



**FACULTY OF LAW**

**ADDRESSING THE SOCIAL PROTECTION DEFICITS FOR WASTE RECLAIMERS  
IN SOUTH AFRICA**

A mini-thesis submitted in partial fulfilment of the requirements for the MPhil degree

<b>Name</b>	<b>Zintle Dotwana</b>
<b>Student number</b>	<b>3336275</b>
<b>Degree</b>	<b>MPhil (structured)</b>
<b>Department</b>	<b>Mercantile and Labour Law</b>
<b>Supervisors</b>	<b>Professor K Malherbe</b> <b>Dr L Grobler</b>

## DECLARATION

I Zintle Dotwana, hereby declare that this mini-thesis is my own original work. Where other people's work has been used (either from a printed source, internet or any other source) this has been properly acknowledged and referenced in accordance with the requirements as stated in the University's plagiarism prevention policy.

Student: Zintle Dotwana

Date 19/03/2023



## KEY WORDS

- Decent work
- Informal work
- International human right instruments
- International social security standards
- Social protection
- Social security
- South Africa
- The Constitution of the Republic of South Africa
- Waste reclaimers



UNIVERSITY *of the*  
WESTERN CAPE

## LIST OF ABBREVIATIONS

(AU) African Unions

(COIDA) Compensation for Occupational Injuries and Diseases Act

(ICESCR) The International Covenant on Economic, Social and Cultural Rights

(ILO) International Labour Organisation

(LRA) Labour Relations Act

(OHSA) Occupational Health and Safety Act

(SADC) Southern Africa Development Community

(UDHR) The Universal Declaration of Human Rights

(UIA) Unemployment Insurance Act

(UIF) Unemployment Insurance Fund

(UN) United Nations



## ACKNOWLEDGEMENTS

My heart is full and overflowing with thanks to God for giving me strength and courage to see this mini-thesis through to completion. Great God that you are, I say thank you. All my life you have been faithful.

I am grateful to the DIS/NRF/CSIR Chair in waste and society, Prof Catherina Schenck for granting me financial support from the National Research Foundation (NRF) under Community of Practice, I am truly grateful.

To my supervisor Prof Kitty Malherbe thank you for your guidance, encouragement, and advice that you have given me throughout my time as your student. Thank you for the great contribution you have made in this mini-theses.

I would like to thank Dr Lizette Grobler, thank you for your support, guidance; I am truly grateful. I have been extremely blessed to have supervisors who cared so much about my progress and cheering for me in the process, I am thankful.

To my parents Mandisa Gxokonyeka Dotwana and Khayaletu Dotwana, I am grateful for your patients, love and support and thank you for your prayers.

To my daughter Zimi Kibela Dotwana, thank you for understanding that sometimes I must be away for studies. I love you, thank for being kind, loving and sweet little girl. I hope one day you understand why I had to be away from home.

To my lovely niece Nichume Hlalumi Dotwana, thank you for your love. I love you.

To my two beautiful sisters Sinazo Dotwana and Sinovuyo Dotwana thank you for your support and love.

To Charlie Babaji Kibela Thank you for your love, prayers, and support, may God bless you.

I like to give thanks to my dearest Friend Mrs Lindokuhle Hlatshwayo, Ms Busiswa Patosi, Mr Sibulelo Gawulayo for your continuous support, encouragement, prayers, and love.



## TABLE OF CONTENTS

Title	Pages
DECLARATION	i
KEYWORDS	ii
LIST OF ABBREVIATIONS	iii
ACKNOWLEDGEMENTS	iv
CHAPTER 1 INTRODUCTION	
1.1 INTRODUCTION	1
1.2 SIGNIFICANCE OF THE PROBLEM	4
1.3 STUDY RESEARCH QUESTION(S)	5
1.4 LITERATURE REVIEW	6
1.5 CHAPTER OUTLINE	7
1.6 METHODOLOGY	8
CHAPTER 2- INTERNATIONAL FRAMEWORK FOR THE RIGHT TO SOCIAL PROTECTION	
2.1 INTRODUCTION	9
2.2 UNITED NATIONS AND THE RIGHT TO SOCIAL SECURITY	10
2.2.1 Universal Declaration of Human Rights	10
2.2.2 The International Covenant on Economic, Social and Cultural Right	11
2.3 INTERNATIONAL LABOUR ORGANISATION AND SOCIAL SECURITY	13
2.3.1 Social Security (Minimum Standards) Convention	13
2.3.2 Recommendation on Social Protection Floors, 202	15
2.3.3 Adequate Health Care System	16



2.3.4 ILO Standards on Occupational Health and safety	17
2.4 Decent Work Agenda	17
2.5 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS	19
2.6 CONCLUSION	20
CHAPTER 3- SOUTH AFRICAN LEGAL FRAMEWORK ON	
SOCIAL SECURITY FOR INFORMAL WORKERS	
3.1 INTRODUCTION	22
3.2 THE RIGHT TO HAVE ACCESS TO SOCIAL SECURITY	
IN SOUTH AFRICA	22
3.3 HEALTH CARE SYSTEMS IN SOUTH AFRICA	22
3.4 OCCUPATIONAL HEALTH AND SAFETY MEASURES	
FOR INFORMAL WORKS	26
3.5 CURRENT STATUTORY FRAMEWORK FOR SOCIAL	
SECURITY IN SOUTH AFRICA	27
3.5.1 Social Assistance	27
3.5.2 Social Insurance	30
3.5.2.1 Unemployment Insurance Fund	30
3.5.2.2 Compensation Fund	32
3.6 LABOUR RIGHTS	33
3.7 LEGISLATIVE FRAMEWORK FOR WASTE MANAGEMENT IN	
SOUTHAFRICA	34
3.8 CONCLUSION	35
CHAPTER 4- SOCIO-ECONOMIC VULNERABILITY OF WASTE RECLAIMERS	
AND THE VALUE THEIR ENDEVOURS ADD TO THE ECONOMY AND	
ENVIRONMENTAL HEALTH OF SOUTH AFRICA	
4.1 INTRODUCTION	36
4.2 WASTE RECLAIMERS ARE MARGINALISED	



AND VULNERABLE	36
4.3 WASTE RECLAIMERS AND OCCUPATIONAL HEALTH RISKS	37
4.4 INCOME SECURITY FOR WASTE RECLAIMERS	39
4.4.1 COVID-19 Economic impact on waste reclaimers	40
4.5 ENVIRONMENTAL AND ECONOMIC ROLE OF WASTE RECLAIMERS IN SOUTH AFRICA	41
4.6 CONCLUSION	42
CHAPTER 5- CONCLUSION AND RECOMMENDATIONS	
5.1 CONCLUSION	44
5.2 RECOMMENDATIONS	46
BIBLIOGRAPHY	48



# CHAPTER 1

## INTRODUCTION

### 1.1 BACKGROUND TO THE MINI-THESIS

Globally, social protection is an important aspect of creating a well-functioning labour market that promotes decent working conditions and alleviates poverty.<sup>1</sup> Social protection is crucial in both living and working conditions; it protects individuals and families against socio-economic risks.<sup>2</sup> Social security is an important component of social protection that encompasses a single scheme or a number of different schemes that are regulated at the national level to provide income benefits for various social risks and contingencies.<sup>3</sup> In South Africa, social security rights flow directly from the Constitution. The South African Constitution states that everyone has the right to have access to social security, including appropriate social assistance should they be unable to support themselves and their dependants.<sup>4</sup>

Social security systems in South Africa encompass social assistance and social insurance schemes. Social assistance is a non-contributory scheme that alleviates and prevents poverty among vulnerable groups who are unable to support themselves and their dependants.<sup>5</sup> Social insurance is largely accessed through the existence of employment relationship and typically protects only formal workers.<sup>6</sup>

The unemployment rate in South Africa is high and the levels of poverty are directly rooted in the labour market.<sup>7</sup> To date, the overall unemployment rate in South Africa stands at 34.5 percent.<sup>8</sup> The year 2020 marked the year of the highest jobs and income

---

<sup>1</sup> Packand T et al 'Protecting all: Risk sharing for a diverse and diversifying world of work' (2019) 4.

<sup>2</sup> Packand T et al 'Protecting all: Risk sharing for a diverse and diversifying world of work' (2019) 2.

<sup>3</sup> United Nations Committee on Economic, Social and Cultural Rights *General Comment 19 social security* para 11.

<sup>4</sup> Section 27 (1)(c) of the Constitution of the Republic of South Africa, 1996.

<sup>5</sup> See 3.5.1 below.

<sup>6</sup> See 3.5.2 below.

<sup>7</sup> National Planning Commission 'National Development Plan 2030: Our future-make it work' available [www.gov.za/sites/default/gcis-documents/201409/ndp-2030-our-future-make-it-workpdf](http://www.gov.za/sites/default/gcis-documents/201409/ndp-2030-our-future-make-it-workpdf)(accessed 21/10/2022).

<sup>8</sup> Statistics South Africa 'Quarterly labour force survey Q2:2022' (2022) 5.

losses globally.<sup>9</sup> The economic consequences of the pandemic did not affect the labour force equally, the informally employed population suffered extreme economic shocks and their already existing vulnerabilities were exposed, as they lack protection against insecurities associated with the labour market.<sup>10</sup> As the Coronavirus health impact is decreasing, the South African economy is slowly recovering and employment growth is slowly picking up.<sup>11</sup> The unemployment rate decreased by 0.8 percent from the fourth quarter of 2021 to the first quarter of 2022.<sup>12</sup> The informal economy in South Africa offered an increase of 171 000 jobs between the fourth quarter of 2021 to the first of 2022.<sup>13</sup> The abovementioned statistics support the view that the informal economy is increasingly becoming a significant source of work opportunities in many developing countries, and South Africa is no exception.

High levels of poverty and the lack of formal employment have resulted in greater numbers of men and women seeking work opportunities in the informal economy, such as waste collection as a means of generating income.<sup>14</sup> The estimated number of persons who participate in the informal waste management sector in South Africa is between 60 000 to 90 000. With the rise in unemployment, there may be as many as 215 000 waste reclaimers on the landfills and streets of South Africa.<sup>15</sup>

Various terms are employed to refer to persons who collect materials from waste streams.<sup>16</sup> These terms include waste recycler, garbage picker, reclaimer, salvager, picker, informal sector, collection worker, collector, cart pusher, picker, and waste

---

<sup>9</sup> Statistics South Africa 'Results from wave 2 survey on the impact of the COVID-19 pandemic on employment and income in South Africa' (2020) 9.

<sup>10</sup> Statistical information provided by Statistics South Africa Q2 (2022) noted that the data collection was disrupted by the restriction of movement and lockdown, and the findings of this document may not be accurate.

<sup>11</sup> Statistical information provided by statistics South Africa Q2 (2022) states that the easing of the lockdown restrictions enabled Statistics South Africa to revert to face-to-face- interviews and there is improvement in the response and accuracy in the data findings of the first quarter and second quarter of 2022.

<sup>12</sup> Statistics South Africa *Quarterly labour force survey Q2 (2022)* 9.

<sup>13</sup> Statistics South Africa *Quarterly labour force survey Q2 (2022)* 15.

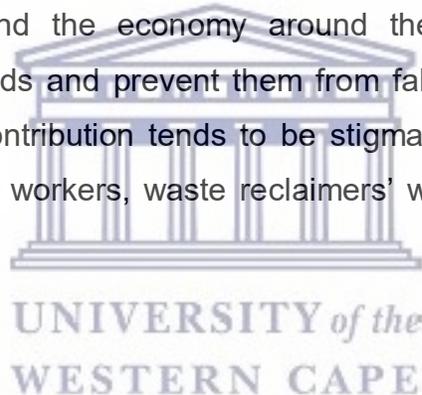
<sup>14</sup> Sentime K 'The impact of legislative framework governing waste management and collection in South Africa' (2014) 33 *African Geographical Review* 82.

<sup>15</sup> Godfrey L & Oelofse S 'Historical review of waste management and recycling in South Africa' (2017) 6 *Unit for Waste Environmental Science and Management* 6.

<sup>16</sup> Samson M 'Urban Policies Research Report 6- Reclaiming reusable and recyclable materials in Africa' (2010) 3.

harvester.<sup>17</sup> The term waste picker is the most used term, and it was adopted by the first world conference of waste pickers.<sup>18</sup> In this mini-thesis, the term 'waste reclaimer' is used to refer to persons who collect recyclable materials to earn a living. The term 'reclaimer' is more favourable than 'picker',<sup>19</sup> the term 'picker' does not emphasise the workers' contribution, but it rather reduces their endeavour to merely picking rubbish.<sup>20</sup> The term 'reclaimer' is more favourable because it underlines the fact that through their labour these workers create value from waste.<sup>21</sup> They collect reusable and recyclable items from waste bins and landfill sites and sell the reclaimed materials to earn an income,<sup>22</sup> and by doing that they reduce the amount of waste that ends up in landfills and they contribute to environmental health.<sup>23</sup>

Waste reclaimers function in the informal economy, within the informal recycling sector.<sup>24</sup> The informal economy includes all economic activities that take place in unregistered enterprises and without social protection. Their endeavours are beneficial to households, societies, and the economy around the world, and they provide livelihoods for poor households and prevent them from falling into deep conditions of poverty. Informal workers' contribution tends to be stigmatised and ignored by policy makers.<sup>25</sup> Like most informal workers, waste reclaimers' work is associated with poor



---

<sup>17</sup> Samson M 'Urban Policies Research Report 6- Reclaiming reusable and recyclable materials in Africa' (2010) 3.

<sup>18</sup> Women in Informal Employment: Globalising and Organising 'Waste pickers: The right to be recognised as workers' (2013) <https://www.wiego.org/sites/default/files/resources/files/WIEGO-waste-pickers-position-paper-pdf> (accessed 15/October/2022).

<sup>19</sup> Millington N et al 'Whose value lies in the urban mine? Reconfiguring permission, work, and the benefits of waste in South Africa' 2020 *Annals of the American Association of Geographers* 1946.

<sup>20</sup> Samson M 'the political work of waste pickers integration' in Chen M & Carre F *The informal economy revisited: Examining the past, envisioning the future* (2020) 195.

<sup>21</sup> Samson M 'the political work of waste pickers integration' in Chen M & Carre F *The informal economy revisited: Examining the past, envisioning the future* (2020) 195.

<sup>22</sup> Department of Environment, Forestry and Fisheries & Department of Science and Innovation 'Waste picker integration guideline for South Africa. Building the recycling economy and improving livelihoods through integration of the informal sector' (2020) 10.

<sup>23</sup> Samson M 'Refusing to be cast aside: Waste pickers organizing around the world' (2009) 4.

<sup>24</sup> Samson M 'Refusing to be cast aside: Waste pickers organizing around the world' (2009) 20.

