

Extending Labour and Social Protection to Workers in the Hospitality Sector

A Path Towards Achieving Decent Work

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Summary

The hospitality sector in South Africa plays a crucial role in the national economy, yet its full potential remains unfulfilled because of various challenges. Legal shortcomings in the country's labour and social protection systems create significant difficulties in this sector. Consequently, employers often exploit employees by offering low wages, imposing long working hours, providing insufficient representation in trade unions, or even excluding these workers entirely. These issues disproportionately affect low-skilled workers, individuals employed in small and medium enterprises, undocumented migrant workers, and those engaged in informal food trading. A significant portion of the workforce in this sector comprises undocumented migrant workers. Employers frequently prefer to hire these individuals because it allows them to exploit and underpay them more easily than their documented counterparts or South African citizens. Consequently, undocumented workers often occupy the most vulnerable and poorly compensated positions within the industry. Considering these pressing challenges, it is imperative for both the public and private sectors to formulate and implement comprehensive support initiatives aimed at strengthening the hospitality sector. Targeted training and development programmes are essential tools for addressing the systemic obstacles that workers

face. Additionally, reforming the immigration system to facilitate the regulation of low-skilled labour migration between African countries could significantly alleviate the hardships endured by these workers. Implementing such measures is crucial, not only for enhancing the well-being of the workforce, but also for promoting a more equitable and sustainable hospitality sector in South Africa.

Keywords: Hospitality Sector, Employment, Labour Law, Social Protection, Decent Work, Recommendation 204

1. Introduction

South Africa's hospitality sector has seen remarkable growth over the years, establishing itself as a crucial part of the economy.¹ This sector is one of the most lucrative within the tourism industry, characterised by a high degree of labour intensity.² However, despite employing approximately 60% of the workforce in this field, the potential of these employees, and thus the sector, remains vastly underutilised and unrecognised.³

A significant factor contributing to the underutilisation of the sector is the lack of investment and attention from both employers

1 Olowoyo, Ramaila and Mavuru "Challenges and growth trajectory of the hospitality industry in South Africa. (1994–2020)" *2021 African Journal of Hospitality, Tourism and Leisure* 1077 1077; This article will follow the definition of hospitality sector employees found in clause 1(2) of Sectoral Determination 14: Hospitality Sector, South Africa. According to this clause: "[The] Hospitality Sector means any commercial business or part of a commercial business in which employers and employees are associated for the purpose of carrying on or conducting one or more of the following activities for reward:

- a. providing accommodation in a hotel, motel, inn, resort, game lodge, hostel, guest house, guest farm or bed and breakfast establishment, including short-stay accommodation, self-catering, timeshares, camps, caravan parks;
- b. restaurants, pubs, taverns, cafés, tearooms, coffee shops, fast food outlets, snack bars, industrial or commercial caterers, function caterers, contract caterers that serve or provide prepared food or liquid refreshments, other than drinks in sealed bottles or cans whether indoors or outdoors or in the open air, for consumption on or off the premises".

2 CATHSSETA 2020/21 –2024/25 *Sector Skills Plan 2022/23 Financial Year Update* 1 27, available at https://www.cathsseta.org.za/storage/app/public/strategic_Documents/SSP%202021-25.pdf (08-06-2025).

3 CATHSSETA Sector Plan (n 2) 27.

and government entities.⁴ Consequently, many employees are often ill-prepared to meet the industry's evolving demands.⁵ The precarious nature of the sector is further exacerbated by several critical issues, including low wages, excessive working hours, and inadequate representation by trade unions.⁶ Together, these challenges lead to widespread non-compliance and employee dissatisfaction, ultimately hindering the overall growth of the sector.⁷

While our labour legislation is designed to protect workers, many protections remain inadequate, especially for vulnerable groups such as those employed in small and medium enterprises (SMEs) and as informal food vendors.⁸ The primary issues lie not only in the lack of legal protections but also in the exclusionary nature of certain provisions within labour and social protection laws.⁹ These regulations often prioritise workers in formal employment, leaving many others without adequate legislative protection.¹⁰ This gap in adequate legal protection highlights a significant gap in the legislative frameworks, necessitating re-evaluation of how laws are applied and who they are intended to safeguard. Without addressing these shortcomings, vulnerable workers will continue to face precarious working conditions.

Despite the hospitality sector's significant productivity and economic potential, many workers still face vulnerabilities and risks of exploitation.¹¹ To effectively address these challenges, a comprehensive approach is required that not only emphasises the importance of employee training and fair working conditions but

4 CATHSSETA Sector Plan (n 2) 31.

5 CATHSSETA Sector Plan (n 2) 31.

6 Olowoyo, Ramaila and Mavuru (n 1) 1078. These challenges will be mentioned throughout this article.

7 Olowoyo, Ramaila and Mavuru (n 1) 1078.

8 Olowoyo, Ramaila and Mavuru (n 1) 1078; Vettori Challenges facing the Department of Labour in implementing labour policy and labour legislation in the hospitality industry in South Africa" 2018 *African Journal of Hospitality* 1 7; Letsiri *Extending Labour Law Protection to Informal Traders* (2020 dissertation UJ) 3.

9 Letsiri (n 8) 59.

10 Letsiri (n 8) 59.

11 *Stemele Career Advancement of Tourism and Hospitality Management Graduates: The Case of Walter Sisulu University, Eastern Cape* (2020 dissertation DUT) 60; ILO guidelines on decent work and socially responsible tourism 1 11.

also expands legal protections to encompass all workers within the hospitality industry.

2. Decent work and the hospitality sector

2.1 *What decent work entails*

Decent work was recognised as a sustainable development goal (SDG) during the United Nations (UN) General Assembly meeting in September 2015.¹² The preamble of the resolution emphasised the commitment of all nations to collaborate in implementing a plan to eradicate poverty and restore the planet.¹³ To support this agenda, the South African government introduced the New Growth Path (NGP) in 2008. The NGP's objective was to create five million new jobs across various sectors, including tourism, by 2020.¹⁴ It aimed to reduce unemployment by 15%, with most new jobs anticipated to be generated by the private sector.¹⁵ Additionally, the NGP prioritises enhancing labour relations, establishing minimum wage standards, developing youth leadership programmes, and improving SMEs' integration through financial support.¹⁶

Within the framework of sustainable tourism, the NGP advocates for policies that promote sustainable practices.¹⁷ These initiatives should not only create job opportunities but also utilise tourism as a tool to combat poverty and reduce inequality.¹⁸ By fostering entrepreneurship amongst marginalised groups, such as women and individuals with disabilities, these programmes aim to stimulate economic growth while aligning with the broader objectives of the SDGs.¹⁹ However, despite these financial and policy objectives being

12 *Sustainable Development Goals: Country Report 2019- South Africa* 1 1, available at https://www.statssa.gov.za/MDG/SDGs_Country_Report_2019_South_Africa.pdf (3-01-2024).

