



ILO RECOMMENDATION 204 AND SOUTH AFRICA: A LEGAL REFORM PERSPECTIVE

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Classification of workers

Statistics (International Conference of Labour Statisticians 2003)

Informal workers:

- Wage-Employed e.g. homeworkers in supply chains; domestic workers,
- Self-employed e.g. street vendors; home-based workers

Labour Law

- Employee
- Independent Contractor
- Disguised Employment
 - ▣ casual, day labourer,
 - ▣ subcontracted work

UN Declaration of Human Rights: Art. 23-25

EVERYONE HAS THE RIGHT:

- to just and favourable **conditions** of work and to **protection against unemployment**
- to **equal pay for equal work**
- to just and favourable **remuneration** ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means **of social protection**
- to **join trade unions** for the protection of his interests
- rest and leisure, including **reasonable limitation of working hours and holidays with pay**
- to a **standard of living adequate for the health and well-being of himself and of his family**

Recommendation 204 provisions that are relevant for own account workers

- **Freedom of association and collective bargaining**
- **Inclusion of representative membership-based organisations of informal workers in all tripartite negotiations** and consultations on issues that affect them.
- Recognition of **public spaces** as work places, and the need for regulated access by informal workers to public natural resources.
- **Social protection**, including the extension of social insurance coverage, and occupational health and safety

South Africa: labour rights for own account workers

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*

- The Constitution refers to workers and not employees.
- R204 and the Constitution recognise that own account workers are also workers
- Rights to freedom of association and collective bargaining are enabling rights

Amendments to Labour Relations Act and Basic Conditions of Employment Act

- Registration and representation of collective organisations
 - National governments that have recognised own account workers' trade unions – India (SEWA) and Malawi (MUFIS)
 - Trade Union federation: Tanzania, Kenya, Senegal, Malawi, and Nicaragua, Argentina 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.
- Framework that allows trade unions of own account workers to bargain collectively with local government
- Adjudication of disputes/denial of labour rights by the CCMA and the Labour Court
- Representation at tripartite national forum (NEDLAC)

Social Protection



- Key policy choices:
 - ▣ contributory or not
 - ▣ means tested or universal
 - ▣ cash transfer or insurance based
- piecemeal reform not advised (process: experts + social partners)

Current South African initiatives

- National Social Security Fund, with a simplified contribution arrangement for own account and other informal workers (2012 Inter Ministerial Task Team on social security and retirement reform).
- National Health Insurance White Paper
- South African Legal Reform Commission : maternity and paternity leave for informal workers.

International instruments and examples

- ILO Recommendation 202 of 2012 on National Social Protection Floors;
- the AU Social Protection Plan for the informal economy and rural workers 2011-2015;
- SADC Code on Social Security.
- Senegal: fused small-scale contributory social security schemes with its public schemes;
- Tunisia: expanding workers compensation and pensions to IWs sector by sector;
- India's Unorganised Sector Social Security Act in 2008 - sector based schemes for IWs;
- Zambia: experimenting with extending contributory social protections to informal construction workers –large employers in the industry makes it possible to adopt a "value chain"/cross subsidisation model ;
- Thailand: a universal health scheme;
- Ghana and Rwanda : extended their contributory health schemes to IWs
- Kenya: National Social Security Fund allows for self-employed workers to become 'voluntary members' of the Fund.
- Cape Verde and Mauritius: non contributory health insurance systems.