<sup>25</sup> Chen M & Carre F 'The informal economy revisited: Examining the past, envisioning the future' (2020) 10.

working conditions, with low and irregular incomes and they usually come from disadvantaged backgrounds.<sup>26</sup>

Waste reclaimers around the world face discrimination and stigmatisation and South Africa is no exception.<sup>27</sup> They are not recognised as workers, they are more exposed to vulnerabilities as they function outside the sphere of labour law and are inadequately protected by social protection measures.<sup>28</sup> Their work is associated with handling hazardous waste, yet their work is not regulated by the Occupational Health and Safety Act,<sup>29</sup> which regulates and promotes the safety and health of persons at work and for those other than the persons at work, who are directly affected by activities done by those at work.<sup>30</sup>

## 1.2 SIGNIFICANCE OF THE PROBLEM

Waste reclaiming has received significant attention as a field of research for many scholars globally and in South Africa.<sup>31</sup> Much research has focused on the social, environmental, and economic contribution of waste reclaiming.<sup>32</sup> In recent years the focus expanded to the occupational health and safety of waste reclaimers<sup>33</sup> and to date, there is little research done on the field of social security rights of waste reclaimers.

Internationally, the right to social security is a right of everyone.<sup>34</sup> Much research on the right to social security has paid particular attention to informal workers in general; there is no comprehensive research that examines the extent to which the state realises the right to social security for waste reclaimers, as it is obliged in international law.

---

<sup>26</sup> Yu et al 'Waste pickers in informal self-employment: Over-worked and on the breadline' (2020) 37 *Development South Africa* 973.

<sup>27</sup> Department of Environment, Forestry and Fisheries & Department of Science and Innovation 'Waste picker integration guideline for South Africa- Building the recycling economy and improving livelihoods through integration of the informal sector' (2020) 24.

<sup>28</sup> International Labour Conference *90<sup>th</sup> session Report VI- Decent work and informal economy* (2002) 23.

<sup>29</sup> Bamu-Chipunza P 'Extending occupational health and safety law to informal workers: The case of street vendors in South Africa' (2018) 1 *University of Oxford Human Rights Hub Journal* 62.

<sup>30</sup> Occupational Health and Safety Act 85 of 1993.

<sup>31</sup> Morais J et al 'Global review of human waste-picking and its contribution to poverty alleviation and a circular economy' (2022) 17 *Environmental Research Letters* 1.

<sup>32</sup> Gutberlet J & Carenzo S 'Waste pickers at the heart of the circular economy: A perspective of inclusive recycling from the global South' (2020) 3 *Worldwide: Journal of Interdisciplinary Studies* 3.

<sup>33</sup> Uhumamure SE et al 'Occupational health risks of waste pickers: A case study of northern Region of South Africa' 2021 *Journal of Environmental and Public Health* 1.

<sup>34</sup> See 2.2 below.

The mini-thesis analyses the right of access to social security as stipulated in the Constitution. The insufficient realisation of the right of access to social security for waste reclaimers is analysed based on the main two branches of social security, which are social assistance and social insurance. The realisation of the right of access to social security for the population aged 18 to 59 (in informal economy) is inadequate. Social assistance in South Africa is focused on children, older persons, and persons with disabilities.<sup>35</sup> Social insurance schemes are important for the employee's well-being and are important in reducing insecurities associated with the labour market. Informal workers lack social insurance benefits because they may lack an employee/employer relationship.

The mini-thesis will give recommendations on how the state can fulfil the right of access to social security for informal workers such as waste reclaimers in South Africa.

### 1.3 RESEARCH QUESTION(S)

The main focus of this mini-thesis is on social protection for waste reclaimers in South Africa. The mini-thesis will analyse domestic law to identify gaps in social security coverage in the informal economy, particularly with regard to waste reclaimers. International law will be analysed to determine whether South Africa is in compliance with international instruments in fulfilling social security rights. The research question will be formulated in this way: What are the existing social protection deficits for waste reclaimers in South Africa?

Several sub-questions were formulated to assist in answering the main research question. The sub-questions are as follows:

- ❑ What are the existing deficits in the realisation of the constitutional right to have access to social security for waste reclaimers in South Africa?
- ❑ How can social protection measures address social, economic and health vulnerabilities of waste reclaimers to enhance productivity, economic growth and improve their working conditions?

---

<sup>35</sup> See 3.5.1 below.

- How can the deficits in social protection for waste reclaimers be addressed in terms of South African law and policy?

#### 1.4 LITERATURE REVIEW

Research done by various scholars from many different fields of study indicates that waste reclaimers possess common characteristics. They are often a vulnerable group living in extreme poverty, many of them are unskilled, and they face high health risks.<sup>36</sup>

Historically, waste reclaimers were not recognised, and their work was misunderstood by policy makers including academic scholars. The interest of research in the informal waste management sector has increased and key areas of research have diversified in many directions.<sup>37</sup> Globally, the most popular areas of research include the role of waste reclaimers in the production of value, their economic and environmental contribution, and integrating waste reclaimers into formal waste management sector.<sup>38</sup> Much research done in South Africa focuses on the contribution of waste reclaiming as a survival work that offers livelihoods in the face of high unemployment.<sup>39</sup> A recent study done by Morais et al, indicate the important environmental and economic contribution of waste reclaimers in developing countries. The research further provides that waste reclaimers' vulnerabilities are rooted in their informal work status. The question of integrating waste reclaimers into the formal waste management sector has also gained attention as an area of research,<sup>40</sup> many scholars are researching ways of integrating

---

<sup>36</sup> Morais J et al 'Global review of human waste-picking and its contribution to poverty alleviation and a circular economy' (2022) 17 *Environmental Research Letters* 1.

<sup>37</sup> Samson M 'the political work of waste pickers integration' in Chen M & Carre F *The informal economy revisited: Examining the past, envisioning the future* (2020) 198.

<sup>38</sup> Samson M 'the political work of waste pickers integration' in Chen M & Carre F *The informal economy revisited: Examining the past, envisioning the future* (2020) 199.

<sup>39</sup> Blaauw D et al 'The economics of urban waste picking in Pretoria' (2019) 11 *African Review of economics and Finances* 129.

<sup>40</sup> Department of Environment, Forestry and Fisheries & Department of Science and Innovation 'Waste picker integration guideline for South Africa. Building the recycling economy and improving livelihoods through integration of the informal sector' (2020) 10.

waste reclaimers into the formal waste management sector, to improve their living and working conditions, to eliminate health risks and to improve job and income security.<sup>41</sup>

Improved occupational health of waste reclaimers is very critical for their productivity and income security. The health risks of waste reclaimers have received attention in research over the years. A study done by Uhunamure et al, provides a holistic assessment of occupational health risks of waste reclaimers in all different ways of waste collection.<sup>42</sup>

The areas of research in social protection are overlooked by many scholars, yet it is the most critical aspect in addressing vulnerabilities, income, and job insecurity of waste reclaimers. A study done by Govindjee challenges the notion that only persons defined as an employee can have access to social security.<sup>43</sup> Similarly, Alferts et al, address the approaches to social protection for informal workers; the research provides a critical reflection on why a productivist model of social protection continues to be important and useful in the context of informal employment.<sup>44</sup> However, the research provides little analysis on how social protection measures can address social, economic and health vulnerabilities of waste reclaimers, to enhance productivity, economic growth and improve their conditions of work.

The phrase 'waste picker' is popularly used by many scholars all over the world. By far this mini-thesis is the first of its kind to refer to the word 'waste reclaimer' in addressing social protection deficits for workers that collect waste to earn an income; the word demonstrates the value these workers add in waste. This mini-thesis makes a great contribution in current literature as it aims to analyse the right to social protection for waste reclaimers from a human rights perspective.

## 1.5 CHAPTER OUTLINE

---

<sup>41</sup> Department of Environment, Forestry and Fisheries & Department of Science and Innovation 'Waste picker integration guideline for South Africa. Building the recycling economy and improving livelihoods through integration of the informal sector' (2020) 4.

<sup>42</sup> Uhunamure SE et al 'Occupational health risks of waste pickers: A case study of northern Region of South Africa' 2021 *Journal of Environmental and Public Health* 4.

<sup>43</sup> Govindjee A 'Social protection and vulnerable workers in South Africa' in Westerveld M & Olivier M *Social security outside the realm of employment contract* (2019) 122.

<sup>44</sup> Alferts L, Lund F & Moussie R 'Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches' (2017) 70 *International Social Security Review* 67.

Chapter two of this mini-thesis identifies the international framework on social protection for waste reclaimers. This chapter will consist of a detailed discussion on the international legal framework for the extension of social protection and for the promotion of social security rights.

Chapter three provides an outline of the South African legal framework on social protection, including social security and occupational health and safety.

Chapter four identifies the socio-economic vulnerabilities of waste reclaimers and the value their endeavours add to the economy and environmental health of South Africa.

Chapter five is the conclusion of the thesis; several suggestions will be made on how social protection can be extended to waste reclaimers in South Africa.

## 1.6 METHODOLOGY

A desktop study is used for the research done in this mini-thesis. Primary resources such as legislation and case law will be discussed and analysed, and secondary resources such as books, papers, journals, and online resources will be used in this mini-thesis.

International human rights instruments will be examined to establish the obligation they put on member states in realising the right to social security. In addition, the ILO instruments covering social protection rights are consulted to establish the extent of informal workers right to social protection.

The primary research question of this mini-thesis relates to the extension of social protection rights. Relevant South Africa legislation will be analysed, the Constitution of South Africa is very important for the discussion of this mini-thesis, particularly for the discussion in chapter three.

## CHAPTER 2

### INTERNATIONAL FRAMEWORK FOR THE RIGHT TO SOCIAL PROTECTION

#### 2.1 INTRODUCTION

Social protection is a much broader concept than social security;<sup>45</sup> it encompasses all public transfers that endeavour to alleviate poverty and protect against socio-economic risks.<sup>46</sup> In addition, social protection systems are strong building blocks for a stable political and economic society.<sup>47</sup> It is important to note that social protection consists of policies and programmes that provide essential health services and other social services needed to reduce lifelong effects of poverty. Social protection measures enhance efficient labour market that promotes decent working conditions, productivity, promote income, and job security.<sup>48</sup>

One of the important components of social protection is social security.<sup>49</sup> Social security is significant for responding to national needs for protection against economic risks and other social risks.<sup>50</sup> Social security systems are regulated at a national level to provide income security and health protection, to reduce poverty and vulnerabilities. Furthermore, its benefits are provided in cash or in-kind, to provide income security in an event of loss of income and to individuals and families in need.<sup>51</sup> This duty derives directly from the right of access to social security,<sup>52</sup> which is affirmed by international

---

<sup>45</sup> Mpedi LG & Nyenti MA 'Key international, regional, and National instruments regulating social security in the SADC: A general perspective' (2015) 43.

<sup>46</sup> Mpedi LG & Nyenti MA 'Key international, regional, and National instruments regulating social security in the SADC: A general perspective' (2015) 45.

<sup>47</sup> Cichon M & Scholz W 'Social security, social impact, and economic performance: A framework to three famous myths' in Townsend P *Building decent societies: Rethinking the role of social security in development* (2009) 80.

<sup>48</sup> Garcia BA & Gruat JV 'Social protection: A life cycle continuum investment for social justice, poverty reduction, and sustainable development' (2003) 6.

<sup>49</sup> Rwegoshora MM *Social security challenges in Tanzania: Transforming the present protecting the future* (2014) 13.

<sup>50</sup> Rwegoshora MM *Social security challenges in Tanzania: Transforming the present protecting the future* (2014) 8.

<sup>51</sup> Cichon M & Scholz W 'Social security, social impact, and economic performance: A framework to three famous myths' in Townsend P *Building decent societies: Rethinking the role of social security in development* (2009) 80.

<sup>52</sup> Section 27 (1)(c) of the Constitution of the Republic of South Africa, 1996.

law as a basic right that everyone should enjoy.<sup>53</sup> Therefore, it is important to note that the development of a legal framework for social protection in South Africa, is greatly influenced by international law. This can be understood from the Constitution's provision, which requires that when interpreting the right to have access to social security, international law be considered.<sup>54</sup> Furthermore, courts are required to apply an interpretation of legislation that is consistent therewith.<sup>55</sup> South Africa is a member state of many international instruments that ensure that domestic interpretation of rights relating to social protection is consistent with international law.

To understand the scope of the duties place on the state to protect the social protection rights of informal workers, international, African, and regional instruments will be examined to determine the state's compliance with its expressed duties.

## 2.2 UNITED NATIONS AND THE RIGHT TO SOCIAL SECURITY

The UN human rights instruments lay down guidelines for furthering national social protection rights worldwide.<sup>56</sup> Social protection related rights have been developed through international human rights instruments that recognise the right to social security as a basic right that should be enjoyed by everyone.<sup>57</sup> The human rights instruments do not necessarily deal with the informal economy but provide general work rights such as favourable conditions of work for all and the right to social protection for all including informal workers.<sup>58</sup> It is necessary to investigate international instruments to determine the extent of access to social security for informal workers.

### 2.2.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly.<sup>59</sup> The UDHR recognises the inherent dignity and equality of everyone and

---

<sup>53</sup> General comment No 19 E/C.12/GC/19 *The right to social security* (2008) para 6.

<sup>54</sup> Section 39 (1)(b) of the Constitution.

<sup>55</sup> Section 233 of the Constitution.

<sup>56</sup> Sepulved S & Nyst C 'The human rights approach to social protection' (2012) 24.

<sup>57</sup> International Labour Organisation 'Building social protection systems: International standards and human rights instruments' (2019) 5.

<sup>58</sup> See 2.2.1 below.

<sup>59</sup> The Universal Declaration of Human Rights 'History of the Declaration' available <https://www.un.org/en/about-us/udhr/history> (accessed on 9/07/2022).

ensures that everyone has access to certain social protection rights.<sup>60</sup> The UDHR states that '[e]veryone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international cooperation and per the... resources of each state...'.<sup>61</sup> Article 25 recognises social protection rights including the right of everyone to adequate health care and other necessary social services. It further recognises the importance of income security in events of unemployment, and any other conditions beyond an individual's control.<sup>62</sup> The UDHR guides member states to implement social protection policies and programmes to enhance the well-being of everyone and alleviate poverty.

Article 23 of the UDHR lays a foundation for the right to work, it emphasises the necessity of favourable conditions of work and protection against unemployment.<sup>63</sup> Article 23, further state that everyone who works has a right to fair payment, ensuring their existing worthy of human dignity, and increased by other means of social protection.<sup>64</sup> The wording "everyone" suggests that there is no exclusion of any categories from accessing social security and other means of social protection.<sup>65</sup> According to the UDHR, informal workers also possess the right to social security benefits against unemployment.

The UDHR, unlike many other UN instruments, is not binding on member states rather, it guides the implementation of the already existing social protection rights expressed in other international instruments that are legally binding.<sup>66</sup> Therefore, it does not have any measures in place to ensure that member states comply with its provisions.

## 2.2.2 The International Covenant on Economic, Social and Cultural Rights

---

<sup>60</sup> Preamble of the Universal Declaration of Human Rights United Nations General Assembly Resolution 217 A(III) of 10 December 1948.

