‘Social protection: A life cycle continuum investment for social justice, poverty reduction and sustainable development’ (2003) No 366683 Geneva ILO.

¹⁵³ Devereux S ‘Social protection for rural poverty reduction (2016) *Rural Transformation Technical Papers Series 1*.

¹⁵⁴Bonilla Garcia A and Gruat JV ‘*Social protection: A life cycle continuum investment for social justice, poverty reduction and sustainable development*’ (2003) Geneva ILO.

¹⁵⁵ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 101.

developing human capabilities, and promoting economic dynamism and creativity...”¹⁵⁶

In other words, social protection is important to alleviate the hardship of poverty experienced by the most vulnerable in society, and thereby provide a sense of human dignity and social justice.

3.3. HISTORICAL DEVELOPMENT OF SOCIAL PROTECTION

3.3.1 Global Overview

The Health Insurance Law was the first national system in the world, where both employers and employees paid into insurance funds, and where government penalised employers for uninsured workers.¹⁵⁷ In 1883, German chancellor Otto von Bismarck introduced the Health Insurance Law, which saw Germany become a welfare state.¹⁵⁸ In Great Britain however, health care treatment was financed by government through taxes and not through employers and workers.¹⁵⁹ Over the years, the health insurance law expanded with accident insurance, disability insurance and unemployment insurance among others.¹⁶⁰ Bismarck’s idea of a health insurance law was not entirely original, as various forms of insurance schemes already existed in Europe, dating back to the 14th century.¹⁶¹ These included ‘sick funds’ organised by community organised health insurance groups, and by the miners in Bohemia whose members paid into a common pot to assist widowers and orphans of miners killed during work accidents.¹⁶²

In addition, the war, revolutions and growing industrialisation brought about several changes which triggered the process of creating the ILO in 1919.¹⁶³ The ILO was the first international

¹⁵⁶ UN Economic and Social Council Enhancing Social Protection and Reducing Vulnerability in a Globalizing World Report of the Secretary General 39th session 13 – 23 February 2001.

¹⁵⁷Boissoneault L ‘Bismarck Tried to End Socialism’s Grip—By Offering Government Healthcare’ (2017) *Smithsonian Magazine* 14.

¹⁵⁸Boissoneault L ‘Bismarck Tried to End Socialism’s Grip—By Offering Government Healthcare’ (2017) *Smithsonian Magazine* 14.

¹⁵⁹Boissoneault L ‘Bismarck Tried to End Socialism’s Grip—By Offering Government Healthcare’ (2017) *Smithsonian Magazine* 14.

¹⁶⁰Boissoneault L ‘Bismarck Tried to End Socialism’s Grip—By Offering Government Healthcare’ (2017) *Smithsonian Magazine* 14.

¹⁶¹Boissoneault L ‘Bismarck Tried to End Socialism’s Grip—By Offering Government Healthcare’ (2017) *Smithsonian Magazine* 14.

¹⁶²Boissoneault L ‘Bismarck Tried to End Socialism’s Grip—By Offering Government Healthcare’ (2017) *Smithsonian Magazine* 14.

¹⁶³ILO ‘Social security and other labour standards’ <https://socialprotection-humanrights.org/legal-depository/legal-instruments/ilo-social-security-and-other-labour-standards/#:~:text=Of%20the%2031%20conventions%20and%2024%20recommendations%20adopted,102%2>

body to recognise the right to social security in 1944 through the Declaration of Philadelphia.¹⁶⁴ It was established with the belief that universal and lasting peace can be achieved based on social justice to extend social protection globally.¹⁶⁵ During the first two years of its existence, the ILO adopted 16 international labour Conventions and 18 Recommendations, one of which was the Social Security (Minimum Standards) Convention, 1952 (No 102) that provides guidance in establishing social security systems.¹⁶⁶ This Convention recognises the instrumental role of ILO social security standards in building universal social protection systems that ensures everyone has access to comprehensive and sustainable protection throughout their life cycle.¹⁶⁷ Equally, the Social Protection Floors Recommendation, 2012 (No 202) was adopted and acclaimed to be the first international instrument to offer guidance to countries to close the social security gaps and achieve universal protection through the establishment of social security systems.¹⁶⁸ This Recommendation will be discussed in the next chapter, alongside Convention 102.

3.3.2. Historical Social Protection Provisions in South Africa

Family, communal structures, and clan formations were the earliest forms of economic security in South Africa.¹⁶⁹ Although poverty and inequality existed prior to the colonial era, their

[9%20is%20considered%20the%20flagship%20social%20security%20instrument](#) (accessed on 25 February 2023).

¹⁶⁴ILO 'Social security and other labour standards' <https://socialprotection-humanrights.org/legal-depository/legal-instruments/ilo-social-security-and-other-labour-standards/#:~:text=Of%20the%2031%20conventions%20and%2024%20recommendations%20adopted,102%29%20is%20considered%20the%20flagship%20social%20security%20instrument> (accessed on 25 February 2023).

¹⁶⁵ILO 'Social security and other labour standards' <https://socialprotection-humanrights.org/legal-depository/legal-instruments/ilo-social-security-and-other-labour-standards/#:~:text=Of%20the%2031%20conventions%20and%2024%20recommendations%20adopted,102%29%20is%20considered%20the%20flagship%20social%20security%20instrument> (accessed on 25 February 2023).

¹⁶⁶ILO 'Social security and other labour standards' <https://socialprotection-humanrights.org/legal-depository/legal-instruments/ilo-social-security-and-other-labour-standards/#:~:text=Of%20the%2031%20conventions%20and%2024%20recommendations%20adopted,102%29%20is%20considered%20the%20flagship%20social%20security%20instrument> (accessed on 25 February 2023).

¹⁶⁷'ILO reaches ratification target for landmark social security Convention' available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_827047/lang--en/index.htm (accessed on 26 February 2023).

¹⁶⁸ ILO 'Social Security and other labour standards' available at <https://socialprotection-humanrights.org/legal-depository/legal-instruments/ilo-social-security-and-other-labour-standards/#:~:text=Recommendation%20No.%20202%20is%20the%20first%20international%20instrument,est%20ablishment%20and%20maintenance%20of%20comprehensive%20social%20security%20systems> (accessed on 26 February 2023).

¹⁶⁹Jehoma S & Ornellas A 'Social Security in South Africa: a historical overview' (2021) *Social Security Review* 9.

effects were mitigated by existing systems of kinship and reciprocity.¹⁷⁰ The dimension of race and the legacy of apartheid plays an integral role in South Africa's social protection framework.¹⁷¹ During apartheid, social policies were mainly driven by racially based political and economic beliefs, cemented within Victorian capitalism, colonialism, and imperialism.¹⁷² Indeed, social security was formalised through state regulation and the unwillingness of white lawmakers to use government revenue in financing of services to Africans was institutionalised into legislative provisions.¹⁷³ Prior to 1919, social security was predominantly provided through charities and the church, which highlighted the start of racially divided social security measures.¹⁷⁴ During 1919 to 1945, the introduction of more structured social security measures through the state were adopted, an increase in provision and formalisation, and some forms of social security extensions to certain groups of black residents.¹⁷⁵ However, racial discrimination through the provision of assistance persisted, in that the Workmen's Compensation Act of 1914,¹⁷⁶ excluded black workers as they were regulated separately by the Naturellearbeid Regelingswet of 1911.¹⁷⁷ Similarly, the 1918 Maternity allowance, was selective in excluding large categories of female workers, such as farm- and domestic workers who were mostly black.¹⁷⁸

After the abolishment of apartheid, the African National Congress (ANC) introduced new legislative measures and policies on social security which were inclusive and applicable to every South African.¹⁷⁹ Access to social security was thus enshrined as a basic right in the Constitution and in other social security legislation in South Africa.¹⁸⁰ The main laws which underpin the typology of the right to social security are: the Social Assistance Act 13 of 2004,¹⁸¹

¹⁷⁰ Jehoma S & Ornellas A 'Social Security in South Africa: a historical overview' (2021) *Social Security Review* 11.