13 South African Country Report (n 12) 1.

14 South African Country Report (n 12) 116.

15 South African Country Report (n 12) 116.

16 South African Country Report (n 12) 116.

17 South African Country Report (n 12) 119.

18 South African Country Report (n 12) 116.

19 South African Country Report (n 12) 116.

intended as catalysts for the decent work agenda in South Africa,²⁰ the author remains critical of the overwhelming focus on economic development as a means to achieve decent work, perceiving it as potentially counterproductive.

This criticism is supported by the views of the International Labour Organization (ILO), which asserts that the decent work agenda encompasses more than just job creation.²¹ It emphasises the importance of ensuring workers' rights and extending social protection.²² While generating jobs is crucial, it is insufficient on its own.²³ The true aim should be to foster sustainable employment, achievable only by improving existing job conditions.²⁴ Such enhancements are fundamental to ensuring sustainability across various industries and creating new job opportunities.²⁵

Despite the ILO's intentions, challenges arise because of the differing approaches employed by the UN in promoting decent work. While the goal remains to improve working conditions, the agenda frequently appears overly focused on increasing production and economic growth, with only two sub-goals explicitly addressing decent work.²⁶ This emphasis on economic growth is understandable, as it is often seen as a primary driver of development that generates jobs and encourages entrepreneurship.²⁷ However, an intense focus on economic indicators can detract from the fundamental objective of decent work: eradicating poverty for workers.²⁸

Economic growth may enhance overall well-being by improving access to resources, but it does not guarantee that individuals can

20 South African Country Report (n 12) 119.

21 ILO Decent Work and the 2030 Agenda for Sustainable Development 1 2.

22 ILO Decent work Agenda (n 21) 2.

23 ILO Decent work Agenda (n 21) 2.

24 ILO Decent work Agenda (n 21) 2.

25 ILO Decent work Agenda (n 21) 2.

26 Kreinin and Aigner "From 'decent work and economic growth' to 'sustainable work and economic degrowth': A new framework for SDG 8" 2022 *Empirica* 281 286. In this article, the author focuses on the inconsistencies in the sub-goals of SDG 8, as it primarily emphasises the improvement of the economy rather than the advancement of human rights.

27 ILO Decent work Agenda (n 21) 7.

28 ILO Decent work Agenda (n 21) 2.

effectively obtain those resources.²⁹ Thus, it is essential to shift the focus from abstract economic metrics to the actual needs and rights of workers striving for a better quality of life.³⁰ By prioritising workers' needs over mere economic indicators, we can pursue a more meaningful quest for decent work and sustainable livelihoods.³¹ This shift is crucial to ensuring that the benefits of economic growth translate into tangible improvements in the lives of individuals and families, thereby fulfilling the true essence of decent work.³²

2.2 *Guidelines on Decent Work and Socially Responsible Tourism*

The hospitality sector faces challenges that extend beyond South Africa; they reflect a global trend affecting the industry worldwide.³³ To tackle these issues, the ILO has developed a comprehensive set of guidelines aimed at assisting countries and various stakeholders in achieving decent work standards.³⁴

These guidelines are designed to establish standard practices and policy frameworks that promote decent work principles within the hospitality industry.³⁵ They target both public and private sectors, addressing critical concerns relevant to governments, employees, and employers.³⁶ These guidelines aim to enhance labour practices in the tourism sector by serving as essential reference points, ultimately fostering the industry's sustainability and resilience.³⁷

2.2.1 Aims of the guidelines

The guidelines emphasise the critical role of the state in fostering sustainability within the tourism sector.³⁸ This responsibility encompasses the development and implementation of comprehensive

29 Kreinin and Aigner (n 26) 289.

30 Kreinin and Aigner (n 26) 289.

31 Kreinin and Aigner (n 26) 289.

32 Kreinin and Aigner (n 26) 289.

33 ILO Guidelines on decent work in the Tourism Sector (n 11).

34 ILO Guidelines on decent work in the Tourism Sector (n 11).

35 ILO Guidelines on decent work in the Tourism Sector (n 11) v.

36 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

37 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

38 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

policies that operate effectively at both national and local levels.³⁹ To achieve this goal, collaboration with a diverse range of public and private stakeholders is essential.⁴⁰

One key aspect highlighted in the guidelines is the need for policies that not only bolster the socioeconomic benefits of tourism for host communities but also align with broader sustainability objectives.⁴¹ In this context, the guidelines mandate that strategic policy design aimed at optimising employment opportunities in local and rural areas is essential.⁴² This includes a focus on job creation, entrepreneurship, and the effective utilisation of local resources.⁴³

Additionally, aligning tourism policies with the overall goals of sustainable tourism is crucial.⁴⁴ These goals include the preservation of cultural heritage, the protection of ecosystems, and the safeguarding of essential natural resources that support the tourism industry.⁴⁵ The guidelines also highlight the significance of strengthening the nexus between tourism and trade policies, which could facilitate the integration of SMEs into local, regional, and international markets.⁴⁶ To enhance the efficacy of these initiatives, robust mechanisms for monitoring and evaluating tourism policies must be established,⁴⁷ alongside a legal framework that ensures compliance with decent work standards.⁴⁸ Hence, this contribution posits that prioritising full and productive employment through targeted skills development initiatives is vital to augmenting opportunities within the sector.⁴⁹ The focus on skills enhancement aligns with the broader objectives of promoting sustainable and equitable growth within tourism.⁵⁰

39 ILO Guidelines on decent work in the Tourism Sector (n 11) 15.

40 ILO Guidelines on decent work in the Tourism Sector (n 11) 15.

41 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

42 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

43 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

44 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

45 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

46 ILO Guidelines on decent work in the Tourism Sector (n 11) 17.

47 ILO Guidelines on decent work in the Tourism Sector (n 11) 17.

48 ILO Guidelines on decent work in the Tourism Sector (n 11) 17.

49 ILO Guidelines on decent work in the Tourism Sector (n 11) 17.

50 ILO Guidelines on decent work in the Tourism Sector (n 11) 18.

Thus, the guidelines highlight the importance of effective policy formulation to achieve decent work in tourism.⁵¹ The ILO advocates for the state to develop comprehensive policies to create employment opportunities and empower marginalised groups, particularly women, youth, and migrant workers, through targeted skills development initiatives.⁵² However, the author posits that existing policies in South Africa may render new policies unnecessary, a perspective that will be further examined in the subsequent discussion.