<sup>61</sup> Article 22 of the UDHR.

<sup>62</sup> Article 25 of the UDHR.

<sup>63</sup> Article 23 (1) of the UDHR.

<sup>64</sup> Article 23 (3) of the UDHR.

<sup>65</sup> See for example article 2 of the UDHR states that '[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...or other status'.

<sup>66</sup> United Nations 'Declaration on human rights defenders' <https://www.ohchr.org/en/special-procedures/sr-human-defenders/declaration-human-rights-defenders> (accessed on 9/07/2022). Also see the preamble of the ICESCR embodies the UDHR.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the UN General Assembly,<sup>67</sup> to promote universal respect for human rights and freedoms.<sup>68</sup> The ICESCR is legally binding on member states. When a state ratifies the ICESCR it agrees to implement and comply with the rights protected in the instrument.<sup>69</sup> South Africa ratified the ICESCR in 2015;<sup>70</sup> by ratifying, the state party agrees to refrain from practising any law that conflicts with ICESCR provisions.

The ICESCR provides that state parties should create conditions whereby everyone is allowed to enjoy his economic, social, and cultural rights.<sup>71</sup> Thereby, the ICESCR provides rights of the aforementioned categories, including the right to social security<sup>72</sup> and labour rights.<sup>73</sup>

Articles 9 of the ICESCR recognise the right of everyone to social security, including social insurance.<sup>74</sup> Article 9 encompasses non-contributory schemes, which provide benefits to anyone who cannot support themselves and their dependants. It also provides for contributory schemes, including social insurance which involves contribution from beneficiaries and employer.<sup>75</sup> The wording “everyone” indicate that the ICESCR is inclusive, and the measures used to distribute social security benefits cannot be selective; in any event they must guarantee minimum enjoyment of the right to social security for everyone and without discrimination of anyone.<sup>76</sup>

Social security measures should be given appropriate priority in law and policy, as it is important for human dignity.<sup>77</sup> The state must take measures to the maximum of its

---

<sup>67</sup> The International Covenant on Economic, Social and Cultural Rights ‘History of the ICESCR’ <https://www.un.org/en/about-us/udhr/history> (accessed on 9/07/2022).

<sup>68</sup> Preamble of the International Covenant on Economic, Social and Cultural Rights A/6316 (1966).

<sup>69</sup> International Labour Organisation & United Nations Development Group ‘UNDG Eastern and Southern Africa social protection issues brief’ (2016) 15.

<sup>70</sup> United Nations ‘Committee on economic, social and cultural rights considers the report of South Africa’ (2018) available at <https://www.ohchr.org/en/press-releases/2018/10/committee-economic-social-and-cultural-rights-considers-report-South-Africa> (accessed 24 November 2022).

<sup>71</sup> Preamble to the International Covenant on Economic, Social and Cultural Rights 1966.

<sup>72</sup> Article 9 of the ICESCR.

<sup>73</sup> For example, Article 7 of the ICESCR Explicitly provides work rights including fair wages, decent living conditions of workers, safe and healthy working conditions.

<sup>74</sup> Article 9 of the ICESCR.

<sup>75</sup> General comment No 19 E/C.12/GC/19 (2008) *The right to social security para2&4*.

<sup>76</sup> Article 2(2) of the ICESCR.

<sup>77</sup> General comment 19 para 41.

resources to extend social protection related rights, particularly social security rights to all workers.<sup>78</sup> Special attention should be given to those who face barriers in accessing to social security rights, including informal workers.<sup>79</sup>

## 2.3 INTERNATIONAL LABOUR ORGANISATION AND SOCIAL SECURITY

The mandate of the ILO is to improve conditions of labour through, among others ‘the prevention of unemployment,... the protection of the workers against sickness, disease and injury arising out of his employment, the protection of children, young persons...provision for old age and injury’.<sup>80</sup> The Declaration of Philadelphia recognises the obligation of the ILO to widen social protection national programs to provide basic income to all in need of such protection.<sup>81</sup> The ILO adopts international standards to address labour and social problems, these standards outline obligations and guidelines for member states to achieve comprehensive social security by developing sustainable social protection systems.<sup>82</sup> The ILO social security standards take forms of conventions and recommendations that outline international agreed standards concerning social protection related rights.

The implications of conventions and recommendations are different; on the one hand, conventions are open for ratification and thereby create obligations for member states. On the other hand, recommendations are not open for ratification they guide the implementation of social security conventions.<sup>83</sup> Relevant international standards related to social protection will be discussed below to determine the scope and content of social protection for workers, particularly for informal workers.

### 2.3.1 Social Security (Minimum Standards) Convention

---

<sup>78</sup> General comment 19, para 34.

<sup>79</sup> General comment 19, para 31.

<sup>80</sup> Preamble of ILO Constitution, 1919 available at <https://www.refworld.org/docid/3ddb5391a.html>

<sup>81</sup> ILO Declaration of Philadelphia Declaration concerning the aims and purposes of the International Labour Organisation, 1944.

<sup>82</sup> International Labour Organisation ‘Building social protection systems: International standards and human rights instruments’ (2019) 10.

<sup>83</sup> International Labour Organisation ‘Building social protection systems: International standards and human rights instruments’ (2019) 6.

The ILO adopted Social Security (Minimum Standards) Convention 102, which came into effect in 1952.<sup>84</sup> Convention 102 is considered the cornerstone in the development of social protection and the extension of social security benefits internationally.<sup>85</sup> The convention provides for nine work-related benefits to workers such as medical care, sickness, unemployment, old age, unemployment injury, family costs, maternity, invalidity, and death of breadwinner.<sup>86</sup> Therefore, ratifying states must provide compensation in an event of the mentioned contingencies.

When a state ratifies the convention, it agrees to two things: First, it agrees to implement its national legislation in relation to the provisions of the convention.<sup>87</sup> Secondly it agrees to accept obligation of at least three out of the nine branches of social security benefits.<sup>88</sup> This gives member states flexibility to gradually adopt minimum branches of social security that can be implemented within their available resources and financial capacity.<sup>89</sup> The rest of the branches may be considered at a later stage when national resources allow.

The decision to ratify Convention 102 is made by the state.<sup>90</sup> South Africa has not yet made the decision to ratify Convention 102. The obligations provided in the convention are not binding on South Africa. There are no obligations imposed to the state, except that the state is required to report to the Director-General of the International Labour Office on the extent in which priority has been given to implement the provisions of the convention in its law and practices.<sup>91</sup>

---

<sup>84</sup>ILO 'C102- Social Security (Minimum Standards) Convention 1952, No 102 [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::p12100\\_instrument\\_id:312247](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::p12100_instrument_id:312247) (accessed 17/10/2022).

<sup>85</sup> ILO 'Social protection spotlight' (2020) available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---soc-sec/documents/publication/wcms\\_754731.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc-sec/documents/publication/wcms_754731.pdf) (accessed 24 November 2022).

<sup>86</sup> ILO 'Social Security (Minimum Standards) Convention , 1952 (No 102)' available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C102](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102) (accessed 24 November 2022).

<sup>87</sup> See article 19 (5)(d) of the ILO Constitution.

<sup>88</sup> Article 2 of the Social Security (minimum standards) Convention 1952 (No 102) <https://www.ilo.org/dyn/normlex/f?p=NORMLEXPUB:12000> (accessed on the 15/07/2022).

<sup>89</sup> Article 3 of the Social Security (minimum standards) Convention 1952 (102).

<sup>90</sup> See article 19 (5)(b) of the ILO Constitution.

<sup>91</sup> Article 19 (5)(e) of the ILO Constitution.

It must be noted that Convention 102 is based on the concept of social insurance.<sup>92</sup> The branches of social security enshrined in Convention 102 are met in the national legislation on social insurance schemes including unemployment benefits, illness benefits, and maternity benefits.<sup>93</sup> Convention 102 allows member states to possibly cover only a portion of the population that its available resources can cater for. The convention does not confirm the ILO objective to provide social protection coverage for all, as it does not address social insecurities encountered by informal workers.<sup>94</sup>

### 2.3.2 Recommendation on Social Protection Floors, 202

The Recommendation on Social Protection Floors, 202 of 2012 was adopted by the International Labour Conference.<sup>95</sup> The ILO established social protection floors to fulfil its objective to achieve effective social protection for all, and to extend benefits in connection to Convention 102 to ensure that everyone has access to high levels of social security.<sup>96</sup>

Recommendation 202 is an important instrument in the extension of social protection to the groups previously uncovered by social protection benefits such as informal workers.<sup>97</sup> It recognises social protection as an important tool in poverty alleviation, inequality, social exclusion, and social insecurity.<sup>98</sup> State parties to the recommendation have a responsibility to realise social inclusion and the provision of adequate benefits to persons in the informal economy and formal economy.<sup>99</sup>

Recommendation 202 ensures national social protection extension by closing existing gaps in the provision of social security benefits in the informal economy, and essentially

---

<sup>92</sup> ILO 'Republic of South Africa report to the government: Assessment of the South African legislation in view of a possible ratification of the Social Security (Minimum Standards) Convention, 1952 NO, 102' (2014) 11.

<sup>93</sup> See for example part B, C and D of the Unemployment Insurance Act, 63 of the 2001.

<sup>94</sup> Vonk G 'The social protection floors recommendation 2012 (No 202): The human rights approach to social security in ILO wrapping paper' in Olivier M et al *The role of standards in labour & social security law: international, regional and national perspectives* (2013) 30.

<sup>95</sup> International Labour Organisation 'Elaboration of an autonomous Recommendation on the Social Protection Floor' <https://www.ilo.org/ilc/LCSessions/previous-sessions/on-the-agenda/social-protection-floor> (accessed on 17/07/2022).

<sup>96</sup> Article 1 (b) of Recommendation, 202.

<sup>97</sup> See Preamble of Recommendation 202.

<sup>98</sup> Preamble of Recommendation 202.

<sup>99</sup> Article 3 (e) of Recommendation 202.

addresses social security coverage gaps in terms of Convention 102 to provide income benefits against work-related risks and contingencies for both formal and informal workers.<sup>100</sup>

Recommendation 202 requires member states to apply principles of non-discrimination and attend to specific need of all economic activities.<sup>101</sup> Responsiveness to specific needs is very important for workers in the informal economy, such as waste reclaimers. Waste reclaimers are exposed to health risks, which ultimately affect their livelihoods.<sup>102</sup> Consideration should be given to the work circumstances of waste reclaimers, including giving priority to their health care and to eliminate occupational health and safety risks for waste reclaimers.<sup>103</sup>

### 2.3.3 Adequate health care system

The Declaration of Philadelphia recognises the ILO obligation to implement national programmes that extend social protection measures to providing basic income, including comprehensive medical care for everyone.<sup>104</sup> The ILO set forth standards that recognise health care as an essential component of social protection.<sup>105</sup> Member states in terms of Medical Care Recommendation 69, have a responsibility to take steps within their available resources to extend health care programmes to all workers.<sup>106</sup> Everyone should have access to medical health care without any hindrance or barriers.<sup>107</sup> Therefore, medical health care should be provided to everyone either through medical insurance and social assistance for a person who cannot afford social insurance medical care, such as informal workers.<sup>108</sup> The health care system of South Africa is

---

<sup>100</sup> International Labour Organisation 'Building social protection systems: International standards and human rights instruments' (2019) 12.

<sup>101</sup> Article 3 (d) of Recommendation 202.

<sup>102</sup> Schenck CJ et al 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' 2019 *Environmental Research and Public Health* 1.

<sup>103</sup> Fourie E 'Social protection instruments and women workers in the informal economy: A Southern African perspective' (2021) 24 *Potchefstroom Electronic Law Journal* 18.

<sup>104</sup> Annex (f) of the ILO Constitution.

<sup>105</sup> See for example preamble of the ILO Medical Care Recommendation, 1944 (69) <https://www.ilo.org/dyn/normlex/f?p=NORMLEXPUB:12000> (accessed on 15/07/2022).

<sup>106</sup> Preamble of the ILO Medical Care Recommendation.

<sup>107</sup> Article 20 of the ILO Medical Care Recommendation, also see Section 27 (3) of the Constitution, 1996.

<sup>108</sup> Article 5 of the ILO Medical Care Recommendation.

analysed in Chapter three, to determine the extent of state's compliance with international instruments on medical care.

### 2.3.4 ILO Standards on Occupational Safety and Health care

The Declaration of Philadelphia recognises the obligation of the ILO to implement national programmes that will achieve adequate protection for the life and occupational health of all workers.<sup>109</sup> Thereby, the ILO set forth principles that workers must be protected against sickness, diseases, and injuries arising from their employment.<sup>110</sup> The Occupational Safety and Health Convention 155 of 1981 is among other standards adopted by the ILO and its mandate is to provide for national occupational safety and health policy and to implement measure to ensure occupational safety and health of all workers.<sup>111</sup>

Informal workers are most vulnerable to health risks, across all economic sectors. In many developing countries they fall outside of national occupational safety and health regulations, and they lack social protection.<sup>112</sup> Therefore, national application of occupational safety and health measure provided by relevant conventions and recommendations are necessary for persons in the informal economy.<sup>113</sup>

The discussion on the aforementioned ILO standards illustrates that state parties have a responsibility to provide adequate social protection for everyone, by achieving comprehensive social security, adequate health care and measures against safety and health risks arising from employment. This holistic approach would permit ratifying states (particularly) an opportunity to achieve great social inclusion, income security, and decent working condition across all economic sectors.

## 2.4 DECENT WORK AGENDA

---

<sup>109</sup> Annex (g) of the ILO Constitution.

<sup>110</sup> See for example Article 4 (2) of ILO Occupational Safety and Health Convention, 1981 (155) also article 3 of ILO Occupational Safety and Health Recommendation, 1981 (164).

<sup>111</sup> ILO Occupational Safety and Health Convention, 1981 (155) <https://www.ilo.org/dyn/normlex/f?p=NORMLEXPUB:12000> (accessed on 15/07/2022).

<sup>112</sup> ILO 'Informal economy: A hazardous activity' <https://www.ilo.org/safeworki/hazardous-work/WCMS-110505/lang-en/index-htm> (accessed on 15/07/2022).

<sup>113</sup> Article 1 (2) of ILO Occupational Safety and Health Recommendation, 1981(164) <https://www.ilo.org/dyn/normlex/f?p=NORMLEXPUB:12000> (accessed on 15/07/2022).

The Decent Work Agenda (DWA) was introduced by the ILO, through the ILO Declaration on social justice to achieve decent and productive work in conditions of freedom, quality, and human dignity.<sup>114</sup> DWA emphasises on the need for work that is productive and that provides fair income, security in work environments, and social protection.<sup>115</sup> DWA has four primary objectives that contribute toward the realisation of decent work for all. The objectives of DWA include the creation of jobs, guaranteeing rights at work, extending social protection, and promoting social dialogue. Unlike signed and ratified international instruments, the DWA is not binding on member states; it is an important tool for the implementation of universal goals and policies that fall under the objectives of DWA.<sup>116</sup>

For this mini-thesis the important DWA objectives are those dealing with the extension of social protection in all economic sectors, including the informal economy. The informal economy is important for the sustenance of livelihoods, but it is also where great decent work deficiencies exist.<sup>117</sup> Therefore, extending social protection in the informal economy is necessary to ensure safe working conditions, income security and access to adequate health care to all.

