

August 2018

STREAM 3, POLICY BRIEF 1

INFORMAL ECONOMY/ SECTOR

Policy brief prepared for the Labour Caucus in the Jobs Summit Small and Micro-enterprise Support working group by the Institute for Economic Justice (IEJ).

Stream: Small and Micro-enterprise Support Stream 3, brief 1

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1. INTRODUCTION

In response to the 2018 Job Summit priorities of inclusive growth and redistribution and (small and) micro enterprise development, this brief focuses on informal economy. Informal work should not be romanticized – incomes are low for all but a few, while for most working conditions are poor with little security or social protection. However, in South Africa, three in every ten of those who work are informally employed. This is a significant source of employment and, as is the case globally, is increasingly dominant. With unemployment levels increasing (recorded at 27% and 37% for the narrow and expanded definitions in quarter 2 of 2018), the chances of accessing any job in South Africa, whether informal or formal, are currently low.

In contrast to micro enterprise development approaches that focus on lowering wages and reducing regulation, these proposals focus on increasing incomes of informal workers and improving working conditions and social protections. A holistic approach to the informal economy considers the multiple needs of informal operators as workers and entrepreneurs, working in different locations and segments of the economy. Increasing the incomes and work conditions of the bottom quintiles of the labour force will generate further demand for goods and services especially in low-income areas, so contributing to inclusive growth and redistribution. In turn this has the potential

for creating more and better-quality jobs – both formal and informal.

2. WHAT IS THE INFORMAL ECONOMY / SECTOR?

There is considerable confusion about who and what activities are included in the informal economy or sector. The International Conference of Labour Statisticians (ICLS) has approved international statistical definitions of the two distinct but related concepts. These norms are reflected in box 1. With the International Labour Organization (ILO) and the International Expert Group on Informal Sector Statistics, WIEGO pushed for the broader concept on informal employment which captures all forms of informal employment both inside and outside the informal sector. A focus just on informal sector enterprises tends to side step the complexity of informality, including informal wage employment in both formal and informal enterprises and households. An enterprise lens also tends to narrow the policy focus to supply side measures of training and micro finance.

BOX 1: INTERNATIONAL CONFERENCE OF LABOUR STATISTICIANS DEFINITIONS

Informal sector (enterprise-based definition) refers to the production and employment that takes place in unincorporated, small or unregistered enterprises (1993 ICLS)

Informal employment (worker-based definition) refers to all workers not covered or insufficiently covered by formal arrangements through their work, including,

- Own-account workers and employers in informal sector enterprise
- Employees who do not have labour rights (such as not receiving social insurance through their job or the right to vacation or sick leave, whether they work in informal or formal enterprises or households.)
- Unpaid workers, including family workers, own use producers, volunteers and trainees (2003 ICLS)

Informal economy refers to all units, activities, and workers so defined and the output from them.

[Statistics South Africa](#) applies ICLS norms, defining the informal sector as having the following two component two components:

- Employees working in establishments that employ fewer than five employees, who do not deduct income tax from their salaries/wages; and
- Employers, own-account workers and persons helping unpaid in their household business who are not registered for either income tax or value-added tax (2018: 17).

This is in contrast to informal employment, which is defined as all people 'who are in precarious employment situations, irrespective of whether or not the entity for which they work is in the formal or informal sector'. They further clarify,

- Persons in informal employment therefore comprise all persons in the informal sector, employees in the formal sector, and persons working in private households who are not entitled to basic benefits such as pension or medical aid contributions from their employer, and who do not have a written contract of employment. (2018: 17-18).

While informal employment is defined in regular Quarterly Labour Forces Survey releases, only domestic

worker and informal sector data is reflected. This is a missed opportunity to regularly highlight the quality of work in South Africa.

3. THE SIZE AND CONTRIBUTION OF THE SOUTH AFRICAN INFORMAL ECONOMY / SECTOR¹

Statistics South Africa's non-agricultural labour force data show that 4.5 million people are in informal employment. Four hundred thousand of these workers are employed in the formal economy but under precarious conditions, another 1.3 million as domestic workers, and 2.8 million in the informal sector. Further interrogation of informal sector data shows that it is largely constituted by own account workers – street and spaza shop traders, taxi drivers, construction workers, educare providers, waste recyclers, tailors, shoe repairers, bush mechanics, among others (see [Rogan and Skinner, 2017](#) for details).

Recent research also shows informal employments' significant contribution to poverty alleviation (Cichello and Rogan, 2017; 2018). While individual incomes are often low, cumulatively these activities contribute significantly to gross domestic product (GDP). Stats SA estimated the informal sector contributed 6% of GDP (Stats SA, 2014). This work is connected into the formal economy in a myriad of ways – either purchasing from, supplying into or being the last mile distribution for, the formal sector. This is while informally employed domestic and care workers allow others to work. Any policy intervention needs to be critically informed by these interconnections.

4. THE NATURE OF THE PROBLEM

Protections and benefits – non-compliance and significant gaps: Protection of and support to the informally employed has been intermittent in the post-apartheid period. With respect to employment and social protections, some key legislation, like the Basic Conditions of Employment Act (BCEA), cover all employees whether they are working in the formal or informal economies. There is however little capacity within the Department of Labour to monitor compliance in the formal, let alone informal sectors. In addition, for critical benefits and protection – like maternity benefits, unemployment insurance and occupational safety and health protections – own account workers are not covered.