¹⁷¹ Jehoma S & Ornellas A 'Social Security in South Africa: a historical overview' (2021) *Social Security Review* 9.

¹⁷² Jehoma S & Ornellas A 'Social Security in South Africa: a historical overview' (2021) *Social Security Review* 9.

¹⁷³ Jehoma S & Ornellas A 'Social Security in South Africa: a historical overview' (2021) *Social Security Review* 12.

¹⁷⁴ Jehoma S & Ornellas A 'Social Security in South Africa: a historical overview' (2021) *Social Security Review* 9.

¹⁷⁵ Jehoma S & Ornellas A 'Social Security in South Africa: a historical overview' (2021) *Social Security Review* 9.

¹⁷⁶ Workmen's Compensation Act of 1914.

¹⁷⁷ Naturellearbeid Regelingswet of 1911.

¹⁷⁸ Jehoma S & Ornellas A 'Social Security in South Africa: a historical overview' (2021) *Social Security Review* 11.

¹⁷⁹ Gronbach L Seekings J and Megannon, V 'Social Protection in the COVID-19 Pandemic: Lessons from South Africa' (2022) 4.

¹⁸⁰ 13 of 2004.

¹⁸¹ 13 of 2004.

Unemployment Insurance Fund Act 63 of 2001,¹⁸² Compensation for Occupational Injuries and Diseases Act 130 of 1993,¹⁸³ and the Pension Funds Act 24 of 1956.¹⁸⁴

The following section examines the constitutional right to social security and statutes which provide for social insurance.

3.4. RIGHT TO SOCIAL SECURITY: LEGAL FRAMEWORK

3.4.1. Constitutional Right of Access to Social Security

The Constitution provides for the right to social security in the following terms:

“(1) Everyone has the right to have access to –

...

(c) social security... including if they are unable to support themselves and their dependents, appropriate social assistance...”¹⁸⁵

This right of access to social security is guaranteed to everyone.¹⁸⁶ In *Mahlaule and Another v The Minister of Social Development and Others*,¹⁸⁷ the Constitutional court interpreted the meaning of the word ‘everyone’ in section 27(1)(c) to mean both permanent residents of South Africa as well as citizens, in keeping with the values which underpins the Constitution. Given the interpretation of the court, ‘everyone’ can therefore be argued to include informal farm workers, whether they are immigrants who are permanent residents or citizens of South Africa. Nonetheless, this constitutional right to access social security is not absolute.

Section 36 of the Constitution provides for limitations, to the extent that the limitation is reasonable and justifiable in an open and democratic society based on equality, freedom, and human dignity.¹⁸⁸ In the matter of *Khosa and others v Minister of Social Development and others, Mahlaule and another v Minister of Social Development*,¹⁸⁹ the court held that a lack of resources is a justifiable limitation to the right of access to social security, however, the

¹⁸² Unemployment Insurance Fund Act 63 of 2001 as amended.

¹⁸³ Compensation for Occupational Injuries and Diseases Act 130 of 1993.

¹⁸⁴ Pension Funds Act 24 of 1956.

¹⁸⁵ Section 27(1)(c) of the Constitution.

¹⁸⁶ Section 27(1)(c) of the Constitution.

¹⁸⁷ *Mahlaule and Others v Minister of Social Development and Others* 2004 (6) SA 505 (CC).

¹⁸⁸ Section 36 of the Constitution. See also *Khosa and others v Minister of Social Development and others, Mahlaule and another v Minister of Social Development* 2004 (6) SA 505 (CC).

¹⁸⁹ *Khosa and others v Minister of Social Development and others, Mahlaule and another v Minister of Social Development* 2004 (6) SA 505 (CC) para 45.

allocation of existing resources must be consistent with the Bill of Rights in general.¹⁹⁰ The right of access to social security is an important instrument in the realisation of dignity and equality, and therefore essential to informal farm workers' plight for social protection.

The next section examines the constitutional right to social security in the context of employment.

3.5. LEGISLATIVE FRAMEWORK ON THE RIGHT TO SOCIAL SECURITY

As noted previously, social insurance is one of the pillars of the South African social security system. This form of social security is an important source of socio-economic security for workers. This section examines the legislative framework of two social insurance schemes in South Africa: namely unemployment and compensation for work-related injuries and illness.

3.5.1. Unemployment Insurance

Unemployment insurance is governed by the Unemployment Insurance Act of 2001,¹⁹¹ and the Unemployment Insurance Contributions Act of 2002.¹⁹² The unemployment insurance system offers income replacement to eligible recipients to alleviate the harmful economic and social effects of income loss due to unemployment.¹⁹³ The provisions of these laws apply to employers and employees.

Section 1 defines 'employee' as "any natural person who receives remuneration or to whom remuneration accrues in respect of services rendered or to be rendered by that person but excludes any independent contractor".¹⁹⁴ While employer means:

"any person, including a person acting in a fiduciary capacity, who pays or is liable to pay to any person any amount by way of remuneration, and any person responsible for the payment of any amount by way of remuneration to any person under the provisions of any law or out of public funds, excluding any person who is not acting as a principal"¹⁹⁵

¹⁹⁰ *Khosa and others v Minister of Social Development and others, Mahlaule and another v Minister of Social Development* 2004 (6) SA 505 (CC) para 45.

¹⁹¹ Unemployment Insurance Act of 2001 (UIA).

¹⁹² Unemployment Insurance Contributions Act of 2002.

¹⁹³ Section 2: Unemployment Insurance Act of 2001 (UIA).

¹⁹⁴ Chapter 1 of the Unemployment Insurance Act 63 of 2001 as amended.

¹⁹⁵ Chapter 1 of the UIA.

Furthermore, section 3(1) of the UIA excludes the following persons:

- i. Employees employed for less than 24 hours a month with a particular employer
- ii. Employees who receive remuneration under a learnership
- iii. Employers and employees in the national and provincial sphere of government
- iv. Persons who enter the Republic for the purpose of carrying out a contract of service, and upon termination thereof the employer is required to repatriate that person.¹⁹⁶

In furtherance to the above, social protection is only extended to individuals who qualify as an ‘employee’ in terms of the provision of the various statutes which regulates social security.¹⁹⁷ As a consequence of being excluded from the definition of ‘employee’, for all legal and practical purposes, these individuals are excluded from accessing unemployment insurance.¹⁹⁸ Exclusions such as the above were previously determined along racial and gender bias, thereby resulting in marginalised groups being affected, most likely to be African. As such, this would equate to a form of discrimination.¹⁹⁹

According to Smit and Mpedi, this definitional limitation can be addressed by broadening the concept of social security laws, as was the case with other South African statutes.²⁰⁰ Sections 198(4)(a) of the LRA, together with section 83A of the BCEA makes provision for ways to include workers under the “deeming” provision.²⁰¹

Although the UIF plays an important role in providing income relief in times of income shocks, some parts of the labour force are excluded from receiving benefits.²⁰² Firstly, only contributing employees are eligible for UIF, and those that have never worked before, are excluded from the insurance system.²⁰³ Similarly, employees found in the informal economy are also not

¹⁹⁶ Section 3(1) of the UIA.

¹⁹⁷ Smit N and Mpedi LG ‘Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?’ (2010) 14 *Law Democracy & Development* 1 25.

¹⁹⁸ Liffman R, Mlalazi B, Moore V, Ogunronbi S & Olivier M ‘Those who have and those who don’t; an investigation into the limited scope of application of social security in South Africa’ (2000) 4 *Law, Democracy & Development* 1 16.