DWA strategies need to address the specific needs of categories of informal workers, such as waste reclaimers. Waste reclaimers live and work under appalling conditions. They are exposed to hazardous waste materials, and they are consequently inadequately protected by social protection measures.<sup>118</sup>

In South Africa, there are greater challenges in reducing decent work deficits in the informal economy, because informal workers generally function outside labour legislations.<sup>119</sup> The state needs to implement and enforce ILO international standards

---

<sup>114</sup> ILO '97 session of the international labour conference Geneva 2008' available at <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang—index.htm> (accessed 7/10/2022).

<sup>115</sup> ILO '97 session of the international labour conference Geneva 2008' available at <https://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang—index.htm> (accessed 7/10/2022).

<sup>116</sup> ILO 'Decent work indicators: Guidelines for producers and users of statistical and legal framework indicators' (2013) 93.

<sup>117</sup> International Labour Conference 90th Session Report *Decent work and informal economy* (2002) 39.

<sup>118</sup> Cruvinel VR et al 'Health conditions and occupational risks in a novel group: Waste pickers in the largest open garbage dump in Latin America' 2019 *BMC Journal of Public Health* 3.

<sup>119</sup> The general conference of the International Labour Organisation meeting in its 90th session. Resolution concerning decent work and the informal economy, 2002 para 2.

that have a great strong base on the extension of social protection, to address decent work deficits in the informal economy.<sup>120</sup> Recommendation 202 is an important international instrument in promoting social protection strategies that apply to both the formal and the informal economy.<sup>121</sup> Recommendation 202 gives emphasis on the implementation of ILO constitutional mandate and social policies that is based on the extension of social protection measures to those in the informal economy to produce employment and enhance decent work.<sup>122</sup>

## 2.5 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Union (AU) is a continental body consisting of 55 member states that make up the countries of Africa.<sup>123</sup> One of its objectives is to promote and protect human and peoples' rights in a manner confirming with the African Charter on Human and Peoples' rights and other relevant instruments.<sup>124</sup> The adoption of instruments such as the African Charter on Human and Peoples' Rights confirms member states' commitment on the development of national social protection strategies, to extend coverage to previously unprotected groups, including informal workers.<sup>125</sup>

The African Charter on Human and Peoples' Rights protects a number of social protection rights.<sup>126</sup> The present charter states 'that member states of the AU, shall recognise the rights, duties and freedom enshrined in this charter and shall undertake steps to adopt legislative or other measures to give effect to them.'<sup>127</sup>

There are still challenges in the implementation of effective social protection policies in the continent of Africa. The African population in the informal economy functions outside of social protection measures. Unfortunately, the Charter does not put strong

---

<sup>120</sup> International Labour Conference 90 session' Decent work and the informal economy' (2002) para 2.

<sup>121</sup> Article 15 of Recommendation, 202.

<sup>122</sup> Preamble of Recommendation, 202.

<sup>123</sup> Mpedi LG & Nyenti MA 'Key international, regional, and National instruments regulating social security in the SADC: A general perspective' (2015) 48.

<sup>124</sup> Article 3(h) of the Constitutive Act of the African Union (2000).

<sup>125</sup> Mpedi LG & Nyenti MA 'Key international, regional, and National instruments regulating social security in the SADC: A general perspective' (2015) 57.

<sup>126</sup> See for example article 16 of the African Charter on Human and Peoples' Rights, which states that 'the right to enjoy the best attainable state of physical and mental health', Article 18(1) 'the right of the aged and disabled to special measures of protection...'

<sup>127</sup> Article 1 of the African Charter on Human and Peoples' Rights (1982).

obligational measures on member states to realise the right to social protection.<sup>128</sup> The lack of obligation could allow member states to turn a blind eye on its duties to protect the right to social protection for all.

The Charter places the duty on member states to create an environment that offers adequate social protection to all workers, irrespective of the type of employment.<sup>129</sup> The enabling environment should be established in accordance with the ILO instruments on social security, such as Convention 102.<sup>130</sup>

The present Charter, states that member states should endeavour to create safe workplaces that do not pose threat to the health of employers, or anyone involved.<sup>131</sup> Member states are required to implement basic work environment and occupational safety and health standards as set out in ILO Convention 155.<sup>132</sup>

The Charter is an adequate instrument to address social protection deficits and to close gaps in social protection coverage in the informal economy. However, the implications of the present Charter are different from that of ILO Conventions, there are no measures putted in place to ensure that member states account for any breach of the charter.<sup>133</sup>

## 2.7 CONCLUSION

The discussion above has established that South Africa is obligated, in terms of various international human rights instruments, to adequately fulfil the right to social protection for all.<sup>134</sup> Social protection encompasses social security, and it has an impact on South Africa's right to have access to social security. The duty derives from the South African right of access to social security, which is affirmed by international law as a basic right that everyone should enjoy.<sup>135</sup> The member state has a duty to take legislative and

---

<sup>128</sup> Sepulved S & Nyst C 'The human rights approach to social protection' (2012) 24.

<sup>129</sup> Article 10 (1) of the Charter of Fundamental Social Rights in SADC (2003).

<sup>130</sup> See for example Article 5 (b) of the Charter of Fundamental Social Rights in SADC.

<sup>131</sup> Article 12 (b) of the Charter of Fundamental Social Rights in SADC.

<sup>132</sup> Article 12 (c) of the Charter of Fundamental Social Rights in SADC. Also see 3.3.4 above.

<sup>133</sup> Nyenti M & Mpedi LG 'The impact of SADC social protection instruments on the setting up of a minimum social protection floors in Southern African countries' (2012) 15 Potchefstroom Electronic Law Journal 251.

<sup>134</sup> See 2.2 & 2.3 above.

<sup>135</sup> See 2.1 above.

other measures to ensure the realisation social protection related rights, particularly social security rights for all.<sup>136</sup> The following chapter will analyse domestic legislation on the right to social security and determine the extent of coverage for informal workers in South Africa.



---

<sup>136</sup> See 2.2.2 above.

## CHAPTER 3

### SOUTH AFRICAN LEGAL FRAMEWORK ON SOCIAL SECURITY FOR INFORMAL WORKERS

#### 3.1 INTRODUCTION

The previous chapter discussed the concept of social protection and social security. International social protection related instruments that outline obligations and guidelines for member states to achieve comprehensive social security by developing sustainable social protection systems were discussed.<sup>137</sup> This chapter will examine South African social security legislation and policies. The discussion will focus on the realisation of the right of access to social security in the informal economy, with the view to examine domestic law deficits in affording social protection to informal workers (for example waste reclaimers) in South Africa.<sup>138</sup> The discussion will commence by analysing the right to have access to social security as stipulated in the Constitution, then examine other social protection rights enshrined in Section 27,<sup>139</sup> to determine the extent of social security coverage in the informal economy. The scope of social security in South Africa will be evaluated in terms of social insurance and social assistance.<sup>140</sup> Labour legislation will be discussed to determine how trade unions can challenge the inadequate social security coverage for informal workers.<sup>141</sup> Finally, the chapter will analyse legislative frameworks for waste management in South Africa; to give legislative background information for the discussion on waste reclaimers in chapter four.

#### 3.2 THE RIGHT TO HAVE ACCESS TO SOCIAL SECURITY IN SOUTH AFRICA

The right to have access to social security is a constitutional right of everyone, irrespective of their socio-economic status.<sup>142</sup> The Constitution states that '[e]veryone

---

<sup>137</sup> See 2.3 above.

<sup>138</sup> See 3.2 below.

<sup>139</sup> See 3.3 below.

<sup>140</sup> See 3.5 below.

<sup>141</sup> See 3.6 below.

<sup>142</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 9.

has the right to have access to social security, including if they are unable to support themselves and their dependants, appropriate social assistance.<sup>143</sup>

It is important to note that the right to have access to social security is not absolute and may be limited.<sup>144</sup> The duty of the state to 'respect, protect, promote and fulfil'<sup>145</sup> the right of access to social security, depends on the state's determination to take steps to progressively realise the right to have access to social security for all. The state should formulate a workable plan, including implementing legislative measures<sup>146</sup> that do not unfairly discriminate against anyone.<sup>147</sup>

The extent to which social security is achieved, as well as the quality of legislative measures applied, is determined by the availability of resources. The state is not required to do more than its resources allow it.<sup>148</sup> The availability of resources is very important for the progressive realisation of the right of access to social security for all. The constitutional Court stated that:

'[W]hat is apparent from these provisions is that obligations imposed on the state by section...27 in regard to access to...,health care, food, water, and social security are dependant upon the resources available for such purpose, and that the corresponding rights themselves are limited by reason of the lack of resources. Given this lack of resources and the significant demands on them that have already been referred to, an unqualified obligation to meet these needs would not presently be capable of being fulfilled...'<sup>149</sup>

---

<sup>143</sup> Section 27(1)(c) of the Constitution.

<sup>144</sup> Section 36(1) of the Constitution state that '[t]he rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors...'

<sup>145</sup> Section 7(2) of the Constitution.

<sup>146</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 CC para 42.

<sup>147</sup> See ssection 9(3) of the Constitution.

<sup>148</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 CC para 46.

<sup>149</sup> *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 para 11.

The lack of access to social security can only be justifiable<sup>150</sup> if the state proves that it has taken reasonable measures within its available resources; to progressively realise the right to have access to social security for everyone. The distribution of resources for the realisation of the right of access to social security should be based on the population needs and not based on an individual's employment status.<sup>151</sup>

The Constitution does not make restrictions to any group or categories from having access to social security rights. The word 'everyone' suggest that informal workers also fall inside the scope of everyone protected by social security rights,<sup>152</sup> as all people in the country.<sup>153</sup> However, the realisation of the right of access to social security for informal workers is a challenge in South Africa; the realisation of the right of access to social security is insufficient for the poor working-age group working in the informal economy.<sup>154</sup> In South Africa the available social security systems for the economically-active population is based on employment and only formal workers are protected thereby.<sup>155</sup> Consequently, a great number of the population in the informal economy is left with no coverage.<sup>156</sup>

The right to have access to other socio-economic rights, such as the right to health care will be discussed below, to understand the extent of coverage for informal workers to the right to health care services.

### 3.3 HEALTH CARE SYSTEM IN SOUTH AFRICA

The right to have access to health care is a basic human right enshrined in the Constitution.<sup>157</sup> The Constitution state that 'everyone has the right to have access to

---

<sup>150</sup> See section 36 of the Constitution.

<sup>151</sup> *Minister of Health and Others v Treatment Action Campaign and Others BCLR 1033 (CC) para 37.*

<sup>152</sup> *Khosa v Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development 2004 (6) BCLR 569 (CC) para 47.*

<sup>153</sup> Section 7 (1) of the Constitution state that 'The bill of rights is a cornerstone of democracy in South Africa. It enshrines the right of all people in our country ... .'

<sup>154</sup> Devereux S 'European Report on Development 2010. Building social protection systems in Southern Africa' (2010) 10.

<sup>155</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 17.

<sup>156</sup> ILO 'Extending social security to workers in the informal economy: Lessons from international experience' (2021) 10.

<sup>157</sup> Section 27 (1)(a) of the Constitution.

health care services'.<sup>158</sup> In South Africa, the National Health Act is responsible to regulate and provide quality health care services that consist of both private and public health care services.<sup>159</sup> On the one hand, public health care system covers the majority of the population. On the other hand, private health care covers a small proportion of the population, who can afford to purchase private health care insurance.<sup>160</sup>

There are persisting challenges concerning the progressive realisation of the right of access to health care services in South Africa. Consequently, the health care system of South Africa is unequal, and its health outcomes depend on the individual's socio-economic status, with no consideration given to the need for care.<sup>161</sup> Public health care is identified with poor quality of services and difficulty to access, due to issues such as long waiting time and unsatisfying conditions.<sup>162</sup> Private health care service is sufficient, but only few can afford it.

Public health care service users, including informal workers, are exposed to health risks, with unhealthy working and living conditions. Workers in the informal economy, including waste reclaimers are exposed to health risks, in the face of insufficient public health care system.<sup>163</sup> Waste reclaimers are less likely to seek medical attention for small injuries that may later develop into life threatening disease if not treated;<sup>164</sup> this is because waiting long hours at public health facilities, they lose possible income for the day.

The Constitution provides that the state must respect, protect, promote, and fulfil the right of access to health care services for everyone. The Constitution further provides that the state must take reasonable legislative and other measures to extend the right of access to health care services.<sup>165</sup> The state must develop policies and programmes that

---

<sup>158</sup> Section 27 (1)(a) of the Constitution.

<sup>159</sup> Section 2 (a)(1) of National Health Act 61 of 2003.

<sup>160</sup> South African Human Rights Commission 'Access to health care' available at <https://www.sahrc.org.za/home/21/FINAL%20Access%20Health%20Care%20Educational%20Booklet.pdf> (accessed 11/ October/ 2022).

<sup>161</sup> Fall F & Steenkamp 'A Building on inclusive social protection system in South Africa' (2020) 29.

<sup>162</sup> Cardozo MC & Moreira RM 'Potential health risks of waste pickers' (2015) 373.

<sup>163</sup> Cardozo MC & Moreira RM 'Potential health risks of waste pickers' (2015) 374.

<sup>164</sup> Sentime K 'The impact of legislative framework governing waste management and collection in South Africa' (2014) *African Geographical Review* 84.

<sup>165</sup> Section 27 (2) of the Constitution.

promote co-operation and shared responsibility to provide health in the public and private health,<sup>166</sup> to ensure equality and fair distribution of health care services for everyone.<sup>167</sup> This will improve health outcomes of health care service users in South Africa. An effective national healthcare system is crucial in addressing other health elements such as occupational health and safety measures.

### 3.4 OCCUPATIONAL HEALTH AND SAFETY MEASURES FOR INFORMAL WORKERS

Health and environmental rights entail that a person's health should not be subjected to dangers due to the environment they live and work in.<sup>168</sup> The Constitution provides that everyone has a right to an environment that is not harmful to their health and well-being.<sup>169</sup> In South Africa the Occupational Health and Safety Act<sup>170</sup> provides for occupational health and safety rights in workplaces to eliminate occupational health and safety risks.<sup>171</sup> It places the duty to ensure a safe and healthy work environment without risks to the health of workers to their employers.<sup>172</sup> The OHS measures are limited to formal workers who have an employer, and lack provision for informal workers based on their lack of employment relationship.<sup>173</sup>

The OHSA requires that informal workers and any other self-employed persons to ensure they and other persons who may be affected by their work is not exposed to health risks.<sup>174</sup> The insufficient provision of health and safety measures for the informal economy places the burden of eliminating health risks on informal workers themselves,

---

<sup>166</sup> Preamble of the National Health Act 2004.