State destruction of livelihoods and patchy support measures: A detailed analysis of local, provincial and national policy responses to the informal sector in the post-apartheid period concluded this has been a mix of ambiguity, omission, but also repression. Notable cases

of destruction of livelihoods cited are violent removal of 6000 inner city street traders in Johannesburg in 2013; the closure of 600 informal businesses by the Limpopo government in 2012, but also ongoing confiscation of informal goods (Skinner, 2018). When the informal sector is addressed, it tends to be regarded as micro and/or survivalist small businesses predominantly requiring micro-finance, training and removal of regulatory constraints. The first and only attempt to have a nationally coordinated informal sector policy – [the National Informal Business Upliftment Strategy](#) or NIBUS (DSDB, 2014) – is a case in point. While such support interventions may assist, a much more comprehensive and nuanced approach is required.

Governance mismatches – the informal economy as a low priority issue combine with ambivalent attitudes: While recent progress has been made in the Departments’ of Labour and Small Business Development in acknowledging the informal economy, it is an issue that is accorded low priority with insufficient human and financial resources being allocated. The activities of local government are particularly critical to those working informally but local authorities often have an ambivalent attitude to informal work, especially those operating in public space, since this is seen as antithetical to what constitutes a ‘modern’ city. Further multiple departments across all three tiers of government impact work in the informal economy. Informal economy budget analyses powerfully demonstrate this (see Budlender, Valodia and Skinner, 2004 and Robbins and Quazi, 2015). In terms of policy levers, this shows that the importance of considering multiple departmental players.

Anti-foreign sentiment as a key driver of punitive approaches: Due to low barriers to entry, the informal economy is a source of employment for foreign economic and political refugees. Post-apartheid experience has shown, in the face of state failures, foreign migrants are easy scape goats. Xenophobic sentiments, within and outside the state, are a key risk in securing a progressive stance on the informal economy. Anti-foreign sentiment has been a key driver of punitive approaches (e.g. the Draft Business Licensing Bill) that are destructive to South African and migrant operations alike.

The multiple linkages between the formal and informal economies not informing interventions: Any detailed analysis of the informal economy and / or segments within it, show that the formal and informal economies are critically intertwined². For example, the CSIR (2015) estimates that approximately 60 000 waste pickers collecting between 16-24 tons of recyclables each per annum are a critical source of supply to formal recycling companies – Mpact, Consol and Universal Recycling – an

industry estimated to generate R15 billion in revenue. Understanding these interconnections are a key to designing more effective interventions. Philips’ (2018) also details formal-informal inter-connections, arguing that a key reason that South Africa’s informal economy is comparatively small, is in fact concentration in the formal economy. Again, this broadens the policy focus, to include economic policies such as competition policy.

The role of big corporates – unregulated and unaccountable: Many multinational corporations – Unilever, Breweries (e.g. Anheuser-Busch InBevIt) and Coca-Cola, Gold Leaf Tobacco – informal retailers provide the final point of distribution for their products. Some of these corporates claim that their use of informal operators is part of their commitment to black economic empowerment or even, as in the case of Coca Cola, corporate social investment (Woodward, Rolfe & Ligthelm, 2014). Closer scrutiny shows that this is often a commercial strategy that can simply devolve risk to smaller players (the ABI controversial owner-driver scheme being a case in point) or as in Gold Leaf Tobacco, a tax evasion strategy. This suggests far greater attention needs to be paid to the big corporates. The policy challenge in South Africa, and globally, is finding ways to ensure corporates take responsibility for, and contribute to protection of, work and workers in their value chains.

Lack of voice for informal workers and their representatives in policy processes: Informal workers are often assumed to be unorganised, which is not the case. In towns and cities across South Africa, informal workers act collectively. This is increasingly aggregating up to national alliances of informal worker organisations, notably the South African Waste Pickers Association (SAWPA); the South African Informal Traders Association (SAITA) and the South African Domestic Service and Allied Workers Union (SADSAWU). While these and other informal worker organisations have been recognised as part of the Community Constituency in NEDLAC and are active in the ILO Recommendation 204 process described below, they are often excluded from other policy processes, both at a national and local level.

5. CURRENT AGREEMENTS AND PROCESSES BY SOCIAL PARTNERS TO ADDRESS THIS ISSUE

There are a range of ongoing informal employment policy efforts. The Jobs Summit process holds the hope of cohering these multiple initiatives.

The 2014 and 2015 International Labour Conference

focused on the informal economy. This resulted in [Recommendation 204: Transition from the Informal to the Formal Economy](#). This is a major break through in the international policy arena. South Africa was selected as test case for the ILO of implementation of R204. The partners in NEDLAC have been engaged for a few years in a Decent Work Country Programme (DWCP), as part of the ILO's Decent Work agenda. Informal worker organisation representatives are involved in the process via the Community Constituency. Implementation of R204 was agreed to be a key pillar of the DWCP's work. R204 provides an important framework for informal economy policy making. **Key elements of R204 include:**

- Providing rights, protections and incentives for informal workers, and recognises the need for a friendly legal and policy environment.
- Promoting the preservation and expansion of formal jobs, with the informalisation of formal jobs to be prevented.
- Recognising public spaces as work places, and the need for regulated access by informal workers to public natural resources.
- Ensuring freedom of association and collective bargaining for informal workers.
- Providing social protection, including the extension of social insurance coverage, and occupational health and safety for informal workers.
- Ensuring gender-based equality and the elimination of all forms of discrimination and violence against informal workers, including gender-based violence.
- Including the membership-based organisations of informal workers in all tripartite negotiations and consultations on issues that affect them.
- Extending labour inspection to protect informal workers.
- Collecting statistics on the informal workforce.
- Preserving and improving livelihoods of informal workers during the transition to formalization.

