

Implementing ILO R204 on the Transition from the Informal to the Formal Economy: Lessons from South Africa's Experience

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Key Findings

- The responsibility for implementation of R204 rests primarily on Member States – ideally with proactive support from their social partners in employers’ and workers’ organizations, including representatives of membership-based organizations of workers and economic units in the informal economy.
- Formalization has to be a multi-pronged rights-based process, not just a formal business registration. It must have a bottom-up approach that directly involves organized workers and economic units in the informal economy as proactive agents of the formalization they want.
- Consensus needs to be built within government about coordination between government departments on the implementation of R204, and between different levels of government, which department(s) will lead and which will interface with workers and economic units in the informal economy, and how this is to be achieved.
- Coordinating work with local government requires different mechanisms from those needed to coordinate work with national government. This has to be factored into planning for multi-pronged work with different levels of government at the same time.
- We learned to watch out for unilateral self-congratulatory reports of implementation progress by Member States (not verified/triangulated by organized workers and economic units in the informal economy); excessive bureaucracy and unnecessarily stringent or costly compliance requirements; punitive actions or unilaterally developed programmes by authorities in the name of “formalization”, “modernization”, “Smart Cities”, etc.
- Inclusive implementation of R204 has to be driven by a process of sustained social dialogue/collective negotiations in which the representatives of MBOs of workers and economic units in the informal economy are directly involved from the planning stages through to the ongoing process of implementation, invariably with multiple and often distinct partners.

1. Introduction

When organizations spend years working to influence what goes into International Labour Organization (ILO) Recommendations, how do they make sure that these are actually implemented? That they do in fact result in improving workers' lives –and how can they tell? A case in point is the ILO's Recommendation 204 (R204) on the Transition from the Informal to the Formal Economy (ILO, 2015) adopted at the 104th session of the International Labour Conference (ILC) in Geneva in 2015.

Chapter IX of R204, on Implementation, says:

38. Members should give effect to the provisions of this Recommendation, in consultation with the most representative employers' and workers' organizations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy, by one or a combination of the following means, as appropriate;

- (a) national laws and regulations;*
- (b) collective agreements;*
- (c) policies and programmes;*
- (d) effective coordination among government bodies and other stakeholders;*
- (e) institutional capacity building and resource mobilization; and*
- (f) other measures consistent with national law and practice.*

39. Members should review on a regular basis, as appropriate, the effectiveness of policies and measures to facilitate the transition to the formal economy, in consultation with the most representative employers' and workers' organizations, which should include in their rank, according to national practice, representatives of membership-based

representative organizations of workers and economic units in the informal economy.

"Members" in this context means national governments, i.e. Member States of the ILO. While national trade union federations and national employer bodies are represented in ILO structures, they are not referred to as "members" but as "social partners". The responsibility for implementation thus rests primarily on Member States – ideally with proactive support from their social partners in employers' and workers' organizations, including representatives of membership-based organizations (MBOs) of workers and economic units in the informal economy.¹

In the 2015 meeting of the ILO Governing Body in its 325th Session (ILO Governing Body, 2015a), the formalization of the informal economy was declared an "area of critical importance", and the Governing Body asked the ILO Director General to communicate the efforts made to facilitate the transition from the informal to the formal economy to the governments of Member States and, through them, to the national employers' and workers' organizations and also to partner agencies in the multilateral system – and to draw on the Resolution when preparing programme and budget proposals and developing resource mobilization initiatives (ILO Governing Body, 2015b).

Member States were further encouraged to promote the implementation of R204 in their Decent Work Country Programmes.

In this brief, we tell of the efforts of organized workers in the informal economy to push the South African government to implement R204. It is a story of multiple players and changing strategies, of progress one day and disappointment and regression the next, of government officials reluctant to get out of their silos and comfort zones, and of the persistence and

¹ While WIEGO consistently uses the term "workers in informal employment", for the purpose of inclusivity; the author refers to "workers in the informal economy" throughout this brief in keeping with the terminology used in R204.

determination of workers in the informal economy. We consider the opportunities for other countries to replicate parts of the implementation that have succeeded in South Africa, as well as lessons for other countries in relation to parts that were not done well.

2. Challenges in Implementation

A conceptual challenge presents itself in finding ways to go beyond a limited understanding of formalizing small, medium and micro enterprises (SMMEs) through business registration, and relief for decent-work deficits through grants.

The most common – and narrow – approach to formalization is to simply register and tax informal operators and their economic units and activities. This approach reflects a dominant narrative about self-employed workers and economic units in the informal economy: the lack-of-compliance narrative, which argues that informal operators seek to avoid or evade registration, regulations and taxation. It also tends to overlook the large segment of the informal workforce that is wage employed.

Another common approach, sometimes adopted by trade unions of workers in the formal economy, diverts the labour market issues of workers in the informal economy to questions of social protection and seeks to address decent-work deficits through social grants.

While much reporting on formalization schemes or processes emerges from these limited approaches, neither has led anywhere near a comprehensive or sustained achievement since R204 was adopted.