Implementation of aims in South Africa

Sustainable development policies for SMEs

One of the key guidelines suggests that efforts should be made to empower SMEs to operate not only at the local level but also on regional and international platforms.⁵³ Unfortunately, there has been insufficient emphasis on enabling these enterprises to flourish in both contexts, revealing a gap in South Africa's approach to supporting SMEs.⁵⁴

Currently, South Africa's focus on SMEs mainly revolves around driving sales and growth within the small business sector at the local and provincial levels.⁵⁵ Most existing strategies concentrate primarily on enhancing networking skills, aiming to create employment opportunities and foster the development of these enterprises.⁵⁶ While South Africa's current practices towards the sustainability of SMEs align with some of these guidelines, there are notable shortcomings. Unlike the guidelines, the South African approach has not sufficiently prioritised enabling SMEs to trade beyond local or provincial markets.⁵⁷ This limitation largely stems from a lack of

51 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

52 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

53 ILO Guidelines on decent work in the Tourism Sector (n 11) 16.

54 Prioritised tourism investment projects in South Africa, May 2018. <https://www.tourism.gov.za/AboutNDT/Documents/Department%20of%20Tourism%20%20Investment%20Opportunity%20Booklet.pdf> (18-06-2025).

55 CATHSSETA Sector Plan (n 2) 29.

56 CATHSSETA Sector Plan (n 2) 29.

57 Sibiya and Van der Westhuizen "Challenges experienced by SMMEs and interventions by the South African National and Provincial government: A literature review" 2023

capital and inadequate access to resources, significantly affecting their ability to expand and survive in a competitive environment.⁵⁸ The absence of access to funding from financial institutions severely hampers the potential for growth and sustainability in the sector.⁵⁹

Furthermore, while the guidelines recommend developing a sector-specific framework, this is unnecessary because South Africa already has a well-established labour and social protection framework.⁶⁰ This existing framework is inherently linked to employment contracts by operation of law, and in certain instances, industry standards can be tailored for specific sectors through collective bargaining agreements.⁶¹ Instead of investing valuable resources and time in creating new policies and legislation specifically for SMEs, the state should focus on improving existing laws to better accommodate these businesses.

A crucial area for improvement lies in the examination of taxation laws and their implications for SMEs.⁶² Policymakers should reconsider the current tax structures governing these enterprises, as the burden of high taxation ultimately hinders their growth.⁶³ Elevated tax rates not only reduce their earnings but also require SMEs to bear the additional burden of value-added tax (VAT) on their purchases.⁶⁴ Furthermore, SMEs face a disproportionately higher tax compliance burden compared to larger enterprises.⁶⁵ This increased

African Journal of Inter/Multidisciplinary Studies 1. In this article, the author discusses how the potential of SMEs remains untapped for various reasons, with the primary factors being the taxes they pay and the inflation rate.

58 Sibiya and Van der Westhuizen (n 57) 5-7.

59 Sibiya and Van der Westhuizen (n 57) 5-7.

60 ILO guidelines on decent work in the Tourism Sector (n 11) 15.

61 The LRA, in s 23, allows for the making of collective bargaining that aims to set terms and conditions that regulate employment in a workplace; s 32 allows for these collective bargaining agreements to be extended to an entire sector in the registered scope of the Bargaining Council.

62 Sibiya and Van der Westhuizen (n 57) 5-6.

63 Sibiya and Van der Westhuizen (n 57) 5-6.

64 Sibiya and Van der Westhuizen (n 57) 5-6.

65 Sibiya and Van der Westhuizen (n 57) 5-6. Deloitte published a report identifying why tax compliance burdens SMEs. They noted the following: "...the regulatory burden and the cost of tax compliance remain a significant challenge for SMEs as they often do not have the necessary staff resources and skills to navigate the complex tax rules to comply with all their tax obligations timeously and fully. The

level of taxation significantly impacts their employability rates and limits their ability to provide decent work opportunities.⁶⁶

By addressing these considerations, it becomes evident how South Africa's non-compliance with the guidelines hampers its ability to achieve the SDGs, particularly in relation to decent work for SMEs. However, by recalibrating the legal framework to better support SMEs, the government can foster a more conducive environment for their development and long-term sustainability. This proactive approach not only aligns with national goals but also supports the broader objective of cultivating a thriving hospitality sector within the framework of sustainable development. Ultimately, prioritising these changes will benefit both SMEs and the overall economy.

Skills development in the tourism sector

In relation to skills development, the guidelines emphasise that achieving decent work in the tourism sector requires a focused approach on training and career development strategies for workers.⁶⁷ This emphasis is crucial, as it allows for the development of skills tailored to meet industry needs, fosters a well-trained workforce, improves the quality of tourism services, and enhances overall productivity.⁶⁸ In South Africa, the framework for skills development is established through the Skills Development Act 97 of 1998.⁶⁹

The primary purpose of this Act is to cultivate the skills of the South African workforce. Specifically for the tourism sector, there is a dedicated skills development body known as the Culture, Arts, Tourism, Hospitality, and Sport Sector Education and Training

cost of tax compliance can thus add significantly to the cost of doing business for SMEs (e.g., additional resources that have to be employed to comply with tax rules, significant penalties imposed for non-compliance with tax rules, administrative non-compliance penalties imposed for outstanding tax returns, among other costs." The tax compliance burden for small and medium enterprises, available at <https://www.deloitte.com/za/en/services/tax/perspectives/the-tax-compliance-burden-for-small-and-medium-enterprises.html> (23-04-2025).

66 Sibiya and Van der Westhuizen (n 57) 5-6.

67 ILO guidelines on decent work in the Tourism Sector (n 11) 25.

68 ILO guidelines on decent work in the Tourism Sector (n 11) 25.

69 97 of 1998.

Authority (CATHSSETA).⁷⁰ CATHSSETA is tasked with developing a sector skills plan that identifies trends within the industry and highlights the skills that are in demand.⁷¹

According to the 2022 Sector Skills Plan published by CATHSSETA,⁷² the sector faces significant challenges in filling higher-skilled vacancies.⁷³ Employers report that graduates often lack the necessary practical skills, while experienced workers may not possess the required qualifications.⁷⁴ This disconnect creates challenges for sustainable employment in the sector, as employers struggle to find candidates who meet both qualification and experience criteria, despite having a workforce that includes individuals from both groups.⁷⁵ This situation highlights the importance of an integrated approach to education and skills training in the hospitality sector, ensuring that both graduates and non-degree workers are better equipped with the skills needed in the industry.