The South African government, together with the three social partners in the tripartite plus one arrangement, has committed to the implementation of R204. Because R204, like all other ILO instruments, sets out only basic principles, the social partners are now expected to elaborate and agree on precise steps to be taken to put R204 into effect. These steps include identifying changes in all laws that relate to the bullet points listed above.

To date, the main features of the R204 implementation process have been:

- A national workshop of organised labour and

informal worker organisations in April 2016.

- An Informal Economy National Summit convened in June 2016.
- The establishment of an implementation Task Team in June 2017 comprising representatives of government, organised labour, informal worker organisations, business and the ILO. The Task Team has agreed terms of reference and is supposed to meet once every two months, although meetings have to date been slightly less frequent. The Task Team has agreed on an expanded version, to meet when necessary, with more representatives for each social partner.
- Agreement by the Task Team on a process of identifying a number of municipalities in which pilot policy and implementation engagement processes should be rolled out, including the establishment of local negotiating forums between the council authorities and informal worker organisations.
- The establishment by the Task Team of a legal reform sub-committee to look into whether amendments will be required to any or all of the following laws, in order to comply with commitments made in R204, including the recognition of all informal workers as workers. The legal reform sub-committee has agreed on terms of reference but is yet to start work on the substance of the identified laws. (See Appendices).
- In principle agreement by the Task Team that Social Protection needs to be established as an additional stream of work, with proposals on what needs to be focused on having been tabled in the Task Team (See Annex 3).
- A National Dialogue in March 2018, which produced a roadmap of actions.

Another important initiative not under the R204 process, but aligned to it, is the South African Local Government Association's (SALGA) process of developing informal economy guidelines for the 257 municipalities who are their members.

The above is an impressive list of agreements and high-level engagement processes. However, there are some serious obstacles to moving these agreements and processes beyond talk shop status. **These obstacles include:**

- Inadequate financial resources for the R204 Expanded Task Team to meet. Currently only the Task Team members are being financed by government to attend meetings.
- No financial resources for informal worker organisations to convene national meetings together

to ensure accountability.

- Insufficient engagement on the part of COGTA with its constituent municipalities to encourage and guide (and if necessary fund) them in their engagements with informal worker organisations. In the absence of resources or directives from COGTA, SALGA informal economy guidelines, municipalities may remain unresponsive.

6. PROPOSED APPROACH, INCLUDING POLICY SHIFTS REQUIRED TO ACHIEVE THE SYSTEMIC CHANGE

The proposed approach is to improve protections and enhance incomes of informal operators as workers and entrepreneurs, working in different locations and segments of the economy. WIEGO has multiple work streams and is involved in research, policy and advocacy at local, national and international levels. Due to the time available to draw together this briefing note, we were not able to do full justice to all of these issues but can furnish further details on request. **Our work however does suggest the following priorities:**

Do no harm measures: As noted above, precarity in many instances is generated by the state. Ongoing confiscation of informal traders' goods, evictions of informal retailers in blitz interventions like 'Operation Clean Sweep' in inner city Johannesburg and 'Operation Hardstick' in Limpopo being cases in point. Other occupations like waste picking are also subject to ongoing harassment while the distribution of fishing quotas have had devastating impacts on small scale fisherfolk³. A critical starting point needs to be 'do no harm' measures. An inventory of these state actions needs to be established as a matter of urgency, and working alongside representatives of these worker groups, alternative paths of action identified.

Implement protections that are there: Where protections have been put in place, for example basic conditions of employment or sectoral minimum wages, there is little enforcement oversight. When workers are 'informal' because of noncompliance – what is required is inspection and compliance by all employers, whether in the informal or formal sector. The enforcement capacity of the DOL's labour inspectorate needs to be enhanced and a strategy needs to be developed that encourages progressive compliance by employers, including considering the option of permitting certain exemptions for an agreed period while compliance is pursued in a step-wise manner. Compliance by all employers and particularly by those in the informal sector, needs to be made possible through the introduction of coherent employer support measures,

including an examination of the relationship between, for example, large powerful firms and small weak firms.⁴

Legal reforms: Changes in the core labour statutes and other Acts are however urgently required in order to extend rights, protections and benefits to own account workers. Appendix 1 outlines amendments to the Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA), and various social protections including legislation relating to occupational health and safety.

In addition to these, attention needs to be paid to the recognition of public spaces as work places. The Socio-Economic Rights Institute have been working with SALGA on street vending regulations. SERI's Fish-Hodgeson and Clark (2018) analyse jurisprudence with respect to street vending and show that the law grants protection to foreign nationals who participate in informal trade, cautions local government to the illegality of impoundment of traders' goods. The report concludes with various recommendations that have been drawn from case law. Clark (2018) translates this into a set of recommendations to local government including outlining bylaw clauses that need to be changed if current laws are to comply with the constitution. Further work needs to be done regarding the need for regulated access by informal workers to public natural resources like waste, medical plants and fish.