Formalization needs to be a multi-pathway process, not a one-time registration procedure. It should involve a gradual extension of legal and social protections

in return for compliance with user-friendly regulations and progressive taxation. Drawing on the example of three cases of formalization of waste pickers – in Bogota (Colombia) (WIEGO, October 2021), Belo Horizonte (Brazil) (Inclusive Cities IEMS, 2013) and Pune (India) (WIEGO, February 2019), a comprehensive approach to formalization of waste pickers requires:

- A legal framework that recognizes access to waste as a livelihood resource.
- Provision of proper contracts (covenants, memoranda of understanding, and others) with payment for collection and reclaiming waste as an environmental service (“diversion rate”).
- Provision of infrastructure for sorting and capacity-building.
- Support to organizations of waste pickers to enable them to enter new competitive markets in the recycling chain and demand social protection, as well as programmes to address gender-related needs and risks (such as childcare).
- A platform that ensures fair representation and real voice and influence for waste pickers.

The key is that it needs to be a bottom-up approach with organized workers in the informal economy as proactive agents of the formalization they seek.

Practical Challenge – Universal Sustained Implementation

It is self-evident that the key to sustained implementation of R204 with workers’ full participation must be driven by a process of sustained social dialogue and collective negotiations in which workers and economic units in the informal economy are directly involved from the planning stages through to the ongoing process of implementation. This invariably involves multiple and often distinct partners.

Clause 16(a) of R204 (ILO, 2015) commits to respect, promote and realize “freedom of association and the effective recognition of the right to collective bargaining”. However, eight years on, workers in the informal economy are still fighting for this right, with the battle cry “Nothing For Us Without Us!”

This means direct inclusion of representative MBOs in collective negotiations. It also means different levels of negotiations – and negotiations are not merely consultations – that include tripartite mechanisms.

Clause 3(k) of the 2018 Conclusions concerning the second recurrent discussion on Social Dialogue and Tripartism (ILO, 2018) requires Member States, with the support of the ILO, to “develop innovative approaches, including initiatives to ensure the exercise of freedom of association and the effective recognition of the right to collective bargaining are extended to, and respected in, employment relationships where they have not traditionally been available, and to new and emerging forms of employment, and that those workers are able to enjoy the protection afforded to them under the applicable collective agreements, in accordance with applicable laws and national circumstances”.

This updated right is formally limited by the definition of collective bargaining in the 1981 ILO Convention 154, which still supercedes other ILO instruments. It defines collective bargaining as “negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other”, which has the effect of excluding own-account workers and any other workers who are not in an employment relationship – at least from the point of view of the ILO – from the right to collective bargaining with the relevant negotiations counterparts.

Therefore, organized workers in different sectors of the informal economy have based their approach on the 2018 Conclusions as

they prevail on the Member State of South Africa to implement R204 thoroughly and comprehensively in their interest.

3. South African Case

3.1 National-level social dialogue context

South Africa’s National Economic, Development and Labour Council (NEDLAC) was established in 1994, the year that South Africa was readmitted to the ILO as a member state after being expelled during apartheid rule. Because of the strong role of civil society in the overthrow of the apartheid regime, community organizations lobbied for inclusion in NEDLAC alongside the traditional social partners, i.e. government, business and labour. NEDLAC was thus constituted as a “tripartite-plus” structure, with a fourth constituency consisting of “members who represent organised community and development interests” known as the NEDLAC Community Constituency. When organized workers in the informal economy were lobbying for inclusion in national policy negotiations during the 1990s, the then Minister of Labour passed them off to the Community Constituency.

It was not the aim of these organized workers that tripartite collective bargaining structures accommodate them through adding a fourth social partner. Their intention has always been to be directly represented as part of the labour caucus or workers’ group, as has been the case in the ILC since the accreditation of StreetNet International and the International Domestic Workers’ Federation (IDWF). However, the South African labour movement was not ready to include representatives from organized MBOs of workers in the informal economy in their NEDLAC delegations, and so these workers had

to settle for using the space available to them, i.e. representation in NEDLAC via the Community Constituency.

3.2 Local-level social dialogue

In all South Africa's towns and cities, an important source of income is survivalist self-employment as well as work performed in small economic units.

The livelihoods of many of these workers, especially those who are self-employed and work in public spaces, depend – explicitly or implicitly – on the policies and practices of local authorities.

Examples of this dependency on local authorities are:

- Street vendors and outdoor hairdressers need allocated working spots, access to water and electricity, storage space and solid-waste collection services.
- Small-shop owners need basic infrastructure such as access to electricity and water, and solid-waste collection services.
- Waste pickers need access to public and private landfill sites, access to recyclable materials in the streets, and sorting and storage space.
- Fishers need access to fishing spaces, including piers and harbours.
- Minibus taxi drivers need taxi rank arrangements, and safe spots for picking up and dropping off passengers.
- Home-based artisans and other home-based self-employed workers, such as mechanics, need access to affordable basic infrastructure and space to work, and/or the appropriate land-use rights conferred on their places of business.

All these workers need access to toilets and potable water, as well as to well-lit public spaces, including streets. They also need some degree of regulation over access to entry to their line of work as a means of managing levels of competition.

On the other hand, the needs of local authorities include order and predictability in the growth and development of these types of work where growth might impact negatively on other public space users, and/or where government-owned land, such as road reserves and pavements, might be needed for more public infrastructure; cooperation in maintaining clean streets and public spaces, as well as clear storm-water drains through effective solid-waste management; controls over pavement and road congestion; and cooperation in preventing illicit work.