Despite these challenges, CATHSSETA has made promising progress in the hospitality sector. For instance, CATHSSETA has funded 116 students pursuing qualifications in the sector and has provided internships to gain practical experience.⁷⁶ Additionally, CATHSSETA has partnered with Technical and Vocational Education and Training (TVET) colleges to develop accredited qualifications aligned with the National Qualifications Framework (NQF).⁷⁷ This collaboration also includes promoting worker-initiated training in line with broader sectoral policies, resulting in bursaries and skills programmes that have benefited 68 workers pursuing higher-skilled qualifications.⁷⁸

70 CATHSSETA is vested with the authority to develop a sector skills plan, and this plan will identify the trends in each sector and the skills that are in demand in that sector.

71 CATHSSETA Sector Plan (n 2) 27.

72 CATHSSETA Sector Plan (n 2) 27.

73 According to the CATHSSETA Skills Plan, hard-to-fill vacancies are occupations that take longer than a year to find suitably experienced and qualified candidates for filling.

74 CATHSSETA Sector Plan (n 2) 46-47.

75 CATHSSETA Sector Plan (n 2) 47.

76 CATHSSETA Sector Plan (n 2) 63.

77 CATHSSETA Sector Plan (n 2) 62.

78 CATHSSETA Sector Plan (n 2) 65.

Building on these efforts, CATHSSETA has recently announced its intention to collaborate with large employers to create youth employment opportunities.⁷⁹ A notable example is its partnership with McDonald's, which has committed to training 1,400 learners through a hospitality leadership programme culminating in an NQF Level 3 qualification.⁸⁰ This programme is designed to serve as a gateway to employment opportunities, equipping participants with both practical skills and industry-specific knowledge.⁸¹ Furthermore, McDonald's has committed to hiring 80% of these learners into formal employment roles after they complete their learnerships.⁸² CATHSSETA articulates that the primary objective of this programme is to address the critical issue of youth unemployment in the country by providing a structured pathway for previously unemployed individuals to enter the workforce. By equipping learners with essential tools and qualifications necessary to excel in the fast-food industry, the programme aims to empower them to contribute to both the sector's growth and their personal development.⁸³

However, while this initiative contributes to reducing youth unemployment – an explicit goal of the guidelines⁸⁴ – it raises important questions regarding the sustainability of the training provided. Specifically, will there be ongoing training offered after students are hired? This enquiry is vital, as a one-time training experience does not adequately support career advancement; ongoing development is essential in this context. Continuous training is necessary to adapt to emerging trends and industry demands; thus, a single training programme may prove insufficient for long-term success.⁸⁵ Using McDonald's as an example, their collaboration with CATHSSETA suggests a focus on one-time training. In their official statement, they assert that the learnership aims to provide learners with experience crucial for gaining employment while also promoting

79 CATHSSETA Annual Report 2023/24, available at https://cathsseta.org.za/storage/app/public/annual_report/1732092285.pdf (15-06-2025).

80 CATHSSETA Annual Report (n 79) 11.

81 CATHSSETA Annual Report (n 79) 11.

82 CATHSSETA Annual Report (n 79) 11.

83 CATHSSETA Annual Report (n 79) 29.

84 ILO guidelines on decent work in the Tourism Sector (n 9) 21.

85 ILO guidelines on decent work in the Tourism Sector (n 9) 10, 19.

entrepreneurship to support sustainable tourism.⁸⁶ However, such language raises concerns about the sustainability of the tourism sector if ongoing training is not integrated into the learning process. Without a commitment to continuous professional development, the long-term effectiveness of such initiatives remains questionable.

2.2.2 Recommendation 204 – Concerning the transition from the informal to the formal economy

This recommendation was introduced to address the pervasive issue of informal work across member states, which frequently results in the exclusion of workers from essential labour and social protections.⁸⁷ To tackle this challenge, the recommendations assert that member states should develop employment policies that prioritise decent work as a central objective within their national development strategies.⁸⁸ This approach aims to foster the creation of quality formal employment opportunities while incorporating skills development and employment programmes designed to support low-income households living in poverty.⁸⁹ By facilitating these changes, we can ensure that individuals in these circumstances benefit from adequate wages and comprehensive social protection policies. Significantly, this strategy should also encompass migrant workers,⁹⁰ acknowledging their critical contributions to meeting labour market needs.⁹¹

Moreover, while the recommendation closely aligns with guidelines established for decent work within the tourism sector, its applicability extends across all industries. The definition of “informal worker” derived from this recommendation has been integrated

86 McDonald’s South Africa and CATHSETTA Partnership, available at <https://www.mcdonalds.co.za/news-notifications/13-august-2024-mcdonalds-south-africa-collaborates-with-cathssetta-to-develop-workforce> (09-01-2024).

87 Preamble of Recommendation 204 (R204).

88 Preamble of R204.

89 Article III (10) of R204.

90 Article III (10) of R204.

91 Article III (11) of R204.

into numerous ILO guidelines, thereby reinforcing its relevance in contemporary discussions surrounding labour protections.⁹²

Following the adoption of this recommendation, South Africa was selected as a test case for its implementation.⁹³ Although the state has yet to officially initiate this process, considerable pressure is mounting from informal economy workers advocating for its adoption.⁹⁴ A study conducted by the Women in Informal Employment: Globalizing and Organizing (WIEGO), titled *Implementing ILO R204 on the Transition from the Informal to the Formal Economy: Lessons from South Africa's Experience*,⁹⁵ delineates the challenges associated with the implementation of these recommendations.⁹⁶ The study highlights that efforts to formalise informal enterprises have predominantly focused on basic activities such as business registration and seeking grants to address deficits in decent work.⁹⁷

The findings reveal that the attempts to formalise informal enterprises have been constrained to rudimentary initiatives, limiting the potential for transformative change.⁹⁸ The report specifically examines the circumstances of street vendors, owners of small shops, waste pickers, fishers, minibus taxi drivers, and home-based artisans operating within the informal economy.⁹⁹ However, if we broaden the definition of “informal workers” to include all employees within the hospitality sector, it becomes evident that

92 The definition of informal sector workers was established in Art I(2) of the R204. As detailed in the discussion under *Decent work in the Tourism Sector*, the same definition was applied there.

93 Pillay *Job Summit Policy Brief Series – Stream 3, Policy Brief: Informal Economy/Sector 2018*, available at <https://iej.org.za/wp-content/uploads/2020/07/Stream-3-Policy-Brief-1-Informal-Economy-Sector.pdf> (10-11-2024).