<sup>167</sup> Section 2(a) of the National Health Insurance Bill 2019.

<sup>168</sup> Schenck C et al 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' 2019 *International Journal of Environmental Research and Public Health* 3.

<sup>169</sup> Section 24(a) of the Constitution.

<sup>170</sup> Occupational Health and Safety Act 85 of 1993.

<sup>171</sup> Women in the Informal Employment: Globalising and Organising 'Occupational health and safety for Informal workers' available at [https://www.wiego.org/sites/default/files/OHS\\_Newsletter\\_Feb\\_2012\\_English.pdf](https://www.wiego.org/sites/default/files/OHS_Newsletter_Feb_2012_English.pdf) (accessed 17/10/2022).

<sup>172</sup> Section 8(1) of the OHSA.

<sup>173</sup> Sentime K 'The impact of legislative framework governing waste management and collection in South Africa' (2014) *African Geographical Review* 81.

<sup>174</sup> Section 9 (2) of the OHSA.

yet their income is insufficient to cover health and safety costs.<sup>175</sup> For formally employed workers, occupational health and safety measures are taken by their employer, such as providing them with protective cloths and equipment.<sup>176</sup> The inadequate realisation of informal workers right to occupational health and safety measures, demonstrate that there is a gap in South Africa's legislation concerning the health and safety rights of the majority of the population in the informal economy.

The OHSWA scope needs to be extended to include informal workers and to address specific health and safety needs of different informal economic activities. Waste reclaimers are among many informal occupations with great health risks, and the nature of their work is associated with handling toxic and hazardous waste.<sup>177</sup> The OHSWA should give the highest possible level of occupational health and safety measures to waste reclaimers. Overall, the extension of occupational health and safety measures in the informal economy is necessary and important for work productivity and economic development of the informal economy.

### 3.5 CURRENT STATUTORY FRAMEWORK FOR SOCIAL SECURITY IN SOUTH AFRICA

Social security measures seek to protect everyone from various socio-economic risks. The discussion below will focus on the two frequently used categories of social security, to identify existing deficits for informal workers in social security legislation. Particular attention will be given to employment-based social security legislation,<sup>178</sup> to identify existing gaps in the right of access to social security to certain categories of workers (particularly, informal workers) in South Africa.

#### 3.5.1 Social assistance

---

<sup>175</sup> Chipunza PB 'Extending occupational health and safety law to informal workers: The case of street vendors in South Africa.' (2018) 1 *University of Oxford Human Rights Hub Journal* 64.

<sup>176</sup> Schenck CJ et al 'Exploring the potential health faced by waste pickers on landfills in South Africa: A socio-ecological perspective' (2019) 16 *International Journal of Environmental Research and Public Health* 2.

<sup>177</sup> Schenck C et al 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' (2019) 16 *International Journal of Environmental Research and Public Health* 11.

<sup>178</sup> Specifically, the Compensation for Occupational Injuries and Diseases Act 130 of 1993 and the Unemployment Insurance Act 63 of 2001.

The Constitution provides the right of access to social assistance to everyone, if they cannot afford to take care of themselves and their dependants.<sup>179</sup> Social assistance is an important component of social security in poverty alleviation.<sup>180</sup> Therefore, the discussion on social assistance is not the only focus of this mini-thesis, but rather, its discussion is important to understand the larger scale of social security system in South Africa.

Social assistance is a non-contributory component of the social security system. It is provided by the state to prevent individuals and families from falling into poverty.<sup>181</sup> The Social Assistance Act is the most important national instrument in administering social assistance.<sup>182</sup> Payments of social grants to eligible individuals are done by the South African Social Security Agency.<sup>183</sup>

Means-test criteria are used to determine the eligibility to social assistance grants.<sup>184</sup> The means testing criteria provide an inaccurate determination of who should benefit from social assistance in South Africa, as the majority of the South African population live below the poverty line.<sup>185</sup>

In South Africa, appropriate social assistance is provided to individuals and families eligible for child support grant, care dependency grant, foster child grant, disability grant, older person's grant, war veteran's grant, grant-in-aid, and social relief of distress.<sup>186</sup> The working age population who do not meet the eligibility criteria to have access to social assistance are not provided income support.<sup>187</sup> The assumption is that the economically-active population aged 18 to 59 will sustain themselves and their dependants from their employment income, and this has proven to be ineffective in a

---

<sup>179</sup> Section 27 (1)(c) of the Constitution.

<sup>180</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 27.

<sup>181</sup> Morais J et al 'Global review of human waste-picking and its contribution to poverty alleviation and a circular economy' (2022) *Environmental Research Letters* 4.

<sup>182</sup> Section 3(a) of Social Assistance Act 13 of 2004.

<sup>183</sup> Section 4 (3)(a) of the South African Social Security Agency Act 9 of 2004.

<sup>184</sup> See ssection 5 (1)(a) of the SAA.

<sup>185</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 26.

<sup>186</sup> Section 5 (1)(a) of the SAA.

<sup>187</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 12.

state with increasing participation in the informal economy and persisting unemployment rate.<sup>188</sup>

Individuals between the ages of 18 to 59 in the informal economy, who may be unfit to work because of a disability. Informal occupations such as waste reclaiming are associated with high health risks; they have higher risks of contracting diseases and injuries that may cause temporal or permanent disability.<sup>189</sup> The disability grant is acquired for persons with physical or mental disability, who is unfit to continue work or get employment to support themselves and their dependants.<sup>190</sup>

Some informal workers obtain social assistance through child support grants. In South Africa, a person is eligible to receive a child support grant if they meet the eligibility criteria in terms of section 5 and if they are the primary caregiver of the child.<sup>191</sup> Many informal workers who earn social grants participate in informal economic activities to earn an additional income because child support grant is not enough to support all the household needs.<sup>192</sup> A small portion of the informal economy population receives older person's grant, and they participate in informal economic activities to earn an extra income. A person obtains older person's grant if they are eligible in terms of section 5 and they are aged 60 or older.<sup>193</sup>

The socio-economic impact of the COVID-19 pandemic affected the informal workers' livelihoods more compared to the formal economy.<sup>194</sup> In South Africa, the social relief of distress grant is a temporary social assistance benefit, offered to individuals who have

---

<sup>188</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 27.

<sup>189</sup> Made F et al 'Illness, self-rated health and access to medical care among waste pickers in landfill sites in Johannesburg, South Africa' (2020) 17 *International Journal of Environmental Research and Public Health* 2.

<sup>190</sup> Section 9 (b) of the Social Assistance Act 13 of 2004.

<sup>191</sup> Section 6 of SAA.

<sup>192</sup> Khosa P & Kaseke E 'The utilization of the child support grant by caregivers: The case of Baphalaborwa municipality in Limpopo Province' (2017) 53 *Social Work Journals* 360.

<sup>193</sup> Section 10 of SAA.

<sup>194</sup> Bassie I et al 'Locked down and locked out: Repurposing social assistance as emergency relief to informal workers' (2020) 6.

insufficient means to support themselves in the period of distress,<sup>195</sup> and when the period of distress ceases, the unemployed and informal workers are left with no safety net against economic shocks.<sup>196</sup> There is no safety net designed to provide protection in the informal economy against occupational shocks.<sup>197</sup>

### 3.5.2 Social insurance

Social insurance is a component of social security. Social insurance consists of contributory schemes, which its measures are aimed at providing income replacement to protected persons and their dependants, in the event they are unable to work.<sup>198</sup> Social insurance schemes including the Unemployment Insurance Fund (UIF)<sup>199</sup> and the Compensation Fund.<sup>200</sup> The two social insurance schemes will be discussed below to determine the extent of coverage for informal workers.

#### 3.5.2.1 Unemployment insurance fund

South Africa is faced with a high unemployment rate. The COVID-19 pandemic fell into an already weak and persisting unemployment rate in South Africa.<sup>201</sup> Protection against unemployment in South Africa is provided in social insurance and it is administered through the Unemployment Insurance Fund (UIF).<sup>202</sup> The UIF provides temporary income support to contributors, in an event of unemployment and other contingencies that affect their ability to earn an income.<sup>203</sup> The contribution to the fund is

---

<sup>195</sup> Section 2 (1) of Social Assistance Act 13 of 2004: Amendment of regulations relating to COVID-19 social relief of distress issued in terms of section 32, read with section 13 of the Social Assistance Act, in GN 2381 22 April 2022.

<sup>196</sup> Bassie I et al 'Locked down and locked out: Repurposing social assistance as emergency relief to informal workers' (2020) 9.

<sup>197</sup> Bassie I et al 'Locked down and locked out: Repurposing social assistance as emergency relief to informal workers' (2020) 7.

<sup>198</sup> *The Green Paper on comprehensive social security and retirement reform (03 August 2021)*.

<sup>199</sup> Established in terms of section 2 of the Unemployment Insurance Act 63 of 2001.

<sup>200</sup> Established in terms of section 15 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

<sup>201</sup> Govindjee A & Dupper O 'Constitution perspectives on unemployment security and a right to work in South Africa' (2011) *Stellenbosch Law Review* 774.

<sup>202</sup> Govindjee A & Dupper O 'Constitution perspectives on unemployment security and a right to work in South Africa' (2011) *Stellenbosch Law Review* 775, also see the Preamble of the Unemployment Insurance Act 63 of 2001.

<sup>203</sup> Govindjee A & Dupper O 'Constitution perspectives on unemployment security and a right to work in South Africa' (2011) *Stellenbosch Law Review* 776.

made by the employer and employee,<sup>204</sup> and the contributor may accumulate financial benefits from this fund.<sup>205</sup> A contributor to this fund is entitled to work-related benefits such as unemployment, illness, maternity, adoption, and death.<sup>206</sup> Informal workers are not entitled to contribute and access benefits from the UIF, owing to their lack of employer/employee relationship.<sup>207</sup> For the purpose of this mini-thesis the unemployment, illness benefits are most important UIF benefits.

The COVID-19 pandemic marked prolonged conditions of unemployment, poverty, and vulnerability for millions in the informal economy. The lockdown measures restricted livelihoods activities of informal workers.<sup>208</sup> Informal workers such as waste reclaimers are dependent on their daily earning to support themselves and their dependant and they were mostly affected by the financial implications of the lockdown, as they lack social insurance benefits.<sup>209</sup> The unemployment benefits are calculated from date of unemployment,<sup>210</sup> to pay income support in an event of unemployment. Unemployment benefits favoured formal workers and informal workers who are already in poverty were left with no income replacement against unemployment.<sup>211</sup>

Employment may cease as a result of various contingencies, such as poor health. Injuries and diseases are prominent in the informal economy, and generally informal workers cannot afford medical health insurance for better health outcomes and they typically lack occupational health and safety measures.<sup>212</sup> Therefore, their livelihoods are likely to cease, as a result of poor health.<sup>213</sup> A contributor who becomes ill and is

---

<sup>204</sup> Section 4 (2)(a) of the UIA.

<sup>205</sup> Section 1 (1) of the UIA, provides that a contributor is a person who is or was employed, to whom this Act in terms of section 3 applies and has made contributions for purposes of this Act.

<sup>206</sup> Section 12 (1) of the UIA.

<sup>207</sup> Govindjee A & Dupper O 'Constitution perspectives on unemployment security and a right to work in South Africa' (2011) 3 *Stellenbosch Law Review* 778.

<sup>208</sup> Khambule I 'COVID-19 and the informal economy in a small-town in South Africa: Governance implications in the post-covid era' (2022) 8 *Cogent Social Science* 3.

<sup>209</sup> Khambule I 'COVID-19 and the informal economy in a small-town in South Africa: Governance implications in the post-covid era' (2022) 8 *Cogent Social Science* 2.

<sup>210</sup> Section 15 (1) of the UIA.

<sup>211</sup> Khambule I 'COVID-19 and the informal economy in a small-town in South Africa: Governance implications in the post-covid era' (2022) 8 *Cogent Social Science* 6.

<sup>212</sup> See above 3.3 & 3.4.

<sup>213</sup> Lee J & Ruggiero ED 'How does informal employment affect health and health equity? Emerging gaps in research from a scoping review and modified e-Delphi survey' 2022 *Internal Journal for Equity in Health* 2.

unable to perform work as a result of illness, is entitled to claim illness benefits from the UIF,<sup>214</sup> should informal workers be off work, due to illness, they do not receive income benefits.

### 3.5.2.2 Compensation fund

The Compensation for Occupational Injuries and Diseases Act (COIDA) provides compensation for injuries sustained by employees or death as a result of sustained injuries or diseases.<sup>215</sup>

The Compensation Fund is established by COIDA, to administer payment of funds to the Act.<sup>216</sup> In the event of an employee becoming injured or disabled as a result of his employment, such employee and their dependant, if the case may be, are entitled to claim compensation benefits.<sup>217</sup>

COIDA contributes to the progressive realisation of social security in South Africa.<sup>218</sup> Unfortunately, informal workers are insufficiently covered by social security benefits provided under the COIDA, as they do not necessarily match the employee definition provided under COIDA.<sup>219</sup> The inadequate provision of social security benefits for informal workers makes one turn back to the application of section 27 of the Constitution to determine the justification of COIDA for excluding informal workers from protection on the event of injury, diseases, and death in the workplace.

Work accidents<sup>220</sup> are prominent in informal economic activities, such as waste reclaiming, such work accidents may have prolonged effects and even cause permanent disability. A disablement affects a person's quality of life and most importantly it affects the performance of their livelihood activities, such employees

---

<sup>214</sup> Section 20 1(a) of the UIA.

<sup>215</sup> Preamble of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

<sup>216</sup> Section 15 of the COIDA.

<sup>217</sup> Section 22 (1) of the COIDA.

<sup>218</sup> *Mahlangu and Another v Minister of labour and others 2020 ZACC 24 para 3.*

<sup>219</sup> Section 1 of the COIDA state that an 'employee means a person who has entered into or work under a contract of services or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing and whether the remuneration is calculated by time or by work done, or is in cash or in kind...'

<sup>220</sup> Section 1 of the COIDA state that 'accident means an accident arising out of and in the course of an employee's employment and resulting in a personal injury.'

should be compensated.<sup>221</sup> Compensation for permanent disablement is regulated in section 49 of COIDA, and informal workers who get into an accident that may cause disability are not covered by COIDA.<sup>222</sup> The only available disability income benefit for informal workers is accumulated under social assistance benefits.<sup>223</sup>

### 3.6 LABOUR RIGHTS

The purpose of the Labour Relations Act (LRA) 'is to advance economic development, social justice, labour peace and the democratisation of the workplace'.<sup>224</sup> It further requires that employees should not be subjected to unfair labour practices.<sup>225</sup> Informal workers can exercise their rights provided under the LRA to address existing barriers for them to have access to social security benefits.<sup>226</sup> Workers have the right to participate in forming a trade union and to join a trade union.<sup>227</sup> This right to fair labour practices and to join trade union flow directly from the Constitution.<sup>228</sup> The LRA further gives effect to international labour standards,<sup>229</sup> such as Recommendation 202 which encourage trade union participation in the informal economy.<sup>230</sup> Trade unions have a potential to transition informal workers, including waste reclaimers to the formal waste management system. A collective voice and presentation have the power to advocate for labour rights, including workers' income and job security, access to basic social services.<sup>231</sup> Waste reclaimers' organisation can play an essential role in integrating waste reclaimers into the formal waste management system and identifying waste reclaimers' role in the recycling economy and value chain in South Africa.<sup>232</sup> The

---

<sup>221</sup> *Department of Labour: The Compensation Commissioner v Botha* 2022 ZASCA 38 para 15.