Investing in infrastructure: Infrastructure has an important and positive impact on the resilience and productivity of informal workers. Those working in public spaces need access to basic infrastructure – water and toilet facilities as well as infrastructure to support their work – shelter, storage and sorting facilities. [Dobson and Skinner](#) (2009) for example, show how providing electricity to street and market traders working in inner-city Durban has led to increased value addition. The DSDB has established a fund - the [Shared Economic Infrastructure Facility](#) (SEIF) – for infrastructure for clusters of informal enterprises, SMMEs and cooperatives. The fund requires a matching 50/50 contribution by the municipality or province and makes up to R5 million available per project. According to the DSDB reports to parliament, there however has been very little uptake of these funds (<https://pmg.org.za/committee-meeting/24671/>). The reasons for this need to be investigated as a matter of urgency.

The evidence shows that for many informal workers their home is their workplace – spaza shop owners, those doing small scale catering and manufacturing to name a few (see findings from the Survey of Employers and Self Employed, Stats SA 2014). Acknowledging and supporting these realities needs to critically inform approaches to slum

upgrading and low-cost housing projects. This suggests a different approach to town planning and settlement design (see Skinner and Watson, 2018).

Training and access to financial services: Analysis of the supply of training to the informal economy suggests that the Sectoral Education and Training Authorities (SETAs) have little incentive nor the expertise to service the specific needs of the informal economy (see [Devey et al 2008](#)). DSDB addresses this through the SEIF programme but this is still struggling to scale up their interventions. In their June 2017 report to parliament, DSDB noted they had trained just over 4 400 informal sector operators⁵. While this is progress, given that in the same period over 2.8 million people were registered as working in the informal sector, scaling up remains a challenge.

Lack of access to finance is repeatedly identified as a problem in surveys with informal economy operators (see Fourie, 2018). The Survey of Employers and the Self Employed (SESE) shows how little access to credit those working in the informal sector currently have. In 2013, 97% of those interviewed had no access to any credit facility or asset finance, rather financing their enterprises with loans from family or friends (Stats SA, 2014: 15). There is increasing emphasis in the literature on the importance on the role of savings (Martin and Paul, 2015) rather than access just to credit⁶. Access to banking is thus important. SESE however found that only 21 % of interviewees had a bank account (ibid), suggesting that the financial service sector campaign, that is pressuring banks to service poorer clients, has made only marginal inroads into the informal sector in South Africa. Access to a range of financial services is an important factor in managing shocks, for mitigating vulnerability, but also the process of entering the informal sector, and the small steps entailed to expand operations or access new lucrative markets (see Philip, 2018). Further pressure needs to be placed on the banks to increase their coverage.

Social protection reforms (inclusive of Occupational Safety and Health)⁷: South Africa has expanded its social grant system considerably since 1994. Own account workers and other categories of informal workers, as part of the universal adult population, are eligible for the child support grant as well as all the pensions (old age, disability, and veterans). In addition to the above, in 2016 [a new national integrated Early Childhood Development \(ECD\)](#) policy was introduced by government to include all 0-4 year olds (as opposed to previous policy covering 3 years plus). This is a universal policy applying to all children. Given that child care is key to a sustainable income for many own account women workers, a concerted effort will have to be made by all stakeholders to ensure it is applied to the children of own account workers.

Own account workers however remain excluded from all forms of social protection that are dependent on an employment relationship. Specifically, they are excluded from the Unemployment Insurance Act (UI Act), the Occupational Health and Safety Act (OSH Act) and the Compensation for Occupational Injuries and Diseases Act (COIDA).

Social Protection is a specialist area of policy. At almost every step of the way there are key policy choices to be made, e.g. whether protections are contributory or not, whether they are means tested or universal, whether they take the form of a cash transfer or are insurance based, and so on. Furthermore, all aspects of social protection are integrally linked, meaning that piecemeal reform is usually not successful. Input from social protection experts, together with engagement between the social partners with a view to reaching policy consensus is absolutely critical before major reforms to laws relating to social protection are proposed.

The discussion on legal reforms required to bring informal workers under those key social protections from which they are currently excluded does not however need to start from scratch. There are already a number of policy and law processes underway.

First there is the stalled process of the consolidation of a comprehensive social security system. This discussion needs to be urgently revived within NEDLAC. The starting point of these discussions from the point of view of the inclusion of informal workers would be the proposal for a National Social Security Fund, with a simplified contribution arrangement for own account and other informal workers (see the March 2012 Discussion Document produced by the Inter-Ministerial Task Team on social security and retirement reform). The envisaged NSSF included proposals for disability and survivor benefits, an extension of Unemployment Insurance after the exhaustion of credit days, a funeral benefit, and a low-cost pension fund to supplement the existing old age pension – with informal workers being eligible for all of these.

Second, there is the National Health Insurance White Paper, which needs to be engaged with.

Third, some consideration has been given to the consolidation of the two existing workers' occupational illness and injury compensation schemes (one for former mine workers and one for all other formal workers).