¹⁹⁹ Employment Equity Act 55 of 1998. Section 6 (1).

²⁰⁰ Smit N and Mpedi LG ‘Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?’ (2010) 14 *Law Democracy & Development* 1 25.

²⁰¹ Section 198(4)(a) of the LRA. See also Section 200A of the LRA.

²⁰² Section 3 of the UIA. Application of the Act. See also chapter 1 of the UIA, Farm workers are excluded from the definition of “Domestic worker”.

²⁰³ Bhorat H, Goga S & Tseng D (2013) ‘Unemployment Insurance in South Africa: A descriptive overview of claimants and claims’ (2013) *University of Cape Town, Development Policy Research Unit Working Papers* 13160 2.

eligible to claim UIF, which results in some of the most vulnerable groups to be excluded.²⁰⁴ Although the UIF provides short-term relief, the main function is to insure contributors against temporary unemployment which may arise out of unemployment, illness, maternity, adoption and dependant's benefits.²⁰⁵

3.5.2. Compensation for Occupational Illness and Diseases

The primary law for compensation for occupational injuries and diseases is the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA).²⁰⁶ The objective of the Act is to protect employees from income shocks which in the course of employment result from being incapacitated and unable to work, either temporarily or permanently.²⁰⁷ The Act compensates employees and their dependents from the compensation fund which is administered by the Department of Labour and is financed by employers through contributions paid over to the revenue services.²⁰⁸ The COIDA benefits include medical care, compensation for permanent, temporary, total, or partial disablement, and dependent's benefits.²⁰⁹

The scope of COIDA is based on the definition of employee. The definition of employee is as follows:

“Employee means a person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by the time or by work done or is in cash or in kind”.²¹⁰

Furthermore, the Act provides for the specific exclusion of certain categories of workers. These workers are:²¹¹

- (i) a person, including a person employed by the State performing military service
- (ii) a member of the Permanent Force of the South African Defence Force
- (iii) a member of the South African Police Force

²⁰⁴ Bhorat H, Goga S & Tseng D (2013) ‘Unemployment Insurance in South Africa: A descriptive overview of claimants and claims’ (2013) *University of Cape Town, Development Policy Research Unit Working Papers* 13160 2.

²⁰⁵ Brockerhoff S ‘A Review of the development of social security policy in South Africa’ (2013) *Studies in Poverty and Inequality Institute Johannesburg* 17.

²⁰⁶ The Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).

²⁰⁷ COIDA. Preamble of Act. See also section 22(1) Right of employee to compensation.

²⁰⁸ Olivier MP, Smit N & Kalula E (Eds.) ‘*Social security: A legal analysis*’ (2003) LexisNexis, Butterworths 37.

²⁰⁹ Section 1 of COIDA.

²¹⁰ Section 1 of COIDA.

²¹¹ Section 1 of COIDA. xviii (i).

- (iv) a person who contracts for the carrying out of work and himself engages others to perform such work
- (v) a domestic employee employed in a private household.²¹²

It is noted that domestic workers are excluded from the definition of employee, however, in the matter of *Mahlangu and Another v Minister of Labour and Others*,²¹³ the court held this exclusion to be unconstitutional. Furthermore, domestic workers can now claim for damages related to work-related injuries, illness, and death through the provision of COIDA.²¹⁴

Nonetheless, the above definition of an employee is limited to those who have entered into, or work under the auspices of an employment contract with an employer, thereby excluding informal workers, with no agreement or recognisable employer.²¹⁵ Likewise, limitations of COIDA exist in its scope of coverage as it excludes informal workers, especially those defined as independent contractors or the self-employed.²¹⁶ Clearly, informal farm workers have no access to social protection as provided under COIDA. This exclusion is a big challenge considering as stated in chapter two the nature of their jobs and their propensity to be exposed to high work-related risks as they work under less strict supervision, and in more precarious and desperate situations.²¹⁷ According to Dekker, those in need of more protection have less protection afforded to them through the social security system.²¹⁸

3.5.3. Pensions

There is no national pension scheme in South Africa.²¹⁹ As a social security arrangement, pension or retirement funds are guided under the ambit of the Pension Fund Act,²²⁰ to provide an income to a person on retirement or income to their dependents if the member passes away. This type of social security arrangement is largely private in nature, where those in formal employment and those who can afford to contribute privately enjoy protection.²²¹ There is

²¹² Section 1 of COIDA. xviii (i).

²¹³ *Mahlangu and Another v Minister of Labour and Others* [2020] ZACC 24 para 183.

²¹⁴ Section 22 (1) of COIDA.

²¹⁵ Section 1 of COIDA.

²¹⁶ Section 1 of COIDA.

²¹⁷ Dekker AH 'Informal social security: A legal analysis' (2005) Doctoral dissertation, University of South Africa 62.

²¹⁸ Dekker AH 'Informal social security: A legal analysis' (2005) Doctoral dissertation, University of South Africa 62.

²¹⁹ National Treasury 'Retirement Fund Reform' (2004) *Discussion paper* 20.

²²⁰ Pension Fund Act 24 of 1956. See also Pension Fund Act 11 of 2007 as amended.

²²¹ National Treasury 'Retirement Fund Reform' (2004) *Discussion paper* 10.

however no obligation to belong to a retirement plan, and as consequence these individuals usually become dependent on state social grants.²²² Pension funds linked to employment, are referred to as occupational retirement funds, where there are contributions from both the employer and employee.²²³ The lack of a recognised employment relationship experienced by informal workers leave many destitute without this income protection.²²⁴

3.6. APPLICABILITY OF SOUTH AFRICA'S SOCIAL SECURITY SYSTEM TO INFORMAL FARM WORKERS

As discussed in chapter two, the use of the term 'employee' poses challenges for informal workers as they are excluded from accessing social insurance provisions as they do not fall under the ambit of employee in the relevant legislation.²²⁵ This has dire consequences for informal farm workers, as they are prone to risks due to the precariousness of their work. For these workers, health risks arise from a number of factors.²²⁶ First, through the use of toxic products without suitable training and protective clothing.²²⁷ Similarly, these workers come into contact with toxic products used in the application of pesticides in handling fruit or raw products. In addition, these workers are often exposed to physical and labour-intensive work, in harsh weather conditions which may pose physical risks and accidents.²²⁸ These working conditions make informal farm workers vulnerable and raises the demand for social protection.

This is enabled by the lack of compliance by employers with relevant regulatory provisions. According to Devereux, employers within the agricultural sector are required to provide written employment contracts to all farm workers; to pay the minimum wage; to provide protective clothing to those exposed by pesticides and to allow labour inspectors to monitor working

²²² Liffman R, Mlalazi B, Moore V, Ogunronbi S & Olivier M 'Those who have and those who don't; an investigation into the limited scope of application of social security in South Africa' (2000) 4 *Law, Democracy & Development* 1 18. See also Sassa Older Persons Grant available at <https://www.sassagrants.co.za/types-of-sassa-grants/older-persons-grant/> (accessed 19 July 2023).

²²³ Olivier MP, Smit N & Kalula E (Eds.) 'Social security: A legal analysis' (2003) LexisNexis, Butterworths 250.

²²⁴ Liffman R, Mlalazi B, Moore V, Ogunronbi S & Olivier M 'Those who have and those who don't; an investigation into the limited scope of application of social security in South Africa' (2000) 4 *Law, Democracy & Development* 1 19.

²²⁵ Taylor Committee Report 'Report No 11: Coverage against Employment Injuries and Diseases' (2002) 458.

²²⁶ Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 392.

²²⁷ Barrientos A & Barrientos SW 'Extending social protection to informal workers in the horticulture global value chain' (2002) *Washington DC World Bank* 23.