<sup>222</sup> Lee J & Ruggiero ED 'How does informal employment affect health and health equity? Emerging gaps in research from a scoping review and modified e-Delphi survey' 2022 *Internal Journal for Equity in Health* 6.

<sup>223</sup> See above 3.5.1.

<sup>224</sup> Section 1 of the Labour Relation Act 66 of 1995.

<sup>225</sup> Section 185 of the LRA.

<sup>226</sup> See section 2 of the LRA.

<sup>227</sup> Section 4(1) of the LRA.

<sup>228</sup> Section 23(1) & 2 (a) of the constitution.

<sup>229</sup> Section 1(b) of the LRA.

<sup>230</sup> See Article 3(q) of Recommendation, 202.

<sup>231</sup> Kruger K & Tshoose CI 'The impact of the labour relations action minority trade unions: A South African perspective?' (2013) 16 *Potchefstroom Electronic Law Journal* 318.

<sup>232</sup> Department of Environment, Forestry and Fisheries & Department of Science and Innovation 'Waste picker integration guideline for South Africa: Building the recycling economy and improving livelihoods through integration of the informal sector' (2020) 55.

following paragraph will discuss relevant waste management and environmental legislation in South Africa.

### 3.7 LEGISLATIVE FRAMEWORKS FOR WASTE MANAGEMENT IN SOUTH AFRICA

For this mini-thesis, the discussion on waste management legislation in South Africa is very important. The Constitution guides the state of the environment in South Africa. Section 24 enshrines the environmental rights in South Africa and obliges the state to protect the environment through reasonable legislative and other measures.<sup>233</sup> In South Africa, the National Environmental Management Act,<sup>234</sup> governs waste management and the role of municipalities in managing waste.<sup>235</sup> It recognises that effective waste management strategy has a positive contribution in many aspects including creating jobs, reducing poverty, preserves natural resources, protect the environment, and promote public health and well-being.<sup>236</sup>

The other important waste management regulator is the National Environmental Management: Waste Act,<sup>237</sup> which is guided by the NEMA.<sup>238</sup> The Waste Act, subscribes to the waste management hierarchy and its objective is to reduce, reuse, recycle and recover waste.<sup>239</sup> This Act encourages recycling and the reuse of products when they reach the end of their life span, this contributes to the economy and provide industries with secondary materials and saves the cost of importing raw materials.<sup>240</sup>

In 2017 South Africa generated approximately 55 million tonnes of general waste, with 34.5 percent being recycled and 65.2 percent disposed of at landfills.<sup>241</sup> Waste

---

<sup>233</sup> Section 24 of the Constitution.

<sup>234</sup> National Environment Management Act 107 of 1998.

<sup>235</sup> Sentime K 'The impact of legislative framework governing waste management and collection in South Africa' (2014) 33 *African Geographical Review* 86.

<sup>236</sup> Sentime K 'The impact of legislative framework governing waste management and collection in South Africa' (2014) 33 *African Geographical Review* 81.

<sup>237</sup> National Environmental Management: Waste Act 59 of 2008.

<sup>238</sup> Section 5 of the National Environmental Management: Waste Act 59 of 2008.

<sup>239</sup> National Environmental Management: Waste Act 59 of 2008.

<sup>240</sup> Department of Environmental Affairs 'National Waste Management Strategy' (2011) 18.

<sup>241</sup> Department of Environmental Affairs 'South Africa: State of waste report' (2018) 19.

management is a great challenge for many developing countries and South Africa is no exception. South Africa is faced with a high volume of waste generated, due to the persisting population growth and urbanisation, in the face of the existing challenge of the lack of resources and ineffective waste management strategy.<sup>242</sup>

The Informal waste management sectors identified a gap in the waste value chain and took the principal role of collecting and sell recyclable materials.<sup>243</sup> In 2022 the informal economy provided approximately 171 000 jobs in South Africa, and it is estimated that 60 000 to 90 000 households in South Africa are supported by the informal management sector.<sup>244</sup> The role of the informal waste management sector in South Africa is consistent with the National Waste Management Strategy plan which is to protect human health and the integrity of the environment by reducing waste through recycling, reusing and recovering waste.<sup>245</sup>

### 3.8 CONCLUSION

The above discussion illustrates that the realisation of the right of access of social security is limited in the informal economy, where the majority of the population is. The social insurance schemes do not cover informal workers, due to their lack of employer/employee relationship. Informal workers generally earn low incomes and live in poverty; however, they are not covered by social assistance schemes if they do not meet the eligibility criteria provided by the social assistance act. The following chapter will analyse the role of waste reclaimers in creating employment and analyse the challenges faced by waste reclaimers in their everyday life, the discussion will give an understanding that social protection is an urgent need in the informal economy.

---

<sup>242</sup> Department of Environmental Affairs 'National Waste Management Strategy' (2011) 14.

<sup>243</sup> Department of Environmental Affairs 'National Waste Management Strategy' (2011) 18.

<sup>244</sup> See 1.1 above.

<sup>245</sup> Environment, Forestry & Fisheries 'National waste management strategy (2020) 28.

## CHAPTER 4

# SOCIO-ECONOMIC VULNERABILITIES OF WASTE RECLAIMERS AND THE VALUE THEIR ENDEAVOURS ADD TO THE ECONOMY AND ENVIRONMENTAL HEALTH OF SOUTH AFRICA

### 4.1 INTRODUCTION

This chapter addresses the heart of the main research question; it provides valuable information on the living and working conditions of waste reclaimers, including their valuable contribution to the economy. Broadly speaking chapters two and three addressed the international and national legal framework for social protection and identified social protection deficits for informal workers in general. This chapter examines health risks, economic insecurities, and vulnerabilities encountered by waste reclaimers in the face of their insufficient coverage of social protection measures. This chapter also discusses the valuable economic and environmental contributions of waste reclaimers.

Waste reclaimers are generally known as persons who collect, sort, and sell recyclable waste to survive.<sup>246</sup> Their survival endeavour provides an important earning opportunity for many poor, unskilled individuals, who would not get employment in the highly skilled concentrated formal economy.<sup>247</sup> Waste reclaiming as a survival endeavour presents socio-economic risks and contingencies.<sup>248</sup>

### 4.2 WASTE RECLAIMERS MARGINALISED AND VULNERABLE

Waste reclaimers globally, endure discrimination, stigmatisation, and harassment from local residents, authorities, and businesses.<sup>249</sup> Waste reclaimers are vulnerable to social, economic, and health risks; despite these vulnerabilities waste reclaimers do not

---

<sup>246</sup> Blaauw P et al 'Adaptive expectations and subjective well-being of landfill waste pickers in South Africa's Free State Province' (2019) 31 *urban Forum* 137.

<sup>247</sup> Burger P & Fourie F 'The unemployed and the formal and informal sector in South Africa: A macroeconomic analysis' (2019) 22 *South African Journal of Economic and Management Science* 1.

<sup>248</sup> Burger P & Fourie F 'The unemployed and the formal and informal sector in South Africa: A macroeconomic analysis' (2019) 22 *South African Journal of Economic and Management Science* 2.

<sup>249</sup> Burger P & Fourie F 'The unemployed and the formal and informal sector in South Africa: A macroeconomic analysis' (2019) 22 *South African Journal of Economic and Management Science* 1.

have social protection.<sup>250</sup> In South Africa, social assistance is targeted to children, people living with disabilities and older persons. The working age population is not covered by social assistance scheme, if they do not fall within the categories of persons protected. social protection.<sup>251</sup> In South Africa, social assistance is targeted to children, people living with disabilities and employer. Informal workers are self-employed and therefore they are excluded from social insurance schemes.<sup>252</sup> The risks encountered by waste reclaimers in the face of insufficient access to social protection will be examined in this chapter. The occupational health risks, economic insecurities and the impact of COVID-19 pandemic is discussed below to determine the extent of waste reclaimers vulnerability.

#### 4.3 WASTE RECLAMING AND OCCUPATIONAL HEALTH RISKS

Globally, waste reclaimers share common features including exposure to risks, unfavourable working conditions and health risks that have a direct impact on their livelihoods.<sup>253</sup> Waste reclaimers work directly with toxic waste, such as medical waste, hazardous chemicals, and wet and dry waste with no safety protective equipment to eliminate health risks.<sup>254</sup> Waste reclaimers who operate in the streets are more likely to experience body pains, including neck and back pains, as they travel long distance carrying and pulling heavy bags and trolleys with waste materials. In landfills waste reclaimers are at risk of being run over by dump trucks, they do not have clean water and toilets on site and poor hygiene in landfills exposes them to infections and

---

<sup>250</sup>International Labour Organisation 'Financing social protection through the COVID-19 pandemic and beyond' (2021) available at [https://www.ilo.org/wcmsp/groups/public/...dgreports/...ddp\\_p/documents/publication\\_829965-pdf](https://www.ilo.org/wcmsp/groups/public/...dgreports/...ddp_p/documents/publication_829965-pdf) (accessed 4/October/2022).

<sup>251</sup>International Labour Organisation 'Financing social protection through the COVID-19 pandemic and beyond' (2021) available at [https://www.ilo.org/wcmsp/groups/public/...dgreports/...ddp\\_p/documents/publication\\_829965-pdf](https://www.ilo.org/wcmsp/groups/public/...dgreports/...ddp_p/documents/publication_829965-pdf) (accessed 10/October/2022).

<sup>252</sup> Alferts L et al 'Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches' (2017) 70 *International Social Security Review* 73.

<sup>253</sup> Schenck CJ 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' (2019) 16 *International Journals of Environmental Research and Public Health* 1.

<sup>254</sup> Muringa TP 'Challenges and survival strategies of vulnerable groups under COVID-19 induced lockdown: The case of Durban waste pickers' (2021) 9 *Journal of Inclusive Cities and Built Environment* 81.

diseases.<sup>255</sup> Despite their important role in the environmental health, waste reclaimers are exposed to health risks with no sufficient occupational health and safety protection.

Unlike waste reclaimers who work directly with toxic waste, formally employed persons in the waste management sector are protected by occupational health and safety regulations.<sup>256</sup> Their employers take measures to ensure the health and safety protection of workers by providing safety protective equipment such as gloves, safety shoes, and sanitation facilities.<sup>257</sup> The duty to ensure a safe and without health risks work environment for employees is placed in their employer.<sup>258</sup> Occupational health and safety measures are important for waste reclaimers to eliminate or mitigate health and safety risks.

In highly hazardous landfills an operator is responsible to monitor and implement safety and health measures to ensure that waste reclaimers and other workers on site are protected.<sup>259</sup> Minimum requirements were implemented to ensure the health and safety of workers in landfills.<sup>260</sup> One of the minimum requirements in landfills is the on-going communication between landfill operators and waste reclaimers' organisations to ensure that waste reclaimers adhere to rules in landfills and are provided with occupational health and safety protective measures, to minimise the spread of COVID-19 and other health risks. Waste reclaimers are required to register for their operation in landfills to be monitored by landfill operators to minimise health and safety risks,<sup>261</sup> only registered waste reclaimers are allowed to enter landfills. Waste reclaimers are given limited time to collect waste on-site, because of the limited time in controlled landfills

---

<sup>255</sup> Schenck CJ 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' (2019) 16 *International Journals of Environmental Research and Public Health* 15.

<sup>256</sup> Schenck CJ 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' (2019) 16 *International Journals of Environmental Research and Public Health* 2.

<sup>257</sup> Muringa TP 'Challenges and survival strategies of vulnerable groups under COVID-19 induced lockdown: The case of Durban waste pickers' (2021) 9 *Journal of Inclusive Cities and Built Environment* 81.

<sup>258</sup> Section 8(1) of the Occupational Health and Safety Act 85 of 1993.

<sup>259</sup> Department of Affairs and Forestry 'Minimum requirements for waste disposal by landfill' (1998) 11-6.

<sup>260</sup> Department of Affairs and Forestry 'Minimum requirements for waste disposal by landfill' (1998) 11-6

<sup>261</sup> *Ubisse v Enviro-Fill (PTY) Ltd 2010 ZAGPJHC 165 para 13.*

they earn less income than waste reclaimers operating in uncontrolled landfills and on the streets.<sup>262</sup>

#### 4.4 INCOME SECURITY FOR WASTE RECLAIMERS

Waste reclaiming is an important survival strategy for many poor and disadvantaged individuals and families in the world. Waste reclaimers are the most important actors in the recycling chain, yet they are the most vulnerable actor in a highly profitable industry.<sup>263</sup> Despite their effort to create income opportunities for themselves they continue to live in poverty, and they are exposed to many risks that have a direct impact on the sustainability of their livelihoods.<sup>264</sup>

Waste reclaimers globally depend on waste generated by households, industries, and businesses, should there be no waste produced they will not earn an income. Waste reclaimers' aim is to collect and sell enough waste materials daily, to make a decent income.<sup>265</sup> Street waste reclaimers sell their recyclables daily; however their weekly income is lower than that of landfill waste reclaimers. This is because waste is more concentrated in landfill sites, and they do not have to walk long distances in search for waste carrying heavy loads of waste.<sup>266</sup> The average weekly income of waste reclaimers operating in both landfills and at the streets is R770 on a bad day their average earning will be R290. Their income is irregular and insufficient, and, in many cases, they cannot even afford to meet their daily needs and those of their dependants.<sup>267</sup>

Waste reclaiming is the only source of income for many poor families and their socio-economic status constrains them from reaching their full potential in improving their

---

<sup>262</sup> Schenck CJ et al 'The management of South Africa's landfills and waste pickers on them: Impacting lives and livelihoods' (2018) 36 *Development Southern Africa* 92.

<sup>263</sup> Schenck R et al 'Enabling factors for the existence of waste pickers: A systematic review' (2016) 52 *Social Work Journals* 44-45.

<sup>264</sup> Schenck CJ 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' 2019 *International Journals of Environmental Research and Public Health* 1.

<sup>265</sup> Schenck R et al 'Enabling factors for the existence of waste pickers: A systematic review' (2016) 52 *Social Work Journals* 44.

<sup>266</sup> Schenck CJ et al 'The socio-economic differences between landfill and street waste pickers in the Free State Province of South Africa' (2016) 33 *Development Southern Africa* 539.