Fourth, there is currently an investigation being led by the South African Law Reform Commission into mechanisms for the extension of maternity and paternity benefits to informal workers.

Furthermore, it may be useful to draw on a range of

international examples of steps taken to include informal workers in some or all social protections. For example,

- Senegal has fused some small-scale contributory social security schemes with its public schemes;
- Tunisia has been expanding workers compensation and pensions to informal workers, sector by sector;
- India introduced the Unorganised Sector Social Security Act in 2008 which allows for the introduction of sector-based schemes for informal workers;
- Zambia is currently experimenting with extending contributory social protections to informal construction workers – taking advantage of the existence of large employers in the industry which makes it possible to adopt a “value chain”/cross subsidisation model;
- Thailand has introduced a universal health scheme;
- Ghana and Rwanda have extended their contributory health schemes to include informal workers;
- Kenya’s National Social Security Fund allows for self-employed workers to become ‘voluntary members’ of the Fund. The Fund provides for old age, withdrawal benefits, survivors’ benefits, an invalidity benefit and a funeral grant.
- Cape Verde and Mauritius have introduced noncontributory health insurance systems.

Many of these examples have been documented by WIEGO (www.wiego.com) and by SASPEN (the Southern African Social Protection Experts Network) (see www.saspem.com).

Regardless of the need for urgent engagement with all of the above processes, there are some quick legal and other interventions which would assist to facilitate the inclusion of informal workers in certain social protections, while the more extensive policy discussions proceed.

Below are some suggested short term interventions, most of which would likely not require any significant or contested changes to the law:

To give effect to a maternity benefit, there are a number of options: - (a) it could be realised in terms of the UI Act and BCEA, which is preferable, not least of all because the UI Fund currently has massive reserves so there would be no additional cost to the fiscus or (b) introducing a supplementary payment to the child support grant for self-employed workers for an agreed period (for example for six months after the birth of a child) as a means of compensating for lost income.

With regard to the OHS Act, it should be possible to include representatives of own account workers on the Advisory Council for Occupational Health and Safety

without any change to the law. The Advisory Council could in turn establish a technical committee comprising representatives of own account workers as well as experts. On the advice of the Advisory Council, the Minister of Labour could issue regulations covering own account workers, again probably with no amendments to the law being necessary. Where changes in the OHS Act may be required would be in relation to the election and function of safety representatives (Sections 18 and 19 of the OHS Act), and in relation to the scope and function of the safety inspectorate (Sections 27-35 of the Act). The absence of an employment relationship should not be an obstacle, as in most cases the local authority will become the counterpart bearing responsibility for the provision of services necessary to keep own account work safe and healthy e.g. clean water, toilet facilities, protection against fire hazards, and the provision of lighting and access to electricity.

Sector specific interventions: While there are cross cutting issues identified above, different segments within the informal economy have particular issues. The suggested approach is to identify segments in the informal economy and conduct an intervention analysis that identifies:

- What is the current legislative framework that governs this work. What are the gaps?
- What protections in place and are they being accessed / implemented?
- Who are the multiple players in the state and private sector who shape the working environment?
- Where do informal workers fit in broader value chains?

This can then identify the critical points of leverage to secure to improve working conditions and security and increase incomes. WIEGO’s work on two sectors suggests the following.

INFORMAL RETAIL

In the first quarter of 2018 Statistics South Africa estimated that 1 093 000 people worked informal retail. This is a disproportionate source of employment for women. Further evidence shows that informal retail is a key source of food for poor households in general and food insecure households in particular (Hungry Cities, African Food Security Urban Network). And yet the policy approach is on a spectrum from violent removals, to punitive (with frequent confiscations), to lower level every day harassment, to benign neglect with only a few cases of progressive inclusion.

Exclusionary approaches are underpinned by punitive

legislative frameworks that criminalize these activities. Anti-foreign sentiment a key driver. However, important litigation challenging these frameworks has declared confiscation of traders' goods and closing and targeting foreigners' spazas unconstitutional. SERI / SALGA details this, including what local government is constitutionally obligated to do. Good examples of inclusive legislation are Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act in India. Using this and model bylaws developed by the Legal Resources Centre, SERI is currently drafting model bylaws for inclusion in the SALGA informal economy guidelines. A critical next step will be to consider how to encourage / ensure that local governments align their street vending bylaws to the constitution.

A key and silent player is the Passenger Rail Agency of South Africa (PRASA) since they manage the areas around train stations – a natural market for street vendors. Currently their approach is to simply profit maximize which often means not prioritizing spaces for the informal sector. These requirements need to be revised.

The majority of informal vendors source their supplies from the big corporates. For example, Tsoeu (2009) estimates that 82% of South African Breweries' final point of sale is in the informal sector while Unilever supplies between 145 000 to 175 000 informal retailers in the country (Personal correspondence, Trade Intelligence, 11 July 2018). These players seldom engage in policy processes and should be drawn on and pressured to take responsibility for social protections. The opportunity for state – private sector – informal sector synergies could be explored. There is precedent for this in Bhubaneshwar in India⁸.