94 WIEGO Technical Brief No 16: April 2024, 5; Horn *Implementing ILO R204 on the Transition from the Informal to the Formal Economy: Lessons from South Africa's Experience*. According to this report, workers in the informal sector are pressuring the state to adopt the recommendations.

95 WIEGO Technical Brief (n 94).

96 WIEGO Technical Brief (n 94) detailed various reasons; however, the most important is the narrow approach the court is taking to transitioning the informal economy into the formal economy. The state is merely focusing on registering businesses, which has proven insufficient as exclusions still exist after registration.

97 WIEGO Technical Brief (n 94) 6.

98 WIEGO Technical Brief (n 94) 7.

99 WIEGO Technical Brief (n 94) 8.

these workers also fall under this classification. Their experiences and challenges are deserving of inclusion in the broader discourse on labour protections.

The author contends that the sustainable realisation of R204 necessitates a multifaceted approach to the formalisation of the informal economy, extending beyond mere business registration to address the varied needs of informal workers across diverse sectors.¹⁰⁰ This discussion aligns with the notion that the state can utilise its legislative powers to facilitate not only the operations of SMEs but also to support individual employees and those who are self-employed.

While WIEGO acknowledges the existence of pertinent legislation, it draws attention to critical shortcomings in the implementation of such laws. It also emphasises the need for processes that can navigate the stringent requirements imposed by legislation on individuals who do not neatly fit the traditional definition of an “employee”.

Ultimately, the prevalent theme in this discourse is the necessity for the state to fully utilise the available legislative framework, focusing on extending both the legislation and its protective measures to encompass self-employed and informally employed individuals. Furthermore, private stakeholders should also facilitate similar protections for formal employees who earn insufficient wages and receive minimal benefits, thus preventing their moral and practical classification as formal sector employees. Until R204 is effectively implemented and our legislative framework is utilised to its fullest potential, the achievement of decent work for all remains an elusive goal.

2.2.3 Hospitality sector workers as “informal workers”

According to Article I (2) of R204, the informal economy is defined for the purposes of this recommendation as encompassing “all economic activities by workers and economic units that are – in

¹⁰⁰ WIEGO Technical Brief (n 94) 7.

law or in practice – not covered or insufficiently covered by formal arrangements”.¹⁰¹

This definition highlights the multifaceted nature of informal employment, which is not limited to a single economic sector but spans both public and private spheres,¹⁰² including employer–employee relationships and self–employment.¹⁰³

Informal food trading and small family–run restaurants serve as salient examples of this phenomenon. These enterprises play an essential role in providing livelihoods for over 50% of the global population, with a particularly significant rise in participation observed in South Africa.¹⁰⁴ This trend is especially pronounced amongst individuals who face barriers in securing positions in the formal job market or who lack formal educational qualifications.¹⁰⁵ Despite their critical importance, these informal vendors encounter numerous challenges, including abuse and harassment from municipal officials.¹⁰⁶ Such adversities often compel them to withdraw from work, resulting in substantial income loss and heightened vulnerability, as informal trading typically represents their primary source of income.¹⁰⁷ The precarious situation faced by informal workers is mirrored in the small and medium–sized enterprises operating within the formal economy, where employees frequently grapple with low wages, unfavourable working hours, insufficient union representation, and a lack of benefits.¹⁰⁸ These conditions make these workers vulnerable, as they do not enjoy the essential protections necessary for decent work.

101 Art I(2) of R204.

102 Art I(5) of R204.

103 Art I(4) (a)(i)–(ii) of R204.

104 De Beer and Rogerson “Decent work in the South African tourism industry: Evidence from tourist guides” 2014 *Urban Forum* 90–91; Bhoola and Chetty “Experiences and perceptions of economically marginalized women food vendors: An exploratory study of informal food traders in Durban, South Africa” 2022 *Journal of Social Inclusion* 25–25.

105 Bhoola and Chetty (n 104) 26.

106 Bhoola and Chetty (n 104) 25.

107 Bhoola and Chetty (n 104) 27.

108 Olowoyo, Ramaila and Mavuru (n 1) 1078.

In light of these pressing challenges, the recommendation urges member states to systematically assess and diagnose the factors contributing to informal labour.¹⁰⁹ Similar to the guidelines for decent work in the tourism sector, this recommendation emphasises the need for developing and implementing comprehensive laws, regulations and policies to facilitate the transition of informal workers into the formal economy.¹¹⁰ These recommendations advocate for the formulation and implementation of comprehensive laws, regulations, and policies designed to facilitate the transition of informal workers into the formal economy.¹¹¹ They promote tailored approaches that take into account the specific characteristics of various sectors and the diverse national circumstances.¹¹² Consequently, the recommendations advocate for an integrated policy framework that actively involves informal workers in collective bargaining processes, thereby fostering equitable labour conditions and enhancing their rights within the broader economic landscape.¹¹³

As stated above, the establishment of entirely new legislation is both impractical and unnecessary. The proliferation of sector-specific legislation would not only be time-consuming but could also impede the overall objective of achieving decent work by 2030. Instead, it is imperative to utilise existing legislative frameworks and explore potential reformations permissible under current laws, which may include the enactment of regulations or new sectoral determinations. This approach promises to expedite necessary reforms while minimising disruptions to the policy landscape.

3. Social protection and the hospitality sector

The right to social security is recognised as a fundamental human right in Article 9 of the International Covenant on Economic, Social, and Cultural Rights (Covenant).¹¹⁴ It emphasises that the right to

109 Article III(8) of R204.

110 Article III(8) of R204.

111 Article III(8) of R204.

112 Article II(7)(a) of R204.

113 Article V(16) of R204.

114 International Covenant on Economic, Social and Cultural Rights, 1966.

social security is essential for individuals to lead dignified lives.¹¹⁵ Without this right, living with dignity becomes unattainable.¹¹⁶

Article 9 places an obligation on the state to recognise everyone's entitlement to social assistance and social insurance.¹¹⁷ However, the Covenant does not specify the details of this obligation, leading the Committee on Economic, Social, and Cultural Rights to issue General Comment 19.¹¹⁸ This document provides a detailed discussion of the right to social security and clarifies the obligations that states must fulfil to uphold this essential human right.¹¹⁹