Local authorities also are expected to balance the needs of workers in the informal economy against the needs of the public who are also users of public space, as well as against the needs of formal businesses. A challenge is that the needs of workers in the informal economy and the needs of local authorities are not always compatible.

Municipal authorities sometimes assume that it is their prerogative to make decisions unilaterally “in the interests of all stakeholders”. However, unilateralism rarely works well. While public participation processes in local government are institutionalized, these formal processes often do not effect change. Therefore, a more accessible and effective form of participatory governance and democracy is needed at local government level.

3.3 Linking R204 and the ILO's Decent Work Country Programme

In September 2010, the first Decent Work Country Programme (DWCP) was signed in South Africa. It was agreed that this would be overseen by a tripartite-plus DWCP Steering Committee housed in NEDLAC, with the active participation of the Community Constituency. The DWCP Steering Committee focused on decent-work issues and programmes in the formal and informal economies.

In 2015, discussions were started for a second DWCP. A drafting committee did most of its work in 2016, yet after it had completed its draft a substantial addition had to be made because it made no mention of R204, which had been passed at the 104th session of the ILC in June 2015. The Community Constituency submitted the addition, which was supported by organized labour. The DWCP Steering Committee agreed in principle on the need for the addition – and the implementation of R204 became one of the six principal outcomes of the revised DWCP.

Early Days of R204

Moves towards transitioning to formality were already being claimed in relation to South Africa in the 325th session of the ILO Governing Body in November 2015, where the *“inclusion of business-enhancing measures within existing national strategies for formalization of micro- & small enterprises”* was noted (ILO Governing Body, 2015a).

First lesson: A false start was made in 2015 when the R204 national task team was established by the government and organizations of employers and workers in the formal economy, which excluded workers and economic units in the informal economy. When confronted about this by the NEDLAC Community Constituency at a meeting of the DWCP Steering Committee, a government representative said the intention was to invite these workers at a later stage. However, this task team did not meet again or do any work.

Nevertheless, in the 329th session of the ILO Governing Body, in March 2017 on progress made during the first year of implementation, the claims made in respect of South Africa included:

- “As a result of outcome 6 activities, several national action plans/roadmaps have been or are being formulated with

ILO support, such as ... the five-year master plan for KwaZulu-Natal Province in South Africa”.

- “Assistance was provided to Business Unity South Africa (BUSA) to develop an Enabling Environment for Sustainable Enterprises (EESE) assessment with a key focus on the transition to formality. The BUSA action plan was established to boost sustainable enterprises and the transition to formality, and a report was produced on the enabling environment of enterprises. BUSA engaged with the SME sector, informal businesses, the Government and organized labour for validating the documents produced”.
- “Interventions include: ... reviewing municipal social dialogue mechanisms in South Africa; ... supporting constituents in the organization of annual informal economy summits in South Africa; ... delivering events to share knowledge and generate concrete recommendations on enterprise formalization in the Caribbean and South Africa; ... collecting information on drivers that shape informality in enterprises in Cameroon and on perceptions among informal entrepreneurs with respect to the business environment in Zimbabwe and South Africa. A product on formalization of enterprises has also been developed and knowledge-sharing forums on this theme have been organized”.

Many of the claims about South Africa were, at best, very premature and, at worst, false. In July 2017, South African government officials were confronted about this at a meeting of the revived R204 national task team. They had no satisfactory explanation or justification for the inaccurate report to the ILO Governing Body. They expressed surprise that workers in informal employment had access to this information, which was on the ILO’s website (ILO Governing Body, 2017).

Second lesson: It is not unusual for Member States to make their optimistic intentions look like *fait accompli* in unilateral reports to their peers – and for this to go unnoticed.

Work on the implementation of R204 eventually started in mid-2017 after representatives of workers in informal employment were invited to participate in the R204 national task team as part of the NEDLAC Community Constituency.

Having done the preparatory work for R204 together, the Community Constituency and trade unions approached the ILO's country office in Pretoria to organize a workshop on how to promote its implementation after it was passed in 2015. This workshop was held in April 2016 and produced a detailed Action Plan for the implementation of R204 in respect of trade union federations, home-based workers and domestic workers, industrial workers in precarious employment, and urban informal workers, for presentation to government in the DWCP Steering Committee in NEDLAC.

The Community Constituency further approached the ILO Pretoria office for bilateral discussions about how to fast-track the implementation of R204 with the active participation of organized workers in the informal economy. Two proposals had been submitted by the constituency to the DWCP Steering Committee for R204's implementation – a programme of national interventions, with the Department of Labour as the lead Ministry; and capacity building for local government in five cities.

The ILO's Pretoria office responded favourably to the two proposals and was particularly pleased with the link the Community Constituency had made with the ILO's Future of Work centenary campaign in the national programme. ILO officials proposed working together on developing a 4- to 5-year programme with short-term, medium-term and long-term objectives.

The following two principles were agreed with regard to implementing R204. First, the Labour Ministry would be the lead government ministry, responsible for bringing in and coordinating with government departments, including the Department of Cooperative Governance and Traditional Affairs (CoGTA), the Department of Social Development, the Economic Development Department, and the Department of Small Business Development. Second, the implementation must involve work on all four pillars of decent work – promoting jobs and enterprise, guaranteeing rights at work, extending social protection and promoting social dialogue – and therefore cannot be reduced to an informal business upliftment programme led by the Department of Small Business Development.