<sup>267</sup> Schenck CJ et al 'The management of South Africa's landfills and waste pickers on them: Impacting lives and livelihoods' (2019) 36 *Development Southern Africa* 87.

livelihoods. There are many income insecurities faced by waste reclaimers, including the availability of waste materials to sell, health risks, disasters, and pandemics.<sup>268</sup> All these factors have the power to affect waste reclaimers' earnings as they do not have access to income security to count on.

#### 4.4.1 COVID-19 Economic impact on waste reclaimers

The outbreak of the COVID-19 pandemic posed a threat to the livelihoods of many informal workers. Waste reclaimers collect waste material to earn an income, their work involves movement, and the lockdown regulations prevented them from collecting waste.<sup>269</sup> The pandemic worsened the economic insecurities for waste reclaimers. The informal economy decreased with 640 000 workers. Many informal workers including waste reclaimers lost their livelihoods.<sup>270</sup> Waste reclaimers depend on daily earnings to survive; unlike formal workers they have no access to social insurance benefits to rely on when their economic activities are disturbed.<sup>271</sup>

South Africa introduced a financial expansion measure to reduce the economic impact of the pandemic on poor individuals. This was done through the short-term social assistance grant, known as the COVID-19 social relief of distress grant. This grant is targeted at unemployed adults, not receiving social grants or support from UIF.<sup>272</sup> The social relief grant sustained waste reclaimers as they did not have any means of generating income due to the lockdown restrictions. The social relief grant helped them to survive the harsh economic conditions of the lockdown.<sup>273</sup>

#### 4.5 ENVIRONMENTAL AND ECONOMIC ROLE OF WASTE RECLAIMERS IN SOUTH AFRICA

---

<sup>268</sup> Schenck CJ et al 'The management of South Africa's landfills and waste pickers on them: Impacting lives and livelihoods' (2019) 36 *Development Southern Africa* 87.

<sup>269</sup> Muringa TP 'Challenges and survival strategies of vulnerable groups under COVID-19 induced lockdown: The case of Durban waste pickers' (2021) 9 *Journal of Inclusive Cities and Built Environment* 83.

<sup>270</sup> Department of Statistics South Africa 'Quarterly labour force survey: Quarter 2' (2020) 2.

<sup>271</sup> Muringa TP 'Challenges and survival strategies of vulnerable groups under COVID-19 induced lockdown: The case of Durban waste pickers' (2021) 9 *Journal of Inclusive Cities and Built Environment* 85.

<sup>272</sup> See 3.5.1 above.

<sup>273</sup> Muringa TP 'Challenges and survival strategies of vulnerable groups under COVID-19 induced lockdown: The case of Durban waste pickers' (2021) 9 *Journal of Inclusive Cities and Built Environment* 83.

Waste reclaimers all over the world, have an important role in producing value from waste and contributing to the economy and environment. Historically, dumpsites were known as the final place where discarded waste landed. In the quest for survival, waste reclaimers transformed dumpsites into resource mines. They saw waste as valuable and dumpsites as the production of value.<sup>274</sup> The intellectual and entrepreneurial skills of waste reclaimers are disregarded, it is important to note that waste reclaimers are producers of knowledge; they discovered value in the trash and created earnings opportunities to lift themselves out of poverty. Their understanding of waste is profit and value driven and they reject the municipal understanding of waste as anything discarded from households.<sup>275</sup> Waste reclaimers have a great knowledge of different values in the materials they collect, and they understand the business side of their endeavour, how to categorise waste and prepare for sale.<sup>276</sup> It is important to note that waste reclaimers have expert knowledge of the recyclables, yet they are not recognised as essential service providers they are not protected by labour regulations and they lack social protection.

Waste reclaimers' endeavours have an important environmental contribution.<sup>277</sup> Around the world, waste generated is increasing; in 2020 the world was estimated to produce 2.24 billion tonnes of solid waste, with the increasing rate of population and urbanisation the production of waste globally is expected to increase 3.88 billions tonnes in 2050.<sup>278</sup> Many developing countries struggle to manage and dispose of waste generated; this is

---

<sup>274</sup> Samson M 'Accumulation by dispossession and the informal economy-struggles over knowledge, being and waste at a Soweto garbage dump' (2015) 33 *Environments and Planning D: Society and Space* 814.

<sup>275</sup> Samson M 'The political work of waste pickers integration' in Chen M & Carre F *The informal economy revisited: Examining the past envisioning the future* (2020) 195.

<sup>276</sup> Samson M 'The political work of waste pickers integration' in Chen M & Carre F *The informal economy revisited: Examining the past envisioning the future* (2020) 195.

<sup>277</sup> Department of Environment, Forestry and Fisheries & Department of Science and Innovation *Waste picker integration guideline for South Africa: Building the recycling economy and improving livelihoods through integration of the informal sector* (2020) 21.

<sup>278</sup> World Bank 'Solid waste management' (2022) available at <https://www.worldbank.org/en/topic/urbandevelopment/brief/solid-waste-manageent> (accessed on 4 November 2022).

because many developing countries have limited resources for waste management practices including limited landfill sites to dispose of waste.<sup>279</sup>

As the South African population and urbanisation increase, equally as the waste generated increases, poorly managed waste has a negative impact on public health and environmental well-being.<sup>280</sup> South African municipalities are experiencing high levels of generated waste, due to the rapid population growth and lack of landfills capacity to store generated waste. The amount of waste dumped on illegal dumpsites and uncontrollably is an increasing environmental hazard and this threatens public health. The municipalities lack financial resources and have little planning and strategies to reduce waste on land. Waste reclaimers play a significant role in the country's cleanliness simultaneously earning an income.

The increasing unemployment rate in South Africa and lack of social protection for the poor economic active population expose many individuals to appalling socio-economic conditions.<sup>281</sup> The unskilled poor populations who cannot get employment in the formal economy resort to different income-generating activities in the informal economy, such as waste reclaiming to survive.<sup>282</sup> Waste reclaiming provides employment for at least 80 000 reclaimers.<sup>283</sup> Waste reclaiming is a survival occupation and attracts these numbers of workers because there are no requirements to enter such as start-up capital, skills, or education, the only requirement is physical strength to pick up and carry waste materials.<sup>284</sup> In the attempt for waste reclaimers to improve their socio-economic conditions, they bear low and irregular incomes and consequently, they remain in

---

<sup>279</sup> Schenck CJ et al 'The management of South Africa's landfills and waste pickers on them: Impacting lives and livelihoods' (2019) 36 *Development Southern Africa* 81.

<sup>280</sup> Department of Environmental Affairs 'South Africa state of waste report' (2018) 2.

<sup>281</sup> Viljoen K & Schenck R 'I would rather have a decent job": Potential barriers preventing street waste pickers from improving their socio-economic condition' (2016) 19 *South African Journal of Economic and Management Sciences* 176.

<sup>282</sup> Viljoen K & Schenck R 'I would rather have a decent job": Potential barriers preventing street waste pickers from improving their socio-economic condition' (2016) 19 *South African Journal of Economic and Management Sciences* 176.

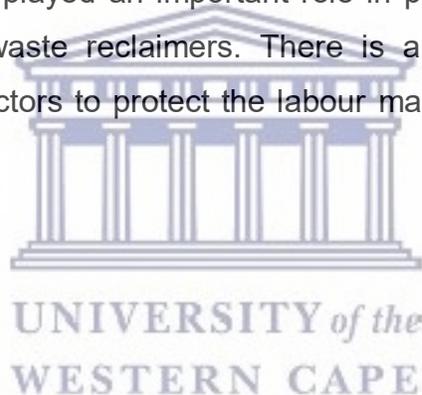
<sup>283</sup> See 3.7 above.

<sup>284</sup> Viljoen K & Schenck R 'I would rather have a decent job": Potential barriers preventing street waste pickers from improving their socio-economic condition' (2016) 19 *South African Journal of Economic and Management Sciences* 176.

poverty and vulnerable to socio-economic risks, with no safety net against economic shocks and occupational risks.

#### 4.6 CONCLUSION

Waste reclaimers have an important economic and environmental role. Despite their important societal role, they face low social status and difficult living and working conditions. Their occupation is associated with handling hazardous waste and because they are informal workers and lack social protection, they are highly vulnerable to occupational health and safety risks, and they are not protected by occupational health and safety legislation.<sup>285</sup> The lack of social protection is a major source of waste reclaimers' exposure to vulnerability, because when they are faced with socio-economic shocks, they have no safety net to rely on. The COVID-19 pandemic worsened the already existing economic and health risks of waste reclaimers; however, the temporary social relief of distress grant played an important role in providing income benefits for informal workers including waste reclaimers. There is a need for social protection measures in all economic sectors to protect the labour market against socio-economic shocks.



---

<sup>285</sup>Schenck CJ et al 'The management of South Africa's landfills and waste pickers on them: Impacting lives and livelihoods' (2019) 36 *Development Southern Africa* 87.

## CHAPTER 5

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 CONCLUSION

In chapter one of this mini-thesis, the phrase 'waste reclaimer' was discussed and it was discovered that the phrase is the preferred term to refer to persons who collect waste to earn an income. Unlike the popularly used phrase of a waste picker, waste reclaimer emphasises the workers' contribution and that they create value from waste.<sup>286</sup>

Statistical information provides that the unemployment rate in South Africa is high and chances of getting employment in the formal economy are limited to skilled workers. The unemployment rate in South Africa is 34.5 percent and 2020 marked the year of the highest income and employment losses, globally. The high levels of poverty and unemployment rate have resulted in a greater number of the population seeking work opportunities in the informal economy to survive. In South Africa, approximately 60 000 to 90 000 of the population participate in the informal waste management sector to earn an income.<sup>287</sup>

Chapter two analysed international and African instruments on the right to social protection. It was determined that social protection is an important aspect of both living and working conditions and it promotes decent working conditions, enhances productivity, and reduces inequalities and poverty, globally.<sup>288</sup>

The state is legally obliged under international law to establish effective social protection systems, within its available resources. The Constitution of South Africa requires that international law should be considered when interpreting the right to have access to social security. South Africa is a member state to many international instruments and

---

<sup>286</sup> See 1.1 above.

<sup>287</sup> See 1.1 above.

<sup>288</sup> Mpedi LG & Nyenti MA 'Key international, regional, and national instruments regulating social security in the SADC: A general perspective' (2015) 43.

courts should ensure that domestic interpretation of rights relating to social protection is consistent with international law.<sup>289</sup>

The ILO mandate is to improve labour conditions, it thereby adopts international standards to address labour and social problems. The international labour standards take forms of conventions and recommendations, and they outline obligations and guidelines for member states to achieve comprehensive social security by developing sustainable social protection systems.<sup>290</sup>

Convention 102 is based on the concept of social insurance, and it typically only covers formally employed workers. It does not confirm the ILO objective to provide social protection coverage for all, as it does not address social insecurities encountered by informal workers.<sup>291</sup>

It was discovered that Recommendation 202 plays an important role in closing coverage gaps, by extending social protection benefits to the groups previously uncovered.<sup>292</sup> The national social protection floors are set of policies designed to provide basic social security, which aims at preventing or alleviating poverty and vulnerabilities in all economic sectors. All workers including informal workers, should have access to essential health care, and income security for persons of working age, who are unable to earn sufficient income, in case of unemployment, maternity, illness, and disability.<sup>293</sup> The discussion on the ILO instruments illustrates that state parties have a responsibility to provide adequate social protection for everyone and that if state party's national legislation is in accordance with the international instruments, such state party will achieve great social inclusion, income security and decent working conditions in all economic sectors.<sup>294</sup>

Chapter 3 examined the right to have access to social security. The Constitution provides that everyone has the right to have access to social security, including

---

<sup>289</sup> See 2.1 above.

<sup>290</sup> See 2.3 above.

<sup>291</sup> See 2.3.1 above.

<sup>292</sup> See 2.3.2 above.

<sup>293</sup> ILO 'ILO social protection floors recommendation/2012 (NO 202) available at [https://www.ilo.org/wcmp5/groups/public/...ed\\_norml/...relconf/document/wcms\\_673680.pdf](https://www.ilo.org/wcmp5/groups/public/...ed_norml/...relconf/document/wcms_673680.pdf) (accessed 26/November/2022).

<sup>294</sup> See 2.3.4 above.

appropriate social assistance should they be unable to support themselves and their dependants. Therefore, this means that the right to have access to social security should be provided to everyone, without discrimination.<sup>295</sup> It was noted that the right to have access to social security is not absolute and may be limited. The duty of the state to protect the right of access to social security depends on the state's determination to take steps to progressively realise the right to have access to social security for all.<sup>296</sup>

Current social, economic, and health challenges encountered by waste reclaimers without social security were discussed in chapter 4. It was discussed that waste reclaimers globally share common features; they endure discrimination from authorities. Their incomes are low and irregular, and they are vulnerable to health risks.<sup>297</sup> It was discovered that the lockdown regulations exposed and worsened the already existing socio-economic vulnerabilities of waste reclaimers as their economic activities were restricted and they had no safety net against the labour market related shocks, apart from the temporary social relief grant.

Waste reclaimers' environmental and economic contributions were also discussed. Waste reclaimers have a very important environmental contribution, they divert waste from landfills and prevent waste pollution by recycling waste materials that would otherwise end up in the environment. Waste reclaiming create employment opportunity to unskilled workers, who cannot get employment in the formal economy.

## 5.2 RECOMMENDATIONS

The following suggested recommendations may be applied by the state to extend the coverage of social security benefits to informal workers, including waste reclaimers in South Africa.

Extending social security benefits for informal workers can be achieved through the extension of existing social relief of distress grant which provides temporary assistance to the unemployed population aged 18 to 59, not receiving social grants and the UIF. The social relief of distress grant is temporary once the period of disaster or pandemic

---

<sup>295</sup> See 3.5 above.

<sup>296</sup> See 3.2 above.

<sup>297</sup> See 4.2.1 above.

ceases, the social relief of distress grant payment also stops. The COVID-19 pandemic caused job losses, endangered livelihoods, and heightened exposure to vulnerabilities for informal workers who have no safety net against economic shocks. The social relief of distress grant should be made permanent to the poor working-age population aged 18 to 59 to protect them against the prolonged economic impact of the pandemic which may take many years for them to recover from.

In South Africa there are barriers to access contributory social security schemes for informal workers. A number of social insurance schemes in South Africa only extend coverage to those who fit the definition of an employee.<sup>298</sup> The Unemployment Insurance Act defines an employee as any person, who receives payments in respect of services rendered but excludes any independent contractor, such as waste reclaimers.<sup>299</sup> Extending coverage of social security benefits to informal workers can be achieved through extension of existing social insurance schemes whereby those working in the informal economy with an adequate and stable income can be encouraged to participate in the existing social insurance scheme, and the government should pay for the contribution of informal workers with insufficient and irregular earnings, such as waste reclaimers.<sup>300</sup>

The extension of social security benefits for informal workers can be achieved through the amendment of social security legislation and the term worker be used instead of an employee, to include other categories of workers such as waste reclaimers.<sup>301</sup> The fact that waste reclaimers' work has low and irregular incomes is a major obstacle to contributing to social insurance schemes. Workers should contribute funds to social insurance schemes according to their occupational scale; workers with low and irregular

---

<sup>298</sup> See 3.6 above.