3.1 *General Comment 19*

The Committee emphasises that the right to social protection is inherently redistributive, aiming to alleviate poverty and combat social exclusion while promoting social inclusion.¹²⁰ Despite its significance, the Committee expresses grave concern regarding the alarmingly low levels of access to social security globally, highlighting that more than 80% of the world's population lacks access to formal social protection systems.¹²¹ This widespread denial of access poses serious challenges to realising other rights enshrined in the Covenant, particularly for marginalised and disadvantaged populations.¹²² A fundamental aspect is "availability", which mandates that a social security system be established, whether as a singular scheme or a collection of schemes, to address relevant social risks and contingencies.¹²³ These systems must be developed domestically, with effective administration under the state's purview.¹²⁴ Additionally, the Committee emphasises the importance of "eligibility" as a key aspect of "availability", asserting that the qualifying conditions for

115 ILO *Building Social Protection Systems: International Standards and Human Rights Instruments* (2021) 1 2.

116 ILO (n 115) 11.

117 Article 9 of the Covenant.

118 General Comment No. 19: The right to social security (Art 9).

119 General Comments (n 118) par 7.

120 General Comments (n 118) par 7.

121 General Comments (n 118) par 7.

122 General Comments (n 118) par 7.

123 General Comments (n 118) par 11.

124 General Comments (n 118) par 7.

benefits should be reasonable, proportionate, and transparent. In cases where social security programmes require contributions, these contributions must be affordable for everyone, ensuring that they do not impede the realisation of other rights under the Covenant.¹²⁵

The Committee emphasises that states must establish social security provisions, including both contributory and non-contributory retirement benefits for old age, and ensure protection for workers who sustain workplace injuries by covering healthcare costs and compensating for lost earnings, with access to these benefits not contingent upon the duration of employment, insurance coverage, or completed contributions.¹²⁶ Moreover, regarding maternity leave, Article 10 of the Covenant specifies that working mothers are entitled to paid leave or leave accompanied by adequate social security benefits.¹²⁷ This entitlement extends to all women, regardless of whether they work in the formal or informal sectors. It also includes medical benefits for perinatal, childbirth, and postnatal care, covering necessary hospitalisation.¹²⁸ The Committee notes that by implementing these measures, states can significantly improve access to social protection and contribute to the realisation of fundamental rights for all individuals.

The Committee also emphasises the importance of providing social benefits on a non-discriminatory basis.¹²⁹ explicitly prohibiting discrimination based on race and origin and affirming that states have an obligation to eliminate any practices that could foster discrimination.¹³⁰ The Committee's requirements appear to include undocumented migrant workers, as it specifies that "everyone is entitled to social protection" and strictly prohibits discrimination based on immigration status.¹³¹

In particular, the Committee calls on states to take comprehensive steps to ensure that social security systems are inclusive of workers

125 General Comments (n 118) par 25.

126 General Comments (n 118) par 15, 17.

127 Article 10 of the Covenant; General Comments (n 118) par 19.

128 General Comments (n 118) par 19.

129 General Comments (n 118) par 29.

130 General Comments (n 118) par 29.

131 General Comments (n 118) par 39.

in the informal sector, especially since many social security frameworks primarily address formal employment.¹³² To improve access for informal sector workers, the Committee recommends several measures, including the eliminating of obstacles that prevent these workers from utilising informal social security schemes, such as community-based insurance.¹³³ It is essential to facilitate access for informal sector workers, and the Committee recommends a range of measures to achieve this, including removing barriers that hinder these workers from accessing informal social security schemes, such as community-based insurance.¹³⁴ Additionally, the Committee advocates for the gradual establishment of a minimum level of coverage for risks and contingencies specifically for these workers within formal social security.¹³⁵

Importantly, the Committee further emphasises the need to recognise and support social security schemes that arise from the informal economy, including micro-insurance and micro-credit initiatives.¹³⁶ By implementing these steps, the Committee believes that states can create a more inclusive social protection framework that benefits all workers, regardless of their employment status.

3.2 *South Africa's social security system*

South Africa has a comprehensive social security system that applies to employees as defined by the Labour Relations Act (LRA) 66 of 1995 and to documented migrant workers, as established by the *Khosa* case.¹³⁷ However, this system excludes undocumented migrant workers.

132 General Comments (n 120) par 34.

133 General Comments (n 120) par 34.

134 General Comments (n 120) par 34.

135 General Comments (n 120) par 34.

136 General Comments (n 120) par 34.

137 ss 200A and 213 of the LRA; *The Khosa v Minister of Social Development; Mahlaule v Minister of Social Development* 2004 6 SA 505 (CC) judgement extended social protection to all documented migrant workers. Mpedi and Smit "Social protection for developing countries: Can social security be more relevant for those working in the informal economy?" 2010 *LDD* 1 167-168.

The committee observes that both social assistance and social insurance should function as an income replacement; however, in South Africa, these two systems serve distinct purposes.¹³⁸ Social assistance is intended to ensure that individuals do not fall below a basic minimum standard of living,¹³⁹ while social insurance acts as an income replacement mechanism supported by contributions from both employers and employees.¹⁴⁰ This creates an assumption that individuals with financial means should contribute to social insurance, whereas social assistance is reserved for those in genuine need.¹⁴¹

Many informal workers are excluded from social insurance because they often do not meet the official definition of an “employee”, which limits the protection of individuals in formal employment.¹⁴² Additionally, informal workers may be unable or unwilling to contribute a significant portion of their income to social security, raising concerns about the system’s affordability.¹⁴³

Although the government plays an important role in regulating social insurance initiatives, it does not offer voluntary social insurance schemes;¹⁴⁴ instead, these schemes are typically managed by private employers for their employees.¹⁴⁵ This distinction is important: social insurance requires contributions from both employees and employers and is administered by private entities, while social assistance is directly provided by the state.¹⁴⁶ Access to social assistance typically requires passing a means test, which can

138 General Comments (n 120) par 16; Mpedi and Smit (n 137) 161.

139 Mpedi and Smit (n 137) 161.

140 Mpedi and Smit (n 137) 161.

141 Mpedi and Smit (n 137) 161.

142 Mpedi and Smit (n 137) 167–168.

143 Mpedi and Smit (n 137) 160.

144 Brockerhoff “Review of the development of social security policy in South Africa” 2013 *Studies in Poverty and Inequality Institute* 1 16.

<https://spii.org.za/wp-content/uploads/2018/02/2013-07-SPII-Working-Paper-6-Review-of-Social-Security-Policy.pdf> (5-10-2023).

145 South African Human Rights Commission *Social Security and Social Services for Children Report, Chapter 2: Social Security, Social Assistance and Social Services for Children and Social Services for Children*. Part A: Overview, 1 13, available at https://www.sahrc.org.za/home/21/files/Reports/3rd%20ESR%20report%20chapter__2.pdf (28-12-2024).