It was agreed that a national tripartite-plus workshop on the implementation of ILO R204 would be convened, and this took place in May 2017, with the Community Constituency delegation including MBO leaders from various sectors in informal employment. A national (NEDLAC Community Constituency, February 2017) and a local government (NEDLAC Community Constituency, November 2016, and NEDLAC Community Constituency, June 2017) implementation programme were both adopted by the workshop, based on the draft plans submitted by the Community Constituency. In relation to the national implementation plan, the Community Constituency was then invited to join the R204 national task team that had been established in 2015 without the Community Constituency and had subsequently been inactive.

In addition to two Community Constituency members from the DWCP Steering Committee on the R204 national task team, which met quarterly, there was an extended national task team convened from time to time, to which all provinces

were invited as part of government's delegation, all NEDLAC-recognized trade union federations, and five Community Constituency representatives from five informal-work sectors: the South African Informal Traders Alliance (SAITA), the South African Waste Pickers Association (SAWPA), an organization of taxi drivers, conductors and washers, the KwaZulu-Natal Subsistence Fisherfolk Forum, and the KwaZulu-Natal Community Health Workers.

The R204 national task team had to oversee the Department of Labour's intergovernmental coordination at all levels, a programme of legal reform (a concept note for this was adopted in September 2017), a national dialogue on the informal economy and Future of Work, and the production of user-friendly materials on R204 to raise awareness of the Recommendation and related activities.

A legal reform technical sub-committee – consisting of one person per social partner constituency and a fifth person from the South African Law Reform Commission – was set up to start the legal reform work to align South African laws with R204 (NEDLAC Community Constituency, August 2017). The sub-committee reported to the R204 national task team, which reported to the DWCP Steering Committee.

During its lifespan, the task team convened the planned national dialogue in March 2018 in Durban and, using the dialogue's outcomes, developed a roadmap for the implementation of R204 (R204 National Task Team, September 2018). The first draft was presented to government officials for discussion in May 2018. Six months later, the Department of Cooperative Governance and Traditional Affairs and the South African Local Government Association (SALGA) convened a stakeholders' meeting, which did further work on the roadmap to make it more practically oriented to action plans. At their only meeting, in July 2018, the legal reform technical subcommittee developed

terms of reference for their work (R204 Legal Subcommittee, August 2018) and these were adopted by the task team the following month.

After South Africa's 2019 national elections, several departments merged or changed. The Department of Labour became the Department of Employment and Labour, the Economic Development Department merged with the Department of Trade and Industry to become the Department of Trade, Industry and Competition, and the Department of Environmental Affairs merged with the Department of Agriculture, Forestry and Fisheries to become the Department of Forestry, Fisheries and the Environment.

In 2019, the progress made by the R204 national task team seemed to stagnate. In a progress report to the Overall Convenor of the NEDLAC Community Constituency in September 2019, sticking points included that the legal reform subcommittee had been held back by the failure of government representatives to coordinate its work. It was therefore agreed that a formal request would be made to the Ministry of Justice to authorize the South African Law Reform Commission to take over the coordination responsibilities. Also, confusion had arisen in the NEDLAC Secretariat about the status of the R204 national task team with members not regarding it as part of their work programme. The DWCP Steering Committee reconfirmed at its 12 September 2019 meeting that the team was indeed a subcommittee of the Steering Committee, and the Executive Director of NEDLAC was asked to rectify this matter. Another problem was that there was insufficient secretarial capacity after the ILO stopped delivering this. And with the confusion over the status of the R204 national task team, the team's requests for assistance from the NEDLAC Secretariat were not directly responded to. The confusion also led to disagreement about how further meetings

of the task team were to be financed. It was hoped that by resolving the confusion, these problems would be overcome.

It also was becoming evident to the Community Constituency that the Department of Employment and Labour was not the most suitable government department to lead or coordinate work on the implementation of R204 at local government level. It noted that the Department of Employment and Labour had no experience or expertise in working with local government, and coordination between provincial and local government entities was in fact the constitutional responsibility of CoGTA – and maximum reach to municipalities could be achieved most effectively with the support of SALGA.

3.4 Role of social partners in implementation of R204

Government: As the lead department, the Department of Employment and Labour had been consistently bringing in other national government departments, including the Department of Small Business Development, CoGTA and SALGA, and finally the Department of Environmental Affairs. The Department of Social Development only attended one meeting, so it needed to be brought in more strongly because of the importance of social protection informalization. The Department of Employment and Labour was trying to bring in the Department of Transport as minibus-taxi drivers had been raising the importance of their involvement. It was necessary to become aligned with the Department of Trade, Industry and Competition for the economic development aspect of the department. The Department of Employment and Labour also attempted to bring in the National Treasury.

Business: Business took a project-based approach and developed a web tool for use by small businesses, but when this was

done, the R204 national task team was informed that there were no funds to apply it. The Community Constituency challenged business to organize the economic units in the business sector, which include micro-enterprises, and capacitate them to engage directly in collective negotiations with organizations of workers in informal employment. The Vice-President of the International Organisation of Employers, based in South Africa, was lobbied and seemed to be interested in this concept, but the Community Constituency was unable to get him to focus further attention on it in South Africa.