²²⁸ Barrientos A & Barrientos SW 'Extending social protection to informal workers in the horticulture global value chain' (2002) *Washington DC World Bank* 24.

conditions on farms.²²⁹ However, many farmers do not comply with the legislative requirements and enforcement is a challenge in the agricultural sector.²³⁰ For example, informal farm workers are excluded from accessing employment related benefits such as unemployment insurance, because the farmers fail to make deductions and contributions toward UIF.²³¹

Besides the above, another barrier to accessing social protection for informal farm workers is costs and lack of financial capacity to contribute toward social insurance schemes. This is due to the seasonality of farm work.²³² This has two implications for their access to social protection. First because their work is seasonal, they can only contribute if at all, during the period they are in employment.²³³ Second, because they earn low wages, many informal farm workers are unable or unwilling to contribute to any social insurance scheme.²³⁴

3.7. CONCLUSION

This chapter provided an overview of the social protection system in South Africa and its impact on informal farm workers. The chapter highlighted major developments since the end of apartheid, which saw legislative instruments come into effect that extend social protection to all, including previously excluded groups. This legislative framework provides for the right of access to social security in the Constitution and relevant statutes, however for informal farm workers, access to this right remains challenging. Consequently, informal farm workers, who work in the most precarious circumstances are vulnerable and exposed to risks without adequate cover. Despite the regulatory framework of South Africa proving to be limited in its plight to extend social protection to informal farm workers, the Constitution provides that when interpreting the Bill of Rights, international law must be considered.²³⁵ The next chapter therefore explores international labour instruments which address social protection for informal farm workers.

²²⁹ Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 382.

²³⁰ Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 382.

²³¹ Devereux S 'Violations of farm workers' labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 392.

²³² Barrientos A & Barrientos SW 'Extending social protection to informal workers in the horticulture global value chain' (2002) *Washington DC World Bank* iii.

²³³ Barrientos A & Barrientos SW 'Extending social protection to informal workers in the horticulture global value chain' (2002) *Washington DC World Bank* iii.

²³⁴ Van Ginneken W 'Extending social security: Policies for developing countries' (2003) *Int'l Lab. Rev* 279.

²³⁵ Section 39 of the Constitution.

CHAPTER 4: INTERNATIONAL FRAMEWORK FOR SOCIAL PROTECTION

4.1. INTRODUCTION

The Constitution recognises the value of international law in South Africa. Section 232 of the Constitution provides “customary international law is law in South Africa unless it is inconsistent with the Constitution or an Act of Parliament”.²³⁶ Furthermore, section 39(1) of the Constitution provides that “when interpreting the Bill of Rights, and by implication, legislation giving effect to these rights, a court, tribunal or forum must consider international law”. In this regard, international labour instruments are important sources of customary international law in South Africa. This chapter, therefore, explores ILO’s Social Protection Floors Recommendation 202 of 2012 (R202) as a guide for the design, implementation, and extension of a social protection regime to informal farm workers in South Africa. This is also done with reference to ILO’s Transitioning from the Informal to the Formal Economy Recommendations 204 of 2015 (R204).

This chapter consists of three parts. The first part provides a brief overview of developments leading to the adoption of Recommendation 202. In addition, this section discusses the scope of Recommendation 202. Part two examines the scope of R204. The last part highlights the difference in approach of both recommendations 202 and 204 in terms of how social protection floors can be implemented.

4.2. SOCIAL PROTECTION FLOORS RECOMMENDATION 202 OF 2012

4.2.1. Background

According to Cichon, for much of its 95-year history, ILO focused on social security for workers in the formal economy, including their families.²³⁷ The Social Security (Minimum Standards) Convention 102 of 1952 is believed to be the flagship instrument of all the ILO social security Conventions, as it is the only international instrument dealing with basic social security principles and creates universally applicable minimum standards of social security,

²³⁶ Section 232 of the Constitution.

²³⁷ Cichon M ‘The Social Protection Floors Recommendation, 2012 (No. 202): Can a six-page document change the course of social history?’ (2013) 66 (3-4) *International Social Security Review* 23.

which include medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity, and survivors' benefits.²³⁸

The Convention defines social security in terms of protection by society, through public measures against certain risks which can cause economic and social distress.²³⁹ Furthermore, this Convention favours a preference for public social insurance (universal and or employment-based), as a means for protecting income, which is not always feasible to meet the needs of poorer countries with larger informal economies.²⁴⁰ As discussed in chapter three, social insurance measures mostly cover individuals who work in the formal economy and who contribute toward statutory funds, thereby excluding those in the informal economy.²⁴¹ According to Olivier, the Convention's narrow focus and protection for the formal sector is due to the fact that the Convention was developed at a time when the goal was the achievement of full employment in the formal sector.²⁴² However, due to changes in the labour market, and the growth of the informal economy in many developing countries, the ILO embarked on a Global Campaign to expand social security to poorer countries and include previously excluded groups.²⁴³

The ILC in 2001 recognised that globalisation and structural adjustment policies made social security important and that priority needed to be given to policies and initiatives which extend social protection to those without this protection.²⁴⁴ Based on consensus reached by governments, employers, and workers during the conference, the ILO launched the 'Global Campaign on Social Security and Coverage for All' in June 2003.²⁴⁵ The objective was to broaden the scope of the social security system to cover individuals that were not included, through using the existing minimum

²³⁸ Smit N & Mpedi LG 'Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?' (2010) 14 *Law, Democracy & Development* 1 14.

²³⁹ ILO Social Security (Minimum Standards) Convention 102 of 1952. South Africa has not ratified this Convention.

²⁴⁰ Article 6 of the ILO Convention 102 of 1952.

²⁴¹ Vonk G 'The Social Protection Floors Recommendation 2012 (No 202): The Human Rights Approach to Social Security in ILO Wrapping Paper' in Olivier M, Dupper O and Govindjee A *The Role of Standards in Labour and Social Security Law* (2013) 29.

²⁴² Olivier M 'International Labour and Social Security Standards: A Developing Country Critique' in Olivier M, Dupper O & Govindjee A, *The Role of Standards in Labour and Social Security Law* (2013) 23.

²⁴³ Vonk G 'The 2012 Recommendation concerning national floors of social protection (No. 202): The human rights approach to social security in ILO wrapping paper' (2013) 4 *International Journal of Social Security and Workers Compensation* 1 49.

²⁴⁴ van Ginneken W 'Extending social security: Policies for developing countries' (2003) 142 *International Labour Review* 3 277.

²⁴⁵ 'Social Security and Coverage for All' available at https://www.ilo.org/global/meetings-and-events/campaigns/WCMS_025342/lang--en/index.htm (accessed on 21 January 2023).

standards that the ILO had developed for social security.²⁴⁶ However, the strategies implored by this campaign such as adopting community-based insurance schemes proved limited in reaching excluded groups found in the informal economy.²⁴⁷

Additionally, in the context of the global economic and financial crisis, the global financial crises had a shocking effect on poverty levels in developing countries, and the social protection response specifically social assistance, was limited due to weak systems and low coverage of pre-existing provisions.²⁴⁸ This left a large part of the world's population vulnerable to the harsh economic and social risks, including those brought about by the current crises.²⁴⁹ To mitigate this devastation, an initiative for a global 'social protection floor' was launched by the United Nations (UN), under the guidance of the ILO and World Health Organisation (WHO).²⁵⁰

In 2008, the Declaration on Social Justice for a Fair Globalisation was adopted in 2008 at the 97th ILC.²⁵¹ The idea that processes of globalisation led to increased inequality, and negative consequences for vulnerable groups led to the adoption of the Declaration.²⁵² The Declaration institutionalised the Decent Work Agenda which requires member states to promote policies that advance opportunities for decent and productive work in conditions of freedom, security, human dignity, and equity.²⁵³ In addition, in structuring the Declaration around the Decent Work Agenda, ILO adopted four pillars seen as requirements for the safeguarding of labour in a globalised world.²⁵⁴ The pillars are, job creation, guaranteed rights at work, extending social protection and promoting social dialogue.²⁵⁵ However, at the 100th ILC which was held in June

²⁴⁶ See Resolution and Conclusions concerning social security, International Labour Conference, 89th session (2001).