146 Social Security and Services Report (n 145) 13.

create barriers for many individuals.¹⁴⁷ Consequently, those living in poverty may find themselves ineligible for crucial support, despite urgently needing it.¹⁴⁸

These challenges emphasise the shortcomings of the social assistance framework. Many individuals who fall just above the means threshold may still be unable to afford social insurance,¹⁴⁹ rendering them vulnerable – especially during periods of unemployment or hospitalisation.¹⁵⁰ Such circumstances highlight the importance of social insurance, particularly for benefits like maternity leave.¹⁵¹

Despite the significance of social security, there is no established framework for recognising informal social security arrangements.¹⁵² Consequently, informal sector workers lack a viable pathway to access the existing social protection system, which results in non-compliance with state obligations imposed by the Covenant.¹⁵³ Smit and Mpedi¹⁵⁴ advocate for the development of a system that caters specifically to the needs of individuals in the informal economy who are capable of contributing to social security.¹⁵⁵

To create such a system, the author argues for a re-evaluation of the definition of “employee” within social security legislation, as well as a relaxation of the criteria related to “qualifying periods” and “consistency of contributions”. This re-evaluation is crucial, considering that informal sector employees often experience irregular

147 Social Security and Services Report (n 145) 13.

148 Social Security and Services Report (n 145) 13.

149 Mpedi and Smit (n 137) 20.

150 Mpedi and Smit (n 137) 20. Section 24 of the UIF Act 63 of 2001 permits only contributors who fit the definition of an employee in the Act to claim maternity benefits.

151 Mpedi and Smit (n 137) 20; s 24 of the UIF Act; Behari “Lessons on parental leave: A comparative analysis of parental leave in South Africa and the United Kingdom” 2020 *Obiter* 787 792. As employers are not mandated to provide paid maternity leave, women frequently rely on income derived from their Unemployment Insurance Fund contributions during this period. If they have not contributed to the fund, they face a complete loss of income during maternity leave, which further illustrates the precarious situation of low-wage workers.

152 Mpedi and Smit (n 137) 175.

153 Mpedi and Smit (n 137) 175.

154 Mpedi and Smit (n 137) 161.

155 Mpedi and Smit (n 137) 177.

incomes, which diverge significantly from the stable earnings associated with formal employment.¹⁵⁶ The inconsistency of income can severely impede their ability to contribute to social security.¹⁵⁷ Furthermore, the long-term perspective of formal sector insurance does not align with the immediate needs of informal workers, who prioritise essential necessities like food over potential future risks.¹⁵⁸

To effectively address these challenges, the authors propose either broadening the definition of “employee” within existing social protection legislation or introducing sectoral determinations tailored to specific worker categories.¹⁵⁹ However, the author leans more towards the latter approach, as simply widening the definition does not adequately tackle other critical issues, such as the income irregularity experienced by informal sector workers, which obstructs their ability to contribute consistently.¹⁶⁰ By recognising informal insurance programmes and progressively integrating these workers into formal social security policies, as suggested in General Comment 19, South Africa can take significant steps towards creating a more inclusive and equitable social protection system.¹⁶¹

4. Undocumented migrant workers and regional integration

South Africa has significant responsibilities as a member of the Southern African Development Community (SADC) at the regional level.¹⁶² One of its key obligations is to promote “regional integration”, a mandate shared by all SADC member states.¹⁶³ This regional integration involves collaborative efforts amongst countries to share knowledge, develop coherent policies, promote peace and security, and enhance trade relations.¹⁶⁴ Central to SADC’s regional

156 Mpedi and Smit (n 137) 175.

157 Mpedi and Smit (n 137) 175.

158 Mpedi and Smit (n 137) 175.

159 Mpedi and Smit (n 137) 180.

160 Mpedi and Smit (n 137) 175.

161 General Comments (n 120).

162 South Africa joined SADC in April 1994.

163 This obligation is imposed on South Africa by the SADC Treaty. South Africa acceded to the Treaty on 29 Aug 1994.

164 Mlambo “Challenge’s impeding regional integration in Southern Africa” 2018 *Journal of Economics and Behavioral Studies* 250 250.

integration efforts for regional integration is the governance framework established by the SADC Treaty.¹⁶⁵ This framework not only aims to promote sustainable economic growth and socioeconomic development but also seeks to alleviate poverty in Southern Africa.¹⁶⁶

A primary objective of this framework is to eradicate poverty and improve the quality of life for individuals in the region.¹⁶⁷ To effectively achieve these interconnected goals, it is essential to harmonise political and socioeconomic policies amongst member states, thereby creating a cohesive approach to development.¹⁶⁸ Additionally, the establishment of institutions capable of initiating and executing key programmes for SADC projects is crucial.¹⁶⁹ Furthermore, the treaty aims to develop policies that systematically remove barriers to the free movement of capital, labour, and people, fostering a more integrated economic environment and ultimately contributing to the overall success of regional integration efforts.¹⁷⁰

In this context, South Africa assumes a central role within SADC because of its status as the strongest economy in both Southern Africa and the broader continent.¹⁷¹ This prominence positions South Africa to effectively lead regional integration efforts.¹⁷² However, it is important to note that South Africa does not have an official regional migration policy. In contrast, Mauritius has implemented a formal temporary labour migration policy within its Export Processing Zones (EPZ), which could serve as a model for other member states.¹⁷³

165 Mlambo (n 164) 250.

166 Article 5(1)(a) of the SADC Treaty.

167 Article 5(1)(a) of the SADC Treaty.

168 Article 5(1)(a) of the SADC Treaty.

169 Article 5(1)(a) of the SADC Treaty.

170 Article 5(2)(a)–(d) of the SADC Treaty.

171 Amos “The role of South Africa in SADC regional integration: the making or braking of the organization” 2010 *Journal of International Commercial Law and Technology* 124; Lu *Mapped: Breaking Down the \$3 Trillion African Economy by Country*, available at <https://www.visualcapitalist.com/breaking-down-african-economy-by-country/#:~:text=Ranked%3A%20Africa's%20Economies%20by%20GDP,the%20first%20half%20of%202023> (20–11–2024).

172 Gwala *An Analysis of South Africa's Role in Regional Integration in Southern Africa: Prospects and Challenges* (2015 dissertation UKZN) v.