Labour: Labour supported Community Constituency proposals, but was not proactive. Bilaterals were organized to discuss issues related to the changing world of work in relation to implementation of R204. The Community Constituency also planned engagements with the South African Federation of Trade Unions (which was then outside of the NEDLAC labour caucus) on R204 and the Future of Work. However, implementation of R204 did not appear to be a priority to them either.

Community Constituency: The Community Constituency continued its leading role and helped the Department of Employment and Labour with some of the departmental contacts (for example, bringing the Department of Environmental Affairs on to the committee). It devoted much attention to coordinating with local and provincial government structures (including SALGA) with regard to local-level implementation of R204 – where implementation would actually take place.

Informal discussions were initiated with the National Treasury via the Deputy Minister about fiscal formalization (StreetNet International, November 2017) with the intention of finding a consensus with regard to a role for the Treasury in the R204 national task team. Also, informal discussions were pursued with the Deputy

Speaker of Parliament with the intention of aligning the outcomes of the task team's regulatory work with the objectives of the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change. None of these advocacy attempts got very far.

3.5 Local-government-level implementation roll-out

Although the local government level is largely where implementation needs to happen, it is extremely challenging to achieve sufficient reach into all the municipalities of the country. Hence, the Community Constituency saw the need to work with the Department of Cooperative Governance as lead government department on this, with the support of SALGA. When it raised this in the R204 national task team, it was not met with much enthusiasm by the national lead department, the Department of Employment and Labour. The Community Constituency realized that work with the relevant departments at provincial and local government level would need to be conducted in parallel with the R204 national task team's work focusing on national programmes, and that not much support for this ground-level of work – or even acknowledgement – should be expected from the task team.

Nevertheless, the Community Constituency continued to report regularly in the national task team on the bottom-up initiatives it was undertaking towards implementation of R204, including at local government level. It was hoped that eventually this work would be recognized as part of the team effort to improve conditions for workers and economic units in the informal economy.

The Community Constituency raised some resources from WIEGO, which in turn raised resources from the Friedrich-Ebert-Stiftung foundation for awareness-raising

support work, with a focus on MBOs of workers in the informal economy. These included a 2018 Johannesburg workshop on R204 attended by informal traders, waste pickers and Department of Economic Development City officials (organized by the Johannesburg Informal Traders Platform and the African Reclaimers Organisation), a 2019 Eastern Cape provincial workshop attended by representatives of informal traders, waste pickers, subsistence fisherpeople and the Eastern Cape Department of Economic Development, Environmental Affairs and Tourism in East London (WIEGO, March 2019a) and a 2019 Limpopo provincial workshop in Mokopane attended by representatives of informal traders, taxi drivers, community home-based care workers, the Congress of South African Trade Unions (COSATU), the South African Transport & Allied Workers Union (SATAWU), Mokgalakwena municipality, and provincial officials (WIEGO, March 2019b).

At the multi-stakeholder national workshop on R204 for representatives of informal traders, waste pickers, home-based workers – including community health workers, taxi drivers and subsistence fisherpeople, held in Durban in 2018, the roadmap developed by the R204 national task team was studied and priorities were identified for implementation (R204 National Task Team, October 2018). This was presented to the extended R204 national task team meeting in Durban later that year and adopted as implementation priorities. The following year, officials from CoGTA's Department of Cooperative Governance met with the Minister of Cooperative Governance and Traditional Affairs at a Presidential Jobs Summit and raised issues of lack of coordination between local and national government in relation to the integration of waste pickers in solid-waste management policy. The minister then requested a meeting with CoGTA's Department of Cooperative Governance and SALGA; representatives of the same worker groups that had gathered

in Durban in 2018 also attended this meeting. Also, negotiations skills training for Tshwane waste pickers, as part of WIEGO's Waste Integration in South Africa project, took place in August 2019 in preparation for engagement with Tshwane municipality and Department of Environmental Affairs officials the following month.

New work was initiated at local government level focusing on setting up negotiations forums for social dialogue on the implementation of R204. This included the development of terms of reference for a local government negotiations forum for the Tshwane municipality and organized waste pickers (City of Tshwane, November 2019), after which monthly meetings were instituted.

A City of Johannesburg workshop on R204 implementation in early 2020 (WIEGO, February 2020) aimed for representatives of workers in informal employment and City of Johannesburg government officials to understand the ILO Recommendation on the transition from the informal to the formal economy and to keep each other updated on what was happening in the different departments working with informal traders and waste pickers in Johannesburg. A report on the R204 national task team as well as on the roadmap for implementation was presented at the meeting. Workers in informal employment also engaged with representatives of relevant provincial and/or City of Johannesburg departments on key issues the workers had identified and discussed the creation of a negotiations forum for City departments to regularly meet with organized workers such as street vendors and informal traders, waste pickers and minibus-taxi drivers.

To get the buy-in of City of Johannesburg officials from different departments for the workshop, a briefing with senior officials in the Department of Economic Development and Department of Environment and

Infrastructure Development had to be convened first.

The workshop was attended by 24 informal trader representatives from organizations belonging to the Johannesburg Informal Traders' Platform and it succeeded in bringing on board government officials from City of Johannesburg departments (with Pikitup municipal waste company), the Gauteng Department of Economic Development, SALGA and the national Department of Employment and Labour. A draft workplan was produced and scheduled to start on 18 March 2020. But this was put on hold with the announcement of the COVID-19 lockdown.