²⁴⁷ 'Social security standards and the ILO campaign for the extension of social security' available at https://www.2019.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_secSOC_10295.pdf (accessed on 21 January 2023).

²⁴⁸ McCord A 'The impact of the global financial crisis on social protection in developing countries' (2010) 63 *International Social Security Review* 2 31.

²⁴⁹ Bonnet F, Ehmke E & Hagemeyer K 'Social security in times of crisis' (2010) 63 *International Social Security Review* 2 47.

²⁵⁰ Bonnet F, Ehmke E & Hagemeyer K 'Social security in times of crisis' (2010) 63 *International Social Security Review* 2 48.

²⁵¹ ILO Declaration on Social Justice for a Fair Globalisation available at https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm (accessed on 22 January 2023).

²⁵² Chowdhury PR 'The ILO's Declaration on Social Justice for a Fair Globalisation: Reviewing International Labour Regulation after the Financial Crisis' (2014) 5 *Indian JL & Just* 124.

²⁵³ Chowdhury PR 'The ILO's Declaration on Social Justice for a Fair Globalisation: Reviewing International Labour Regulation after the Financial Crisis' (2014) 5 *Indian JL & Just* 124.

²⁵⁴ Chowdhury PR 'The ILO's Declaration on Social Justice for a Fair Globalisation: Reviewing International Labour Regulation after the Financial Crisis' (2014) 5 *Indian JL & Just* 124.

²⁵⁵ ILO 'Decent Work Agenda' available at <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm> (accessed on 28 February 2023).

2011, the Executive Director of the Standards and Fundamental Principles and Rights at Work Sector, Mr Guy Ryder, stated that the ILO's Declaration on Social Justice for a Fair Globalisation of 2008 had outgrown the standards with which it had to be implemented and that a complementary instrument or other measures were needed to guide the gradual extension of social security coverage for all.²⁵⁶ This led to the adoption of the Social Protection Floors Recommendation 202 of 2012, which is fundamental when considering the extension of social protection to vulnerable workers in the informal economy.²⁵⁷

4.2.2. Scope of R202

Recommendation 202 reaffirms that social security is a human right and a necessity to establish and maintain national social protection floors.²⁵⁸ One of the objectives of R202 is to provide guidance to members to establish and maintain social protection floors as a fundamental part of national social security systems.²⁵⁹ Furthermore, it aims to guide members to implement social protection floors within strategies for the extension of social security which progressively ensures higher levels of social security for all.²⁶⁰ This Recommendation provides basic social protection guarantees which consist of access to a nationally defined set of goods and services which include essential healthcare, basic income security for children and older persons, and for persons who are unable to earn sufficient income.²⁶¹

Article 4 provides that Members must establish and maintain as soon as possible social protection floors which consists of basic social security guarantees. According to Vonk, R202 is less prescriptive as to the nature of the state's role and the social security techniques to be used.²⁶² These guarantees must at the minimum ensure in their life cycle that everyone has access to essential health care and basic income security. By using the term 'guarantees' the

²⁵⁶ ILO International Labour conference 100th Session 'Report of the Committee for the Recurrent Discussion on Social Protection' available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_157820.pdf (accessed on 22 January 2023).

²⁵⁷ Social Protection Floors Recommendation 202 of 2012 (R202).

²⁵⁸ Preamble of R202.

²⁵⁹ ILO Social Protection Floors Recommendation 202 of 2012 available at https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205341/lang-en/index.htm#:~:text=The%20Social%20Protection%20Floors%20Recommendation%2C%202012%20%28No.%20202%29,of%20social%20protection%20accessible%20to%20all%20in%20need (accessed on 22 January 2023).

²⁶⁰ Article 1(a)(b) of R202.

²⁶¹ Article 5 of R202.

²⁶² Vonk G 'The 2012 Recommendation concerning national floors of social protection (No. 202): The human rights approach to social security in ILO wrapping paper' (2013) 4 *International Journal of Social Security and Workers Compensation* 1 57.

focus of the Recommendation leans toward the outcome in terms of the social security measure that can be achieved by the different schemes.²⁶³

In terms of article 5, social protection floors must be made up of the following basic social security guarantees. These are:

- i. access to health care, which include maternity care
- ii. income security for children, providing access to education, nutrition and other necessary goods and services
- iii. basic income security for working people who are unable to earn sufficient income in the event of unemployment, sickness, and disability
- iv. basic income for older persons.²⁶⁴

Article 6 stipulates that member states should provide basic social security guarantees to all residents and children, subject to their existing international obligations.²⁶⁵ Furthermore, article 7 only mentions that the basic social security guarantees should be established by law, and whereas article 9 invites members to use creativity in the techniques to be applied to achieve social security.²⁶⁶ While R202 has been adopted to assist countries in establishing comprehensive social security systems applicable to all workers, including informal workers, and closing the gaps to achieve universal coverage, it emphasises the continuing relevance of existing standards and their importance for social security systems.²⁶⁷

Kulke & Guilbault avers that R202 makes an important contribution toward social security standards, in that the international social security landscape has been enhanced as it provides a complete and adequate framework for establishing and maintaining an inclusive social security framework.²⁶⁸ Similarly, Cichon asserts that R202 is an unparalleled document, because it is

²⁶³ Osiki, AE *The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria* (unpublished doctoral dissertation, University of Cape Town, 2018) 103.

²⁶⁴ Article 5 of R202.

²⁶⁵ Vonk G 'The 2012 Recommendation concerning national floors of social protection (No. 202): The human rights approach to social security in ILO wrapping paper' (2013) 4 *International Journal of Social Security and Workers Compensation* 1 51.

²⁶⁶ Vonk G 'The 2012 Recommendation concerning national floors of social protection (No. 202): The human rights approach to social security in ILO wrapping paper' (2013) 4 *International Journal of Social Security and Workers Compensation* 1 57.

²⁶⁷ Kulke U & Guilbault ESP 'The Social Protection Floors Recommendation 2012 (No. 202): Completing the standards to close the coverage gap' (2013) 66 *International Social Security Review* 3 4 88.

²⁶⁸ Kulke U & Guilbault ESP 'The Social Protection Floors Recommendation 2012 (No. 202): Completing the standards to close the coverage gap' (2013) 66 *International Social Security Review* 3 4 102.

the first time there is so much international and public support for social protection, and recognition of its role in national development strategies.²⁶⁹

Nonetheless, Recommendations having a non-binding status, the application of the Social Protection Floors Recommendation is recognised as one of the paths in the formalisation process of the informal economy by Recommendation 204.²⁷⁰

4.3. ILO RECOMMENDATION 204 OF 2015 (THE TRANSITION FROM THE INFORMAL TO FORMAL ECONOMY)

As outlined in Chapter two, the informal economy is associated with vulnerabilities as it operates without regulation and/or outside the provision of legislation.²⁷¹ In 2015, the ILO introduced a recommendation to facilitate the formalisation process of the informal economy.²⁷² This instrument is called Transitioning from the Informal to the Formal Economy Recommendation 204 of 2015 (R204). Recognising that most individuals do not enter the informal economy by choice, but out of necessity after failing to find employment in the formal sector, R204 has three objectives:²⁷³

- i. to facilitate the transition of workers and economic units to the formal economy,
- ii. to promote the creation, preservation and sustainability of enterprises and decent jobs in the formal economy,
- iii. to prevent the informalisation of formal economy jobs.²⁷⁴

Within this context, social protection is recognised as one of the means to address these challenges of informality.