173 Migration and Development – The Mauritian Perspective, available at <https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/>

As the only SADC nation with a policy specifically focused on the employment and recruitment of low-wage and semi-skilled migrant workers, Mauritius showcases the various approaches that can be adopted to address labour migration issues.¹⁷⁴

Compounding concerns surrounding labour migration, many African countries grapple with perceptions that categorise some nations as major destinations for migrants while labelling others solely as sources of migrant outflows.¹⁷⁵ This mindset can be counterproductive; reluctance to establish a structured labour migration framework for low-skilled workers often leads to irregular migration. Such irregularities result in the exploitation of undocumented workers and diminish the potential benefits of comprehensive regional integration, ultimately undermining the objectives that SADC seeks to achieve.¹⁷⁶ Therefore, it is essential to implement a diverse range of strategies tailored to the unique circumstances of each member state to facilitate effective regional integration and sustain economic growth across Southern Africa.

4.1 *South Africa and regional integration*

The issues surrounding undocumented migration in South Africa are primarily driven by the strict requirements outlined in the Immigration Act 13 of 2002,¹⁷⁷ which was designed to limit the unlawful migration of unskilled workers while encouraging the immigration of skilled individuals.¹⁷⁸ This creates a significant barrier for unskilled labourers, severely restricting their opportunities to migrate to South Africa legally.¹⁷⁹

microsites/IDM/workshops/return_migration_development_070708/speech_seewooruthun.pdf (20-11-2024).

174 Mlambo (n 164) 253.

175 Mlambo (n 164) 253.

176 Draft National Labour Migration Policy for South Africa Feb 2022 1 33, available at <https://www.labour.gov.za/DocumentCenter/Publications/Public%20Employment%20Services/National%20Labour%20Migration%20Policy%202021%202.pdf> (21-06-2023).

177 Snyman *Social Protection for the Migrant Workers in South Africa* (2013 dissertation UP) 66; 13 of 2002.

178 s 2(j) of the Immigration Act .

179 Snyman (n 177) 66.

To address the challenges faced by migrant workers, the Department of Labour (DOL) published a paper on Labour Migration in South Africa in February 2022.¹⁸⁰ This paper aims to identify the underlying reasons for the poor regulation of labour migration in the country.¹⁸¹ Despite the DOL's efforts in releasing this comprehensive policy, it has yet to be enacted into law, leaving South Africa without a formal labour migration framework.¹⁸² As a result, the country continues to rely mainly on the Immigration Act, which does not provide adequate pathways for low-skilled migrant workers to enter legally.¹⁸³ Consequently, the unregulated migration of unskilled workers persists, leading to the ongoing exploitation of undocumented migrants.¹⁸⁴

This hesitance appears unwarranted considering South Africa's historical approach to labour migration. In the past, South Africa established bilateral agreements with neighbouring countries, which facilitated the legal migration of low-skilled workers through mechanisms like the "two-gate policy".¹⁸⁵ While this approach enabled some lawful entry for low skilled migrant workers, it ultimately proved to be exploitative, as it was a scheme of the apartheid government that denied workers access to social benefits and subjected them to deferred payment arrangements.¹⁸⁶ The current

180 Labour Migration Policy (n 176).

181 Labour Migration Policy (n 176) 20.

182 The only strides that have been made since the publication of this policy has merely been public hearings but nothing more. This is confirmed in the following sources: Employment and Labour held a robust dialogue on Labour Migration Policy and Governance – Mpumalanga, available at <https://www.gov.za/speeches/employment-and-labour-labour-migration-policy-and-governance> (29-11-2024).

183 The preamble of the Immigration Act confirms that the intention of the Act is only to allow exceptionally skilled migrants into South Africa.

184 Vettori (n 8) 3.

185 Section 2.1.1 of the SADC Labour Migration Policy, 2013; South Africa has included these bilateral agreements with countries such as Lesotho to allow for cheap labour in South Africa's mines and on the farms; In the 19th and 20th centuries, South Africa engaged in bilateral agreements with neighbouring countries such as Mozambique, Swaziland, Lesotho, and Malawi, facilitating the legal migration of low-skilled workers through a framework known as the "two-gate policy".

186 UN Internal Organization for Migration *Bilateral Labour Migration Agreements in Two SADC Corridors* 1 7, available at <https://publications.iom.int/system/files/pdf/Bilateral-Labour-Migration-Arrangements.pdf> (25-11-2024).

government has declared an end to these exploitative practices; however, leniency persists in practice through temporary permits granted to certain populations, such as Zimbabweans.¹⁸⁷ Although these permits offer provisional legal status, they do not provide adequate rights protection.¹⁸⁸

The reluctance to officially recognise irregular migration, coupled with ongoing legal ambiguities regarding undocumented workers, exacerbates the issue and contributes to further exploitation. Therefore, a reformed immigration policy is essential to facilitate the entry of low-skilled migrant workers while safeguarding their rights.

Establishing a comprehensive labour migration policy would empower the South African government to regulate the activities of undocumented workers, granting them legal status and protections equivalent to their documented counterparts. Such a policy would not only enhance the welfare of migrants but also align with regional integration goals, ultimately fostering a more equitable labour framework that benefits both migrant populations and the broader South African economy.

5. Conclusion

South Africa stands at a critical juncture where it can significantly enhance the rights and protections of workers, particularly those in the informal economy and the hospitality sector. The challenges faced by the hospitality sector highlight its unique characteristics, as employment often shifts between formal and informal economies. While some workers may be classified as operating within the formal economy because of limited legislative protections, the reality is that many continue to experience conditions akin to informal employment. This discrepancy highlights the urgent need for a multifaceted approach that redefines employment and social security, actively facilitating the transition of informal workers into the formal economy.

187 UN Internal Organization for Migration (n 186) 14.

188 UN Internal Organization for Migration (n 186) 14.

To achieve decent work by 2030, South Africa must adopt proactive measures, such as state-supported career advancement programmes that empower workers to gain qualifications and improve their positions within the workforce. Reforming immigration laws to support low-skilled undocumented migrants is equally crucial, as this can safeguard workers' rights and establish better oversight through legal migration channels. Together, these initiatives aim to create a more stable and equitable work environment.

Moreover, any sector-specific policy formulation must occur through existing laws, using mechanisms like sectoral determinations and collective bargaining agreements. Cultivating these specific policies enables the state to address the multifaceted issues within the hospitality sector effectively. This strategy not only enhances trade union participation and strengthens labour rights but also facilitates greater engagement in the economy for this workforce. However, as highlighted by the ILO, legislative protections are of little value without practical enforcement. The persistent negative stereotypes that label the hospitality sector merely as a "transitional sector" for transient workers oversimplify its challenges and undermine the sustainability of its workforce.

Thus, a more equitable and inclusive approach to policy formulation is critical for recognising the vital role that the hospitality sector plays in the broader economy. By implementing these comprehensive steps, South Africa can foster a dignified and secure environment for all workers in the sector, ultimately contributing to a more inclusive and prosperous society.