WASTE RECYCLING

The current waste management system and the further promotion of privatization locks informal recycling workers into the poverty trap at the bottom of the waste value chain. Their income is determined by middlemen mediating between the workers, who work under extremely unsafe and hazardous conditions to retrieve 10.8 million tons of recyclable material from landfills, households, industry and public spaces annually, and the big recycling companies. A system of social, economic and political inclusion must be introduced.

Government's increasing focus on creating 'green jobs' must place existing workers at the centre of all green economy policies and strategies and not displace them from their existing livelihood. Recognition of informal recycling workers as key stakeholders must be a priority of all efforts in developing the green economy through

improved working conditions and skills development for their progression in the recycling value chain. In the context of an environmental and socio-economic crisis, savings in landfill costs could be applied to inclusive, socially responsible models of recycling. Strengthening of the economic environment: payment for waste pickers' labour and/or compensation through subsidies; schemes for payment of environmental service rendered.

Policy priorities for waste recyclers:

- There has to be alignment of policy and legislative reforms across different national departments: Department of Environmental Affairs to address environmental priorities, Department of Science and Technology as it addresses technological innovation, Cooperative Governance and Traditional Affairs to support the implementation of national policies at local government level. All the policy and legislative reform processes should be coordinated by the Department of Labour in its oversight of the country's Decent Work Programme and the transition from the informal to the formal economy.
- Waste minimization policies such as the separation at source of household waste is threatening informal recycling workers' livelihood because they have to compete against the private sector (contracted by municipalities) for access to recyclable material, despite politicians' denial of the unfair competition that the privatization of recycling creates. Clearly transformative pro-poor policies must be developed, implemented and regularly monitored.
- Informal recyclers must be registered on municipal databases to have accurate records of the number of workers and to measure their contribution to municipalities' waste minimization targets.
- The recognition of informal recycling workers to be formalized by paying them for the public service that they provide (the payment of informal recyclers has been proven to increase recycling rates in countries such as Egypt, Argentina, Brazil, Colombia and India).
- The private sector has already endorsed labour intensive recycling in recognition of the socio-economic context, however government should regulate the working conditions as it does with all other sectors in the economy.
- Subsidies and coaching/mentoring for workers' small, medium and micro enterprises should be provided to ensure effective integration into the recycling industry.

7. FINANCING AND SOURCES

There has been insufficient time to do detailed costing on all the suggestions above. A few issues related to funding. First there are existing state funds allocated to supporting informal workers within both national and local authorities. Often these are uncoordinated, insufficient and sometimes spent on destroying livelihoods (for example local authorities report how expensive evictions are, since there are few other opportunities they only sustained if there is constant policy presence). In addition, some of the allocated funds go unspent. For example, the Department of Small Business Development (DSBD) June 2017 report to parliament, the DSBD reported R46 million underspending⁹ on implementation of informal business support. It is important to understand the institutional and other blockages to spending.

The R204 process holds the hope of finally securing a more and supportive approach to the informal economy. However insufficient resources have been set aside for the convening of various committees tasked with taking the process forward. For example, currently, participation of informal worker organisations is being funded by the Nedlac Community Constituency budget, but this is a very limited budget and needs either to be topped up, or alternative sources found within government. Funding for this is key.

Our worker group analysis suggests that there are missed opportunities in leveraging private sector funds. Resources to pay waste recyclers for their contribution to the environment and saving they generate to municipalities¹⁰, as they do in Colombia, could in part be funded through Extended Producer Responsibility (EPR) levies. Currently producers are reluctant to contribute to national treasury as they will have no control over how it is spent (based on their experience of the plastics levy). They are proposing the setting up of an EPR accredited system that could pay informal recycling workers through EPR registered buy-back centres. Further work needs to be done to look at innovative financing models like these.

8. CONCLUSION

Mitigating against continued marginalisation of the informal economy requires multiple departments across levels of government viewing the informal economy, not a marginal add on, but as a priority issue and co-ordinating their approach and priorities (including resource allocation) accordingly. The R204 process should be complemented by a dedicated informal economy policy development process jointly spearheaded by DSDB and DoL. In both processes informal worker group representatives need to be intimately involved.

This document reflects only elements of WIEGO's work.

WIEGO has a wealth of information and hope to engage further with the labour consistency on these issues.

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APPENDICES: INFORMAL ECONOMY/SECTOR POLICY BRIEF

APPENDIX 1: FORMALISATION FOR OWN ACCOUNT WORKERS

(Extracts from the Concept Note on Legal Reforms Required to Align South African Laws to ILO Recommendations 204)

In contrast to what is required for waged informal workers, for own account workers significant legal changes are required in order to align with R204. The Recommendation 204 provisions that are relevant for own account workers and for this committee to consider with respect to legal reform are:

- a) A friendly legal and policy environment that provides for progressive implementation and enforcement of rights and protections
- b) Freedom of association and collective bargaining
- c) Inclusion of representative membership-based organisations of informal workers in all tripartite negotiations and consultations on issues that affect them.
- d) Recognition of public spaces as work places, and the need for regulated access by informal workers to public natural resources.
- e) Social protection, including the extension of social insurance coverage, and occupational health and safety

We are of the view that the South African Constitution provides a solid foundation for the reforms necessary for R204 to take effect. Section 23 of the Constitution reads:

*23. (1) Everyone has the right to fair labour practices.
(2) Every worker has the right— (a) to form and join a trade union; (b) to participate in the activities and programmes of a trade union; and (c) to strike*

It is important to note that the Constitution refers to workers and not employees.