<sup>299</sup> See 3.6 above.

<sup>300</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 11.

<sup>301</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 13.

income, should prove that their income is low and irregular to contribute low funds to the scheme and to receive financial support from the government.<sup>302</sup>



---

<sup>302</sup> Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) 11.

## BIBLIOGRAPHY

### 1 ARTICLES

Alfers L et al 'Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches' (2017) 70 *International Social Security Review* 67-85.

Bamu-Chipunza P 'Extending occupational health and safety law to informal workers: The case of street vendors in South Africa' (2018) 62-85.

Blaauw P et al 'Adaptive expectations and subjective well-being of landfill waste pickers in South Africa's Free State Province' (2019) 31 *urban Forum* 135-155.

Burger P & Fourie F 'The unemployed and the formal and informal sector in South Africa: A macroeconomic analysis' (2019) 22 *South African Journal of Economic and Management Science* 1-12

Chipunza PB 'Extending occupational health and safety law to informal workers: The case of street vendors in South Africa.' (2018) 1 *University of Oxford Human Rights Hub Journal* 62-85.

Cruvinel VR et al 'Health conditions and occupational risks in a novel group: Waste pickers in the largest open garbage dump in Latin America' 2019 *BMC Journal of Public Health* 1-15.

Dupper O et al 'Extending coverage of the unemployment insurance system in South Africa' (2010) 21 *Stellenbosch Law Review* 438-462.

Fourie E 'Social protection instruments and women workers in the informal economy: A Southern African perspective' (2021) 24 *Potchefstroom Electronic Law Journal* 1-41.

Godfrey L & Oelofse S 'Historical review of waste management and recycling in South Africa' (2017) 6 *Unit for Waste Environmental Science and Management* 1-11.

Govindjee A & Dupper O 'Constitution perspectives on unemployment security and a right to work in South Africa' (2011) *Stellenbosch Law Review* 775-803.

Gutberlet J & Careno S 'Waste pickers at the heart of the circular economy: A perspective of inclusive recycling from the global South' (2020) 3 *Worldwide: Journal of Interdisciplinary Studies* 1-14.

Khambule I 'COVID-19 and the informal economy in a small-town in South Africa: Governance implications in the post-covid era' (2022) 8 *Cogent Social Science* 1-12.

Khosa P & Kaseke E 'The utilization of the child support grant by caregivers: The case of Ba-phalaborwa municipality in Limpopo Province' (2017) 53 *Social Work Journals* 356-367.

Lund F 'Work-related social protection for informal workers' (2012) 65 *International Social Security Review* 9-30.

Made F et al 'Illness, self-rated health and access to medical care among waste pickers in landfill sites in Johannesburg, South Africa' (2020) 17 *International Journal of Environmental Research and Public Health* 1-10.

Millington N et al 'Whose value lies in the urban mine? Reconfiguring permission, work, and the benefits of waste in South Africa' 2020 *Annals of the American Association of Geographers* 1942-1957.

Morais J et al 'Global review of human waste-picking and its contribution to poverty alleviation and a circular economy' (2022) *Environmental Research Letters* 1-33.

Muringa TP 'Challenges and survival strategies of vulnerable groups under COVID-19 induced lockdown: The case of Durban waste pickers' (2021) 9 *Journal of Inclusive Cities and Built Environment* 79-88.

Nyenti M & Mpedi LG 'The impact of SADC social protection instruments on the setting up of a minimum social protection floors in Southern African countries' (2012) 15 *Electronic Law Journal* 244-428.

Samson S 'Not just recycling the crisis: Producing value at a Soweto garbage dump' (2017) 25 *Historical Materialism* 36-62.

Samson M 'Accumulation by dispossession and the informal economy-struggles over knowledge, being and waste at a Soweto garbage dump' (2015) 33 *Environments and Planning D: Society and Space* 813-830.

Schenck CJ et al 'The management of South Africa's landfills and waste pickers on them: Impacting lives and livelihoods' (2018) 36 *Development Southern Africa* 80-98.

Schenck CJ 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' (2019) 16 *International Journals of Environmental Research and Public Health* 1-21.

Schenck R et al 'Enabling factors for the existence of waste pickers: A systematic review' (2016) 52 *Social Work Journals* 35-53.

Schenck CJ et al 'The socio-economic differences between landfill and street waste pickers in the Free State Province of South Africa' (2016) 33 *Development Southern Africa* 532-547.

Schenck CJ et al 'Exploring the potential health risks faced by waste pickers on landfills in South Africa: A socio-ecological perspective' 2019 *Environmental Research and Public Health* 1-21.

Sentime K 'The impact of legislative framework governing waste management and collection in South Africa' (2014) *African Geographical Review* 81-93.

Uhunamure SE et al 'Occupational health risk of waste pickers: A case study of Northern region of South Africa' 2021 *Journal of Environmental and Public Health* 1-12.

Viljoen K & Schenck R 'I would rather have a decent job': Potential barriers preventing street waste pickers from improving their socio-economic condition' (2016) 19 *South African Journal of Economic and Management Sciences* 175-191.

Yu et al 'Waste pickers in informal self-employment: Over-worked and on the breadline' (2020) 37 *Development South Africa* 971-996.

## 2. REPORTS

Department of Affairs and Forestry 'Minimum requirements for waste disposal by landfill' (1998) Department of Affairs and Forestry: South Africa.

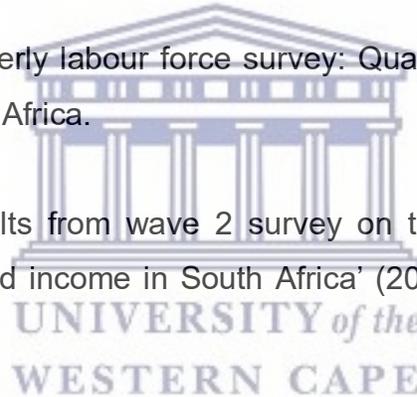
Department of Environmental Affairs 'South Africa state of waste report' (2018) Department of Affairs and Forestry: South Africa.

Department of Environment, Forestry and Fisheries & Department of Science and Innovation *Waste picker integration guideline for South Africa: Building the recycling economy and improving livelihoods through integration of the informal sector* (2020) Department of Environmental, Forestry and Fisheries: South Africa.

Samson M 'Urban Policies Research Report 6- Reclaiming reusable and recyclable materials in Africa' (2010) Urban Policy Research Report No, 6.

Statistics South Africa 'Quarterly labour force survey: Quarter 2' (2020) Department of Statistics South Africa: South Africa.

Statistics South Africa 'Results from wave 2 survey on the impact of the COVID-19 pandemic on employment and income in South Africa' (2020) Department of Statistics South Africa: South Africa.



Statistics South Africa *Quarterly labour force survey Q2:2022* (2022) Department of Statistics: South Africa.

Department of Environmental Affairs 'National Waste Management Strategy' (2011) Environmental Affairs: South Africa.

Environment, Forestry & Fisheries 'National waste management strategy' (2020) DEFF & DST: Pretoria.

Department of Social Development 'Green paper on comprehensive social security and retirement reform' (2021) Department of Social Development: South Africa.

Devereux S 'European Report on Development 2010. Building social protection systems in Southern Africa' (2010) European Commission: South Africa.

ILO Declaration of Philadelphia Declaration concerning the aims and purposes of the International Labour Organisation, 1944.

International Labour Organisation 'Republic of South Africa report to the Government: Assessment of the South African legislation in view of a possible ratification of the ratification of the Social Security (Minimum Standards) Convention, 1952 NO, 102' (2014) International Labour Office: Geneva.

International Labour Conference 90th Session Report *Decent work and informal economy* (2002) International Labour Office: Geneva.

The general conference of the International Labour Organisation meeting in its 90th session. 'Resolution concerning decent work and the informal economy' (2002) International Labour Office: Geneva.

### **3. BOOKS**

Chen M & Carre F 'The informal economy revisited: Examining the past, envisioning the future' (2020) Routledge: New York.

Mpedi LG & Nyenti MA *Key international, regional, and National instruments regulating social security in the SADC: A general perspective* 1 ed (2015) SUN Press: Stellenbosch.

Rwegoshora MM 'Social security challenges in Tanzania: Transforming the present protecting the future' (2014) Mkuki na nyoka Publishers Ltd: Tanzania.

Samson M 'Refusing to be cast aside: Waste pickers organizing around the world' (2009) Women in Informal Employment: Globalising and Organising: Cambridge.

### **4. CHAPTERS IN BOOKS**

Samson M 'The political work of waste pickers integration' in Chon M & Carre F *The informal economy revisited: Examining the past envisioning the future* (2020) Routledge: New York.

Vonk G 'The social protection floors recommendation 2012 (No 202): The human rights approach to social security in ILO wrapping paper' in Olivier M et al *The role of standards in labour & social security law: international, regional, and national perspectives* (2013) Juta & Co Ltd: Cape Town.

## 5 PAPERS

Bassie I et al 'Locked down and locked out: Repurposing social assistance as emergency relief to informal workers' (2020) Southern African Labour and Development Unit: Working Paper Series No 261.

Cichon M & Scholz W 'Social security, social impact, and economic performance: A framework to three famous myths' in Townsend P *Building decent societies: Rethinking the role of social security in development* (2009) International Labour Office: Geneva.

Fall F & Steenkamp A *Building on inclusive social protection system in South Africa* (2020) Economic Department Working Paper No 1620.

Garcia BA & Gruat JV 'Social protection: A life cycle continuum investment for social justice, poverty reduction, and sustainable development' (2003) International Labour Office: Geneva.

Sepulved S & Nyst C 'The human rights approach to social protection' (2012) Ministry for Foreign Affairs of Finland: Finland.

International Labour Organisation 'Building social protection systems: International standards and human rights instruments' (2019) International Labour Office: Geneva.

International Labour Organisation & United Nations Development Group 'UNDG Eastern and Southern Africa social protection issues brief' (2016) International Labour Office: Geneva.

Packand T et al 'Protecting all: Risk sharing for a diverse and diversifying world of work' (2019) World Bank: Washington.

ILO 'Decent work indicators: Guidelines for producers and users of statistical and legal framework indicators' (2013) International Labour Office: Geneva.

## **6 GENERAL COMMENTS**

General comment No 19 E/C.12/GC/19 *The right to social security* (2008).

## **7 NATIONAL LEGISLATION**

The Constitution of the Republic of South Africa, 1996.

The Compensation for Injuries and Diseases Act 130 of 1993.

The Labour Relations Act 66 of 1995.

The Medical Schemes Act 131 of 1998.

The National Environmental Management: Waste Act 59 of 2008.

The National Environment Management Act 107 of 1998.

The National Health Act 61 of 2003.

The National Insurance Bill, 2019.

The Occupational Health and Safety Act 85 of 1993.

The Social Assistance Act 13 of 2004.

The Unemployment Insurance Act 63 of 2001.

The Social Assistance Act 13 of 2004: Amendment of regulations relating to COVID-19 social relief of distress issued in terms of section 32, read with section 13 of the Social Assistance Act, in GN 2381 22 April 2022.

## **8. INTERNATIONAL LEGAL INSTRUMENTS**

African (Banjul) Charter on Human and Peoples' Rights, OAU Document CAB/LEG/67/3/Rev. 5 (1981).

Southern African Development Community Charter of Fundamental Social Rights in SADC (2003).

International Labour Organisation Social Security (Minimum Standard) Convention, 102 of 1952.

International Labour Organisation Social Protection Floors Recommendation, 202 of 2012.

International Covenant on Economic, Social and Cultural Rights A/6316 (1966).

Universal Declaration of Human Rights United Nations General Assembly Resolution 217 A(III) of 10 December 1948.

International Labour Organisation Occupational Safety and Health Convention, 155 of 1981.

International Labour Organisation Occupational Safety and Health Recommendation, 164 of 1981.

ILO Medical Care Recommendation, 1944 (69)

The Constitution of the International Labour Organisation, 1919.

## 9. CASES

*Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 CC.

*Khosa v Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* 2004 (6) BCLR 569 (CC).

*Mahlangu and Another v Minister of labour and others* 2020 ZACC 24.

*Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA.

*Mohamed v President of the Republic of South Africa* 2020 (7) BCLR 865 (GP).

*Ubisse v Enviro-Fill (PTY) Ltd* 2010 ZAGPJHC 165.

## 10 INTERNET SOURCES

Women in Informal Employment: Globalising and Organising 'Waste pickers: The right to be recognised as workers' (2013) <https://www.wiego.org/sites/default/files/resources/files/WIEGO-waste-pickers-position-paper-pdf> (accessed 15/October/2022).

ILO 'C102- Social Security (Minimum Standards) Convention 1952, No 102 [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::p12100\\_instrument\\_id:312247](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::p12100_instrument_id:312247) (accessed 17/10/2022).

ILO 'Social protection spotlight' available at <https://www.socialprotection-humanright.org/instru/social-minimum-standards-convention-No-102-1952>.

International Labour Organisation 'Elaboration of an autonomous Recommendation on the Social Protection Floor' <https://www.ilo.org/ilc/LCSessions/previous-sessions/on-the-agenda/social-protection-floor> (accessed on 17/07/2022).

<sup>1</sup> Article 1 (b) of Recommendation, 202.

ILO 'Informal economy: A hazardous activity' <https://www.ilo.org/safeworki/hazardous-work/WCMS-110505/lang-en/index-htm> (accessed on 15/07/2022).

ILO '97 session of the international labour conference Geneva 2008' available at <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang—index.htm> (accessed 7/10/2022).

The Universal Declaration of Human Rights 'History of the Declaration' available at <https://www.un.org/en/about-us/udhr/history> (accessed on 9/07/2022).

United Nations 'Declaration on human rights defenders' <https://www.ohchr.org/en/special-procedures/sr-human-defenders/declaration-human-rights-defenders> (accessed on 9/07/2022).

United Nations 'UN treaty body database' available at [https://tbinternet.ohchr.org/\\_layout/15/treatybodyexternal/treaty.aspx?treaty=cescr&lang=en](https://tbinternet.ohchr.org/_layout/15/treatybodyexternal/treaty.aspx?treaty=cescr&lang=en) (accessed on 11/07/2022).

The International Covenant on Economic, Social and Cultural Rights 'History of the ICESCR' available at <https://www.un.org/en/about-us/udhr/history> (accessed on 9/07/2022).

South African Human Rights Commission 'Access to health care' available at <https://www.sahrc.org.za/home/21/files/FINAL/access-to-health-care-booklet.pdf> (accessed 11 October 2022).

Women in the Informal Employment: Globalising and Organising 'Occupational health and safety for Informal workers' available at [https://www.wiego.org/sites/default/files/OHS\\_Newsletter\\_Feb\\_2012\\_English.pdf](https://www.wiego.org/sites/default/files/OHS_Newsletter_Feb_2012_English.pdf) (accessed 17/10/2022).



UNIVERSITY *of the*  
WESTERN CAPE