A provincial workshop in Mpumalanga with similar aims for representatives of workers in informal employment and government officials in the province, districts and municipalities, was held a few weeks after the Johannesburg workshop and was attended by 19 street vendor and informal trader leaders from Bushbuck Ridge, Mbombela, Nkomazi and Thaba Chewu in the eHlanzeni district; from eMalahleni and Steve Tshwete in the Nkangala district; and from Amsterdam, Piet Retief and Secunda in the Gert Sibande district. Two domestic workers also attended, and five officials from COSATU, the South African Domestic Services & Allied Workers Union (SADSAWU) and the South African Commercial, Catering & Allied Workers Union. In addition, government officials attended from Mbombela, Nkomazi and Thaba Chewu municipalities, eHlanzeni district, and the national Department of Employment and Labour. A skeleton draft workplan for the establishment of negotiations forums in municipalities was developed by the participants. It was sent to all participants for comments and fine-tuning, with the intention of submitting it to the relevant government departments and governance structures for integration into their overall workplans for 2020. This was intended to form the basis of a Mbombela/Mpumalanga

local government R204 pilot activity agreed with SALGA.

For this work on the ground to feed into the R204 national task team process, the Community Constituency relied on the team's continuity in coordinating with the other social partners and making progress in achieving the integrated policy frameworks detailed in Chapter III of R204 (ILO, 2015).

3.6 The impact of the COVID-19 crisis on implementation of R204

Work on implementation of R204 was interrupted by the COVID-19 pandemic and national lockdowns that began on 26 March 2020 – before any discussion among the social partners in the DWCP Steering Committee about how the DWCP should repurpose itself. The Community Constituency insisted that the Steering Committee should continue its meetings online as soon as the government had developed the capacity to hold virtual meetings.

The DWCP Steering Committee was asked to consider repurposing the Decent Work Country Programme for post-COVID-19 economic recovery and restructuring the 2020 workplan accordingly; repurposing the proposed Future of Work programme; and revisiting the R204 national task team with a view to finding ways to support and restructure the informal economy in post-COVID-19 economic recovery, including with more meaningful and participatory local economic development.

The Executive Director of NEDLAC moved fast to get weekly meetings of a COVID-19 Rapid Response Task Team going, and the Community Constituency was very active in these meetings.

This proved to be an effective space for raising the problems of workers in the informal economy and for engaging directly with the decisions being made about

pandemic lockdowns. Due to interventions by the Community Constituency in this newly opened virtual space, informal food vendors were allowed back to work as from 4 April 2020, in recognition of their essential role in food security, and waste pickers were allowed back to work in May during the hard lockdown; subsistence fishers were allowed back to work a month later, and progressively more informal traders and workers from different sectors of the informal economy were able to go back to work under various levels of eased lockdown. For those who were not able to go back to work, a Special COVID-19 Social Relief of Distress grant of ZAR350 per month was announced at the end of April, and payouts began in mid-June 2020. This grant was extended repeatedly.

Before most workers in the informal economy could go back to work (and before the special grant kicked in), many depended on food and cash relief – but were largely unable to access it. Whatever savings they had were used up during this time.

Workers in the informal economy who went back to work found their markets changed and were not able to make the same income as before COVID-19. Waste pickers found that prices for the materials they collect had dropped. Street vendors found that their customer base had less money because they had lost jobs.

Workers in different sectors of the informal economy who work in public space found their workspace greatly changed due to the health concerns in these spaces and developed demands that would stop police and other enforcement officials harassing traders and confiscating their goods; facilitate safe trading; simplify licensing and suspend trading fees; and provide income support and cash grants to facilitate business re-establishment.

In relation to continuing the implementation of R204, the Community Constituency argued that the core function of the R204

national task team should be to ensure that the transition from informal to formal economy was fast-tracked in the processes of post-lockdown economic recovery in line with the exigencies of decent work and R204's guiding principles. It pointed out that failure to do this could result in increasing informalization, with workers and economic units in the informal economy in danger of being relegated to the role of permanent grant recipients.

The Community Constituency argued that the R204 task team should position itself to guide the team of government departments coordinated through the Department of Employment and Labour – mindful of the fact that economic activity in the informal economy can be revived faster than large formal businesses that have collapsed. Interventions were needed to ensure that such start-ups were not obstructed by red tape. This needed to be done firstly by the entire R204 national task team familiarizing itself with the fast pace of developments, and then as a team re-purposing to:

- Monitor the progress of the lifting of lockdown restrictions on the work of workers and economic units in the informal economy.
- Monitor the implementation of health measures for getting workers in informal employment back to work safely, as part of the process of reviving the economy.
- Intervene to ensure access of domestic workers to Unemployment Insurance Fund benefits and employer compliance with the Sectoral Determination for domestic workers, i.e. implementation of existing legislation – determine the obstacles to proper implementation and initiate appropriate intervention(s) to overcome these.
- Intervene to ensure employer compliance with the Sectoral Determination in the minibus taxi

industry, starting with a drive for the registration of all their drivers and registration with the Unemployment Insurance Fund. This would be another intervention for the implementation of what is already legislated.