The Labour Relations Act realizes these Constitutional rights broadly in the context of an employment relationship, which excludes own account workers. Section 1 states that the purpose of the Act is “to advance economic development, social justice, labour peace and the democratisation of the workplace” ... “to give effect to the fundamental rights conferred by section 23 of the Constitution.” The LRA proceeds to provide a collective bargaining framework for employees and their trade

unions with employers and employer associations

Our contention is that R204 and the Constitution recognises that own account workers are also workers and that 23 (2) (a); (b) and (c) are integral to formalizing their work. This note aims to identify key areas of reform and some of the applicable provisions of the LRA and BCEA. It is not intended to be comprehensive, or to suggest appropriate wording for amendments.

In this section we outline in broad terms the proposed amendments to the Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA), and various social protections including legislation relating to occupational health and safety.

THE LABOUR RELATIONS ACT

In respect of the Labour Relations Act, formalisation for own account workers would mean, above all else:-

- a) Trade union registration: Trade unions of own account workers should be able to register as trade unions and represent own account workers in collective negotiations and social dialogues. Trade unions that have both own account and waged workers in their ranks should also have their registration take both into account. India and Malawi are two countries that have recognized own account workers’ trade unions as unions. The national trade union federations in Tanzania, Kenya, Senegal, Malawi, and Nicaragua amongst others have admitted trade unions of own account workers as members. The International Trade Union Confederation (ITUC) has admitted SEWA, an Indian federation of informal workers to membership. The concept of trade unions for own account workers is therefore not as foreign as many might think.
- b) A framework that allows trade unions of own account workers to bargain collectively with local government and other agreed identified government institutions over matters of mutual interest (i.e. everything that impacts on working conditions, including the content of by-laws; the regulation of their access to public space and; public procurement opportunities for waste collectors; access to waste; licenses etc.)
- c) Adjudication of disputes/denial of labour rights by the CCMA and the Labour Court
- d) Representation at NEDLAC in all chambers as a partner, preferably as an acknowledged part of the labour constituency

Examples of Sections of the LRA that would require amendment to expand the right to freedom of association

and collective negotiations to own account workers are:

- a) Definition section: define own account worker
- b) Section 4 (1): who has the right to join a trade union (or form a union)
- c) Section 14(4): trade union representative may represent a union member in disputes with the state e.g. police, licensing official etc.
- d) Section 16: possible disclosure requirements on the part of local government, in particular with regard to proposed decisions with respect to public space or public resources or services that affect informal workers.
- e) Section 21(3): “Within 30 days of receiving the notice, the employer (or local government) must meet the registered trade union and endeavor to conclude a collective agreement as to the manner in which the trade union will exercise the rights in respect of that workplace” whether that work place is the home or a public space”.
- f) Sections 21 and 22 deal with the right of the trade union employer to go to the Commission for Conciliation, Mediation and Arbitration if agreement is not reached. These rights should be extended to trade unions of informal workers and local governments, or other institutions with who own account workers’ trade unions are bargaining.
- g) Representivity: in general terms, the same principles of sufficient representivity as already exist in the LRA should apply to own account worker trade unions.
- h) Section 23: to provide for collective agreements between trade unions of own account workers and local governments and other identified institutions of the state.
- i) Section 77: Protest action to promote or defend socio-economic interests of workers should include provision that own account workers may not lose licenses etc.
- j) Section 157: Jurisdiction of the Labour Court amended to include jurisdiction over disputes between trade unions and local governments?

BASIC CONDITIONS OF EMPLOYMENT ACT AND SECTORAL DETERMINATIONS

The substantive chapters of the BCEA are as follows:-

- Chapter One deals with definitions, purpose and application of the Act
- Chapter Two deals with regulation of working time
- Chapter Three deals with leave provisions
- Chapter Four deals with Particulars of employment

and remuneration

- Chapter Five deals with termination of employment
- Chapter Six deals with Employment of children and forced labour
- Chapter Seven deals with variation of basic conditions of employment
- Chapter Eight deals with Sectoral Determinations
- Chapter Nine deals with the Employment Conditions Commission
- Chapter Ten deals with monitoring, enforcement and legal proceedings

Part B of the BCEA covers legal proceedings, including procedures for disputes – referral to the CCMA (clause 80) and Codes of Good Practice (clause 87).

The provisions of Chapters Two (Regulation of Working Time) apply clearly only to where an employment relationship exists (waged work). It is difficult to see how meal intervals, hours of work, or Sunday pay could be regulated for own account workers. It would nevertheless be useful if organised own account workers looked carefully at the principles enshrined in Chapter Two as a model of best practice for work-life balance. It is acknowledged however that the realization of work-life balance for own account workers depends ultimately on the conditions being in place for a decent livelihood – and these conditions are dependent in turn on many of the other elements of formalisation.

Chapter Three (Leave) could more easily be adapted to accommodate own account workers. This adaptation could take the form of a Sectoral Determination (as we have already outlined in Section 3) and/or amendments to the Unemployment Insurance Act to incorporate contributions to the UI Fund to be made by own account workers. Ideally, the government would make a contribution to make up for the absence of employer contributions. **The clauses in Chapter Three of the BCEA that need to be referred to in this process are:**

- a) Sections 20 and 21 on annual leave
- b) Sections 22 and 23 on sick leave
- c) Section 25 on maternity leave
- d) Section 27 on family responsibility leave

We deal with the leave provisions further under the Social Protection section point a) below.