²⁶⁹ Cichon M ‘The Social Protection Floors Recommendation, 2012 (No. 202): Can a six-page document change the course of social history?’ (2013) 66 (3-4) *International Social Security Review* 37.

²⁷⁰ Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 181.

²⁷¹ ILO ‘Informal Economy’ available at <https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/lang--en/index.htm> (accessed on 17 October 2022).

²⁷² ILO ‘*Transitioning from the Informal to the Formal Economy Report V (2)*’ (2014) available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_241897.pdf (accessed on 12 November 2022).

²⁷³ Article 1(a) (b) (c) of R204.

²⁷⁴ Article 1(a) (b) (c) of R204. Also see Charmes J ‘Informal Economy, Social Protection and Transition to the Formal Economy: The Terms of a Debate’ (2017) 4 *Revue de droit comparé du travail et de la sécurité sociale* 64.

Articles 18 to 20 of R204 deals with the provision of social protection as a means of formalisation of the informal economy.²⁷⁵ Article 18 provides that:

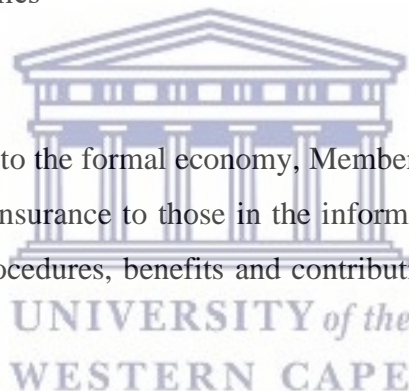
“Through the transition to the formal economy, Members should progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that takes into account the needs of workers and considers relevant factors, including but not limited to the cost of living and the general level of wages in their country”.

Furthermore, articles 19 and 20 provide that members must take into consideration the particular circumstances of informal workers and their families in providing social protection. Article 19 stipulates:

“in building and maintaining national social protection floors within their social security system and facilitating the transition to the formal economy, Members should pay particular attention to the needs and circumstances of those in the informal economy and their families’

Likewise, article 20 states that

“Through the transition to the formal economy, Members should progressively extend the coverage of social insurance to those in the informal economy and, if necessary, adapt administrative procedures, benefits and contributions, taking into account their contributory capacity”.



According to Osiki, articles 19 and 20 provide solutions to the challenges of providing social protection to vulnerable groups in developing countries.²⁷⁶ These articles as outlined above, are summaries of the provisions contained in R202, which avers that social protection is a human right.²⁷⁷ Indeed, there are similar provisions of social protection as a human right in other international human rights instruments like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (CESCR).²⁷⁸ In terms of both R202 and R204, establishing the social protection floors are the minimum

²⁷⁵ Articles 18 to 21 of R204.

²⁷⁶ Osiki, AE *The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria* (unpublished doctoral dissertation, University of Cape Town, 2018) 180.

²⁷⁷ Preamble of R202.

²⁷⁸ Articles 22 and 25 of the UDHR and Article 9-11 of the ICESCR provides that social protection is a right.

obligation expected of Member States as a means to alleviate the vulnerability and poverty experienced by informal workers.²⁷⁹

4.4. IMPLEMENTATION OF NATIONAL SOCIAL PROTECTION FLOORS

In considering how national social protection floors can be implemented, the two Recommendations differ in approach. Recommendation 202 is less prescriptive on the nature of the state's role and the security measures which needs to be employed.²⁸⁰ R204 uses a more progressive approach in promoting the social protection floors.²⁸¹ Article 5 of R202,²⁸² provides for 'guarantees' which correlates with the Constitution of South Africa.²⁸³ Given South Africa's constitutional provision of the right of access to social security, the directive approach in 202 is more relevant to the country's context. The preamble of R202 outlines the value of social security as a means to prevent and reduce inequality, social exclusions, insecurity and the promotion of gender and racial equality.²⁸⁴ South Africa is plagued by a history of discrimination based on multiple grounds which include race and gender which makes R202 pertinent to those in marginalised and vulnerable positions such as informal farm workers.²⁸⁵ The Constitution stipulates that government must take reasonable legislative and other measures within its available resources to achieve the realisation of these rights.²⁸⁶ Indeed, the socio-economic context of South Africa, the existence of the constitutional right to social security and the presence of social security related institutions, makes the approach in R202 more relevant to the provision of social protection for informal farm workers.

4.5. CONCLUSION

This chapter highlighted the important role played by international instruments, specifically R202 and R204 towards the development and extension of social protection to the informal economy. As stated, establishing social protection floors are regarded as the minimum

²⁷⁹ Osiki, AE *The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria* (unpublished doctoral dissertation, University of Cape Town, 2018) 182.

²⁸⁰ Vonk G 'The 2012 Recommendation concerning national floors of social protection (No. 202): The human rights approach to social security in ILO wrapping paper' (2013) 4 *International Journal of Social Security and Workers Compensation* 1 57.

²⁸¹ Article 20 of R204.

²⁸² Article 5(a)(b)(c)(d) of R202.

²⁸³ Section 27(1)(c) of the Constitution.

²⁸⁴ Preamble of R202.

²⁸⁵ Fourie E 'Social protection instruments and women workers in the informal economy: A Southern African perspective' (2021)24 *Potchefstroom Electronic Law Journal* 18.

²⁸⁶ Section 27 (2) of the Constitution.

commitment from member states to alleviate the vulnerability and poverty experienced by workers in the informal economy. South Africa has an overarching social security system, which affords the constitutional right of access to social security for everyone. This research proposal therefore argues that a more directive approach to the obligations of State parties to social protection implementation, in line with articles 10-14 of R202 can be applied within the South African context as a pathway to formalisation. The next chapter explores how the implementation of social protection in line with R202 can be applied in the context of informal farm workers in South Africa.



CHAPTER 5: PATHWAYS TO EXTENDING SOCIAL PROTECTION TO INFORMAL WORKERS IN SOUTH AFRICA

5.1. INTRODUCTION

Chapter three highlighted the lack of legal protection experienced by informal farm workers. This is because the relevant legal framework does not consider the circumstances of informal farm workers. However, social protection remains a means through which informal farm workers can be formalised. Consequently, chapter four examined ILO's framework for social protection. By using the overarching social security system in South Africa, which is centred on a directive approach to the obligations of State parties, R202 is a guide to facilitate the implementation of a social protection system which will facilitate the transition of informal farm workers to the formal economy.²⁸⁷

Against this background, this chapter explores some pathways through which access to social protection can be extended to informal farm workers. These pathways are not exhaustive, but it is hoped that they serve as a trigger for more extensive research and consideration by stakeholders in the informal economy.

5.2. PATHWAYS TO EXTEND SOCIAL PROTECTION TO INFORMAL FARM WORKERS

5.2.1. Universal Basic Income (UBI)

Article 9 of R202 specifies that in providing social security guarantees, member states should consider using different approaches which may include universal benefit schemes, social insurance schemes and employment support schemes among others.²⁸⁸ As mentioned in chapter three, South Africa's social security framework consists of social assistance in the form of means-tested grants and social insurance, which is premised on a contributory scheme.²⁸⁹ These benefits in the current social security system are accessed either by falling within the scope of the means test, and/or relevant social insurance laws.²⁹⁰ Consequently, informal workers are generally excluded because they operate outside the traditional employment relationship and

²⁸⁷ Articles 8- 10 R202.

²⁸⁸ Article 9 of R202.

²⁸⁹ Malherbe K & Wakefield L 'The effect of women's care-giving role on their social security rights' (2009)13 *Law, Democracy & Development* 47.