- Develop means and guidelines for making workers and economic units in the informal economy central to the re-building of local value chains.
- Develop means and guidelines for supporting the role of workers in the informal economy in post-COVID-19 economic recovery.
- Consider the pilot work on implementation of R204, which had already started at local and provincial government level, and develop an approach to monitor local and provincial government progress in relation to the distinct processes of economic recovery in different provinces and municipalities.
- Engage Treasury on budget allocations for the phased lifting of lockdown restrictions on the work of workers and economic units in the informal economy.

It was agreed that the national task team would focus on ways of supporting and restructuring the informal economy post-pandemic, with more meaningful and participatory local economic development. The team's regular meetings, which had restarted in April 2020, became monthly instead of quarterly. The roadmap was repurposed with a revised one-year work plan for 2020/2021: Roadmap to Facilitate Transitions from the Informal to the Formal Economy (R204 National Task Team, June 2020). After an extensive and inspiring meeting on 8 October 2020, the R204 national task team met again on 10 December 2020 – and this meeting turned out to be its last, despite many lobbying and advocacy attempts.

The Department of Employment and Labour failed to keep up the momentum

or convene any further meetings. Without consulting the Community Constituency, at the DWCP Steering Committee's meeting on 12 April 2021, the department unexpectedly proposed that the R204 national task team be "converted into a project". The Community Constituency opposed this proposal, but organized Business and Labour merely requested an opportunity to consult their constituencies and revert with their replies. The meeting agreed to establish a two-a-side team to discuss proposals, including one from the Community Constituency to revive and sustain the work of the repurposed R204 national task team, and to try to find an amicable solution. The Community Constituency submitted their proposal with a renewed one-year workplan for 2021/2022 (NEDLAC Community Constituency, April 2021) but the two-a-side meeting was never convened.

The end-of-2020 retirement of the principal organized labour representative in the R204 national task team meant that the team lost the continuity of the labour representation it had always had and, with it, the support from organized Labour that the Community Constituency had been able to count on. The R204 national task team thus became a casualty of the other social partners' lack of sustained interest in implementing R204.

The Community Constituency realized that it would have to shoulder the responsibility of continuing the work, along with those government entities still showing some political will in response to pressure from organizations of workers in the informal economy. These were the Department of Forestry, Fisheries and Environment, which had maintained its commitment to work on the integration of waste pickers into solid-waste management systems, and the Local Economic Development department of SALGA. With the increased recognition of the plight of workers in the informal economy during the pandemic, space in the NEDLAC COVID-19 response meetings

had opened up to raise issues pertinent to the implementation of R204. It had become clear that working on the implementation of R204 in a more direct and decentralized way might be more strategic than trying to flog the dead horse that the R204 national task team had become after its three-year spurt of foundational activity.

Changing Gear – A *luta continua!*

As disappointing as the shutting down of the R204 national task team was – before it had completed its work and before it had even started the work on legal reforms required to align South African laws with the ILO Recommendation to which the government's lead department had committed with such fanfare in 2018 – a consciousness of R204 was by now blazing among many organized workers in the informal economy and also among many provincial, district and municipal officials around the country. After all, the R204 national task team structure had been only the means to an end. And workers in the informal economy, who are characterized by their resilience in the face of adversity, were not about to give up their struggle for rights-based transitions from the informal to formal economy.

Some of the work done outside of the R204 national task team with regard to inclusive policy development for application at local government level had borne fruit and given workers in some sectors of the informal economy guidelines as a tool for achieving their most important demands. These were "Waste Picker Integration Guideline for South Africa: Building the recycling economy and improving livelihoods through integration of the informal sector" for waste pickers (DEFF and DSI, August 2020), and "Public Space Trading Guidelines for Local Government 2021-2026" for street vendors and other informal traders (SALGA, 2021). Both guidelines resulted from inclusive and participatory processes and therefore reflect the needs and demands of the workers

in these sectors in a way that unilaterally prepared guidelines do not. However, much work is still needed to popularize these guidelines and get them implemented by all local authorities in the country. This is where the efforts to implement R204 are now focused, at least for these two sectors of the informal economy.

Importance of Collective Bargaining

As noted at the beginning of this brief: It is self-evident that the key to sustained implementation of R204, with full participation by workers and economic units in the informal economy for the formalization they want, has to be driven by a process of sustained social dialogue and collective negotiations in which these workers are directly involved from the planning stages through to the ongoing process of implementation. How has this been done in the case of South Africa?

Firstly, it is self-evident that meaningful collective bargaining with workers and economic units in the informal economy is not the kind of collective bargaining as defined in the 1981 ILO Convention 154, which narrowly defines collective bargaining as *“negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other”*. This would exclude negotiations between own-account workers and other workers in the informal economy with the negotiating counterparts on whom they are economically dependent in other ways than through an employment relationship.

Here we are talking about collective bargaining as referred to in Clause 3(k) of the ILO’s 2018 Conclusions concerning the second recurrent discussion on social dialogue and tripartism (ILO, 2018), which requires Member States to *“develop innovative approaches, including initiatives to ensure the exercise of freedom*

of association and the effective recognition of the right to collective bargaining are extended to, and respected in, employment relationships where they have not traditionally been available, and to new and emerging forms of employment, and that those workers are able to enjoy the protection afforded to them under the applicable collective agreements, in accordance with applicable laws and national circumstances”.