Chapter Four (Particulars of employment and remuneration) applies to waged workers only. However

the principles of record keeping about place of work and remuneration/income are applicable to other processes of formalisation.

Chapter Five (Termination of Employment) again applies to situations where there is an employer (whether in the formal or informal sector). However the principles enshrined here, including notice periods for termination, payment of compensation for retrenchment (severance pay), certification of employment etc could be used to develop a Code of Good Practice in terms of the BCEA for municipalities where own account workers are dependent on their authority to perform their work.

Chapter Six (Employment of children and forced labour) does not apply to own account workers where there is no employment relationship. However the principle of a prohibition on the employment of anyone under the age of 15 can be applied to own account workers where license or permit conditions are attached.

We have already dealt with Chapter Eight (Sectoral Determinations) and how these could be used to extend rights and benefits to own account and other workers who fall outside of the BCEA employee definition test.

Clause 60 of Chapter Nine (Employment Conditions Commission) deals with the composition of the ECC. Notwithstanding the fact that the precise form and future role of the ECC is currently under debate in the context of discussions on the draft National Minimum Wage Bill, clause 60 (2) (a) currently states that the ECC will include "one member and one alternate member nominated by the voting members of NEDLAC representing organised labour". Consideration must be given as to how the interests of own account workers and their trade unions/membership based organisations are represented within the organised labour constituency (see our point under Labour Relations Act point d) above).

Depending on whether and how the BCEA is amended to accommodate the above proposals, in particular the proposals regarding leave, it will be necessary to include in a definition of own account worker in Chapter One of the Act.

Changes in the core labour statutes and other Acts are however required in order to extend rights, protections and benefits to own account workers. We have focused on the LRA, the BCEA and various social protection provisions. **Additional laws that require auditing and possible recommendations for amendment include:**

- i. The Employment Equity Act (which prohibits unfair discrimination on a wide range of grounds and provides mechanism to challenge it, and it also introduces affirmative action procedure and monitoring)
- ii. The Unemployment Insurance Act (UI Act) (which is

a contributory scheme that makes provision for limited benefits for a fairly short period of unemployment and which currently includes maternity benefits)

iii. The Occupational Health and Safety Act (OHS Act) (which provides safety standards and safety assurance system for workplaces as well as enforcement)

iv. The Compensation for Occupational Injuries and Diseases Act (COIDA) (which requires contributions from employers only and provides compensation to workers injured in the course of their employment or contracting illnesses from their employment. This can be for temporary incapacity or permanent partial and full incapacity.)

v. The Cooperatives Act

vi. Local government regulation of public space, infrastructure as well as solid waste management

vii. The Skills Development Act (which provides the financial framework and infrastructure for workers, including the unemployed and work seekers, acquiring skills that can lead to employment or self-employment)

viii. The Skills Development Levies Act

ix. The National Minimum Wage draft Bill

x. The Employment Services Act (in terms of which the Minister of Labour may establish schemes to enable youth and vulnerable work seekers to enter employment or remain in employment, and can also set wages and conditions for such employment)

xi. The Municipal Systems Act

xii. The Employment Tax Incentive Act (which provides eligible employers with a subsidy for employing young workers, with one condition being they must be compliant with any relevant wage determination or if there is none pay a default minimum wage)

xiii. Taxation laws including the Income Tax Act, the VAT Act, the Tax Administration Act, and the Customs and Excise Act

xiv. The NHI White Paper

xv. Legislation that is specific to sectors of industry but not obviously labour related e.g. mining, construction, solid waste management and fishing legislation

Each piece of legislation needs to be examined to establish which parts can be extended to own-account workers. A careful audit might reveal that some legislation already covers own account workers e.g. it would arguably be quite easy for a self-employed person to enrol in training via the SDA.

1. Dr Rogan generated the statistics cited here using Statistics SA Quarterly Labour Force Survey data for quarter 4, 2017.
2. One notable exception is the traditional medicine value chain.
3. See for example <https://www.dailymaverick.co.za/article/2018-08-14-hangberg-why-fishers-have-been-turned-into-poachers/>.
4. In addition, the provisions that already exist in our core labour statutes need to be creatively exploited in order to introduce minimum employment standards for workers in atypical employment relationships.
5. <https://pmg.org.za/committee-meeting/24671/>
6. Even among those providing micro finance there is broad acknowledgement that offering a range of services needs to be a key focus for the future (Center for Financial Inclusion, 2011).
7. his section draws form Extract from the Concept Note on Legal Reforms Required to Align South African Laws to ILO Recommendations 204.
8. See <http://www.wiego.org/blog/partnering-street-vendors-led-one-indian-city-model-way-forward>.
9. See <https://pmg.org.za/committee-meeting/24671/> and <https://mg.co.za/article/2017-03-10-00-small-business-fails-to-spend-budget-yet-zulu-wants-more-money>
10. The CSIR (2016) estimated that waste pickers save municipalities between R309 and R749 million in landfill space in 2014