²⁹⁰ Malherbe K & Wakefield L 'The effect of women's care-giving role on their social security rights' (2009)13 *Law, Democracy & Development* 47.

do not qualify for social assistance based on the means-test.²⁹¹ In keeping with the principles of R202, a Universal Basic Income (UBI) is the most fundamental social protection scheme for informal farm workers, as it offers unconditional cash transfers to all residents and/or citizens in a country.²⁹²

Broadly defined, a UBI is universal, and ongoing (monthly) cash payments to individuals, without conditions attached, such as means-testing or targeting.²⁹³ It offers a solution to the rise in income insecurity associated with changing forms of work due to globalisation and challenges arising from precariousness and informality of employment.²⁹⁴ Additionally, it would promote individuals' dignity and human rights by granting informal workers the freedom to engage in informal work that are not or inadequately protected by the current legislative framework.²⁹⁵ Despite the above, the UBI has been criticised in that some fear it may discourage persons to work, thereby delinking income from labour market participation.²⁹⁶

In considering the feasibility in South Africa, proposals to finance the UBI include hiking up value-added tax (VAT), excise and fuel taxes, which would impact high-spending individuals, but would be less burdensome on low-income individuals.²⁹⁷ The challenge with this financing proposal, however, is that South Africa's high unemployment rate, coupled with the growing informal economy, signals a relatively small group of adults pay income taxes and low-income households are already burdened by VAT.²⁹⁸ It is worth pointing out, that no country has adopted a fully-fledged UBI as a main pillar of income support, whose level would be sufficient to guarantee a national social protection floor.²⁹⁹ However, the core principles set out in R202,

²⁹¹ Malherbe K & Wakefield L 'The effect of women's care-giving role on their social security rights' (2009)13 *Law, Democracy & Development* 47.

²⁹² Ortiz I, Behrendt C, Acuña-Ulate A & Anh NQ 'Universal Basic Income proposals in light of ILO standards: Key issues and global costing' (2018) *SSRN 3208737* 1.

²⁹³ Marais H 'In the Balance: The Case for a Universal Basic Income in South Africa and Beyond' (2022) *Wits University Press* 12.

²⁹⁴ Ortiz I, Behrendt C, Acuña-Ulate A & Anh NQ 'Universal Basic Income proposals in light of ILO standards: Key issues and global costing' (2018) *SSRN 3208737* 1.

²⁹⁵ Ortiz I, Behrendt C, Acuña-Ulate A & Anh NQ 'Universal Basic Income proposals in light of ILO standards: Key issues and global costing' (2018) *SSRN 3208737* 1.

²⁹⁶ Bergmann BR 'A Swedish-style welfare state or basic income: Which should have priority?' (2004) 32 *Politics & Society* 1 108.

²⁹⁷ Marais H 'In the Balance: The Case for a Universal Basic Income in South Africa and Beyond' (2022) *Wits University Press* 90.

²⁹⁸ Marais H 'In the Balance: The Case for a Universal Basic Income in South Africa and Beyond' (2022) *Wits University Press* 90.

²⁹⁹ Ortiz I, Behrendt C, Acuña-Ulate A & Anh NQ 'Universal Basic Income proposals in light of ILO standards: Key issues and global costing' (2018) *SSRN 3208737* 1.

can serve as a valued reference to assess the scope and feasibility of a UBI, taking into consideration fiscal and other social, economic and employment policies.³⁰⁰

5.2.2. Using Cooperatives

Mshiu suggests ‘cooperatives’ to be a relevant and attractive option in the formalisation of the informal economy as they offer a voice and represent solidarity.³⁰¹ Likewise, Osiki posits that cooperatives can provide the necessary structure which would enable informal workers to access social protection.³⁰²

A cooperative is defined as an

“autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”.³⁰³

The main examples of cooperatives in South Africa include:³⁰⁴

- i. ‘Worker Cooperatives’ where employees have a stake in the business and equal rights on how it must be run,
- ii. ‘Financial Cooperatives’ which provide financial products and services to its members which include savings, insurance, and investment among union members,
- iii. ‘Agricultural Cooperatives’ that work together to produce and process or market agricultural products and supplies to its members,
- iv. ‘Cooperative Burial Society’ which provides funeral benefits to members and their dependents.

Mshiu contends that ‘worker cooperatives’ are most rewarding, it provides an opportunity to formalise the informal economy, and in so doing it can create more secure jobs, thereby leading to increased income.³⁰⁵ According to Khumalo, with the rise in unemployment, the

³⁰⁰ Ortiz I, Behrendt C, Acuña-Ulate A & Anh NQ ‘Universal Basic Income proposals in light of ILO standards: Key issues and global costing’ (2018) SSRN 3208737 1.

³⁰¹ Mshiu S ‘The cooperative enterprise as a practical option for the formalization of informal economy’ (2010) *Cooperative Development the ILO Cooperative Facility for Africa* 2.

³⁰² Osiki, AE ‘*The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria*’ (unpublished doctoral dissertation, University of Cape Town, 2018) 184.

³⁰³ Mshiu S ‘The cooperative enterprise as a practical option for the formalization of informal economy’ (2010) *Cooperative Development the ILO Cooperative Facility for Africa* 1.

³⁰⁴ ‘Guide to cooperatives in South Africa’ available at <https://smesouthafrica.co.za/sme-guides/guide-to-cooperatives-in-south-africa/> (accessed on 26 January 2023).

³⁰⁵ Mshiu S ‘The cooperative enterprise as a practical option for the formalization of informal economy’ (2010) *Cooperative Development the ILO Cooperative Facility for Africa* 9.

‘cooperative model’ provides an alternative method to deal with socio-economic challenges affecting the country.³⁰⁶ Cooperatives endeavour to meet the economic, cultural, and social needs of its members and the surrounding community they serve.³⁰⁷ Furthermore, Cooperatives can be utilised as a mechanism for economic development, and so doing extending social protection to informal workers.

5.2.3. Social dialogue and representation

According to the ILO, social dialogue can be described to include all types of negotiation, consultation, or the exchange of information between stakeholders on issues of common interest relating to economic and social policy.³⁰⁸ The primary goal of social dialogue is to promote consensus building and democratic involvement among stakeholders in the world of work, thereby resolving economic and social issues.³⁰⁹ Article 13 of R202 encourages social dialogue as a means to formulate and implement national social security extension strategies.³¹⁰ Likewise, article 14 provides that in extending social security, Members should raise awareness about their social protection floors through social dialogue.³¹¹ Furthermore, article 15 of R202 provide that the extension of social security strategies should apply to persons in the informal economy and support the growth of formal employment and the reduction of informality.³¹² Informal workers can be organised in various ways, which include trade unions, workers’ associations outside the formal trade union movement, cooperatives and other less traditional forms of democratic worker organisations or member-based organisations (MBO).³¹³

The Constitution grants everyone the right to fair labour practices which includes the right to form and be part of a trade union.³¹⁴ However, the statutes which gives effect to this right are restricted to persons who fit the definition of ‘employee’.³¹⁵ Furthermore, the Labour Relations

³⁰⁶ Khumalo P ‘Improving the Contribution of Cooperatives as Vehicles for Local Economic Development in South Africa’ (2014)14 *African Studies Quarterly* 4.

³⁰⁷ ‘Guide to cooperatives in South Africa’ available at <https://smesouthafrica.co.za/sme-guides/guide-to-cooperatives-in-south-africa/> (accessed on 26 January 2023).

³⁰⁸ ‘What is social dialogue’ available at <https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang-en/index.htm%20%20a#:~:text=Social%20dialogue%20is%20defined%20by%20the%20ILO%20to,common%20interest%20relating%20to%20economic%20and%20social%20policy>. (accessed on 28 January 2023).

³⁰⁹ ‘What is social dialogue’ available at <https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang-en/index.htm%20%20a#:~:text=Social%20dialogue%20is%20defined%20by%20the%20ILO%20to,common%20interest%20relating%20to%20economic%20and%20social%20policy>. (accessed on 28 January 2023).

³¹⁰ Article 13 of R202.

³¹¹ Article 14 (f) of R202.

³¹² Article 15 of R202.

³¹³ MBOs are used to describe a range of organisations in the informal economy, irrespective of legal status. MBOs are of the workers, by the workers for the workers and managed and owned by the workers.

³¹⁴ Section 23 of the Constitution.

³¹⁵ Mpedi LG ‘The evolving relationship between labour law and social security’ (2012) 2012 *Acta Juridica* 1 284.

Act (LRA),³¹⁶ defines a trade union as “an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers’ organisations”.³¹⁷ This leaves informal workers without protection as they are often the least unionised categories of workers.³¹⁸ Major obstacles facing trade unions include political challenges, lack of resources and experience as well as the reluctance to organise informal workers.³¹⁹ This, according to Fourie can be attributed to the unidentifiable relationships and small or precarious workplaces such as private households.³²⁰ In particular, farm workers are often found in rural remote areas, on private dwellings, thereby limiting recruitment and contact.³²¹ Similarly, they have multiple workplaces and jobs, which makes recruitment difficult, and which necessitates new organising strategies, new ways of collecting membership fees and new approaches to defining a workplace.³²²

Nonetheless, to overcome these challenges and extend social protection to informal workers, Fourie posits “new structures, innovative communication tools and effective collective methods such as non-profit organisations (NPOs) and other civil society organisations which could assist with reaching these workers, with the support of political structures and policies which recognise the importance of the working poor.”³²³ This would mean that unions must evolve to cover wage negotiations with an employer, but also engage in social and political bargaining with public authorities and legislative bodies.³²⁴ In addition to the above, Mpedi takes a different approach in that trade unions must be encouraged to help organise the least unionised workers. He suggests assisting workers to organise themselves, through capacity building exercises.³²⁵ Trade union involvement can provide excluded and marginalised workers with a voice advocating for inclusion. Trade unions have the power to lobby and apply pressure on government (and employers) to expand the scope and coverage of social insurance

³¹⁶ Labour Relations Act 66 of 1995.

³¹⁷ Section 213 of the LRA.

³¹⁸ Mpedi LG ‘The evolving relationship between labour law and social security’ (2012) *Acta Juridica* 1 284.

³¹⁹ Fourie E ‘Exploring innovative solutions to extend social protection to vulnerable women workers in the informal economy’ (2016) 37 *Indus LJ* 841.

³²⁰ Fourie E ‘Exploring innovative solutions to extend social protection to vulnerable women workers in the informal economy’ (2016) 37 *Indus LJ* 841.

³²¹ Devereux S ‘Violations of farm workers’ labour rights in post-apartheid South Africa (2020) 37 *Development Southern Africa* 3 382.

³²² Section 213 of the LRA provides for the definition of ‘workplace’.

³²³ Fourie E ‘Exploring innovative solutions to extend social protection to vulnerable women workers in the informal economy’ (2016) 37 *Indus LJ* 841.

³²⁴ Fourie E ‘Exploring innovative solutions to extend social protection to vulnerable women workers in the informal economy’ (2016) 37 *Indus LJ* 841.

³²⁵ Mpedi LG ‘The evolving relationship between labour law and social security’ (2012) 2012 *Acta Juridica* 1 284.

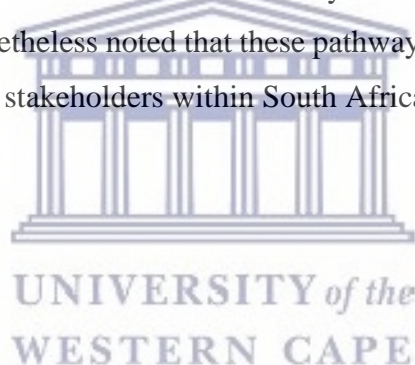
schemes through strike- and protest action.³²⁶ Additionally, trade unions play an important role in labour representation to the relevant boards of social insurance schemes. However, the context of informal farm workers as highlighted in chapter two must be taken into consideration by either trade unions or civil society organisations when facilitating social dialogue for these workers.³²⁷

5.3. CONCLUSION

The aim of this chapter was to explore how Recommendation 202 could assist with extending social protection to informal farm workers.

Article 9 of Recommendation 202, together with Articles 13 and 14 were broadly considered as pathways to extend social protection to informal farm workers, and potential ways of implementation were emphasised within the regulatory framework and within the socio-economic context of South Africa.

However, these pathways are not exhaustive, but importantly, the chapter identified pathways which will ensure informal farm workers are covered by social protection in the context of Recommendation 202. It is nonetheless noted that these pathways will not be effective without the support of decision-making stakeholders within South Africa.



³²⁶ Mpedi LG 'The evolving relationship between labour law and social security' (2012) *Acta Juridica* 1 284.

³²⁷ Bonner C & Spooner D 'Organizing in the informal economy: A challenge for trade unions' (2011) *2 Internationale Politik und Gesellschaft* 2011 90.

CHAPTER SIX: CONCLUDING REMARKS

This research paper has analysed the regulatory framework governing the access to social protection by informal farm workers. Social protection was argued to be a means to alleviate poverty and offer basic living standards for everyone. In affirming social protection as a basic human right, international, and national regulatory framework impacting on South Africa were examined. As discussed in chapter two, the heterogeneity of the informal economy makes it difficult to address the challenges of informal workers broadly. There are varying levels of vulnerability aggravated by factors such as gender and national origin among others. Consequently, the discussion in this research paper was limited and primarily addresses the challenges faced by informal farm workers. Chapter three noted that despite the great strides made in the past two decades to extend social security to previously marginalised people, majority of informal workers are still left without adequate social protection. The chapter showed that there are still legislative and practical barriers to informal farm workers accessing social protection. Chapter four focused on international instruments, specifically R202 and R204. It emphasised the right of access to social security as it is entrenched in the Constitution. Chapter four then concluded with a proposal that R202 can be utilised as a pathway to extend social protection to informal farm workers in South Africa. Against this context, chapter five examines some potential pathways to extend social protection to informal farm workers. As shown in this chapter, the implementation of a UBI to provide income to everyone and the use of cooperatives to formalise informal farm workers, together with extending the reach of trade unions to informal workers are some of the ways to extend social protection.

Nonetheless, the pathways discussed above, will not be effective without political will and labour inspection. Labour inspections are one of the ways through which labour legislation is enforced, and which assist in ensuring fairness in the workplace.³²⁸ Similarly, a comprehensive social protection system requires continuous political commitment which must be led by citizens and civil society, as well as from the governments and their international development partners.³²⁹

³²⁸ Osiki, AE *The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria* (unpublished doctoral dissertation, University of Cape Town, 2018) 192.

³²⁹ Devereux S 'Social protection in South Africa: exceptional or exceptionalism?' (2011) 32 *Canadian Journal of Development Studies* 4 414.

Social protection is an important tool to prevent and reduce poverty, especially among informal workers, as they are often exposed to extreme conditions of precarity, coupled with little to no social protection cover. It is then envisaged that the pathways outlined in this research paper generate a keen interest in the extension of social protection to informal workers, thereby providing an avenue of eradicating poverty and the harsh realities of basic risks and needs. *(19488 words, chapters, and footnotes only)*



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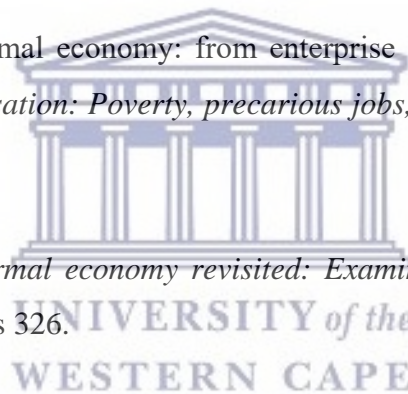
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