National-level collective bargaining has been conducted in the NEDLAC space in South Africa, through the council’s Community Constituency, as described. However, this space is not sufficiently secured for the sustained participation of workers and economic units in the informal economy in national negotiations. It took the national economic crises accompanying the COVID-19 pandemic, a mass uprising and looting spree in July 2021, and devastating floods in April 2022 for the economic inequality and social distress of workers in the informal economy to be publicly acknowledged by politicians and decision-makers and regarded as an issue that must be addressed for the benefit of the nation. The narrative of *“leaving no one behind”* has taken root, and it has become possible for some of the leaders of workers in the informal economy to find a place at the national negotiating table, albeit in NEDLAC subcommittees that report to NEDLAC Chambers that members of the Community Constituency are still excluded from.

Local-level collective bargaining – there is uneven progress in the establishment of negotiating forums across municipalities in South Africa. Usually in municipal social dialogue forums it is easier to make short-term breakthroughs than to sustain a practice of social dialogue. Because local government is generally not accustomed to processes of collective negotiations (other than with municipal employees) and, in most countries, there are no statutory negotiations forums at local government level, a lot of work is needed for practices

of collective negotiations to take root and then be sustained.

In two South African cities, negotiations forums with organized workers in informal employment have been undermined by political changes in coalition governments. In Tshwane, a negotiations forum with waste pickers established in November 2019 was first disrupted by COVID-19 lockdowns in 2020, then revived in 2022, and again collapsed while the ruling city coalition was changing guard. In Nelson Mandela Bay, the municipality started off on a very good footing with street vendors and informal traders during the pandemic, instituting monthly meetings with the local committee and quarterly stakeholder meetings involving provincial and district officials. Then, in 2022, a new Mayor from a new political party was installed – and the new officials that accompanied the Mayor in the coalition change apparently had no interest in negotiating with informal traders or continuing the good work started by their predecessors.

This lack of continuity in local government processes is one of the biggest challenges in implementation at local government level.

In the medium term, organized workers in the informal economy have to pressure the authorities to meet with them on a regular monthly or bi-monthly basis, and use the meetings for both parties to table plans, developments or other matters for discussion.

4. Lessons for Other Countries from the South African Example

This case presents several lessons for other countries. It is recommended that the Decent Work Country Programmes be adapted and used to prioritize implementation of R204 – with the representatives of workers and economic

units in the informal economy fully involved in the monitoring of the DWCP implementation. Currently, this appears to be an underused space for more thorough implementation of R204 in most countries.

It is not recommended that tripartite-plus national negotiating structures be set up. The experience of the NEDLAC Community Constituency in South Africa being the “Cinderella” constituency in NEDLAC, barred from participation in three of the four NEDLAC Chambers (Finance & Fiscal Chamber, Labour Market Chamber and Trade & Industry Chamber, with participation allowed only in the Development Chamber) has shown that this is not the way to go. Rather, the labour movement needs to be approached by organized workers in the informal economy and asked to restructure itself to enable full representation by leaders of workers in the informal economy at every level and in every forum in which the labour movement is represented.

Consensus needs to be reached between social partners about coordination between government departments, between different levels of government, which department(s) will lead and which will be the interface with workers and economic units in the informal economy, and how this is to be achieved. Lack of coordination between different government departments is one of the most common ways for Member States to (intentionally or unintentionally) sabotage their progress in the implementation of R204.

It should be anticipated that the mechanisms needed for coordinating work with local government may be different from those needed to coordinate work with national government. This should be factored into planning for multi-pronged work with different levels of government at the same time.

Unilateral reports of implementation progress by Member States should only

be believed when there is independent verification/triangulation from the intended beneficiaries, i.e, workers and economic units in the informal economy. Otherwise, such reports could be little more than self-congratulatory tick-box exercises.

Punitive, or simply unilaterally developed, actions by authorities in the name of “formalization”, “modernization”, “Smart Cities”, etc, should be regarded with healthy suspicion. Workers call this “shaving our heads in our absence”.

It is much easier for government officials to express commitment to involve workers in their implementation plans than to actually do it. Many government officials are not sufficiently familiar with the MBOs of workers and economic units in the informal economy even to know how to approach them – especially independent MBOs that were not set up by government. However, with efforts such as inviting officials to participate in what would traditionally be worker-only training workshops, it is possible to shift their thinking and understanding.

Workers and economic units in the informal economy need to work directly with local government. Work done with national government will not trickle down to local level. Many local government authorities know about R204 only because of direct and incessant reminding by worker leaders in the informal economy.

Dialogue platforms at local government level could be set up with agreed rules established for regular meetings (ToRs or MoUs signed by both parties), with both sides sticking to the rules. Being prepared to change strategy is essential – if an agreed dialogue structure proves unworkable, as in the case of the R204 national task team, know when to let it go and shift focus to other levels of engagement.

Barriers such as excessive bureaucracy, overly stringent or expensive compliance

requirements should be watched out for and removed.

It is important to remember that the fight is never over. Every time government makes a step forward, it does not mean it will sustain those temporary gains. The other social partners (big Business and Labour) do not have the same vested interest in implementing R204 as the workers and economic units in the informal economy and, therefore, they are prone to losing interest, often without warning and when least expected.

Role of MBOs of workers and economic units in the informal economy

Organizations of workers in the informal economy must not wait for governments to start the process of implementing R204 or to be invited to participate. Initiate implementation from the bottom up to entrench the practice of Nothing For Us Without Us!

It is essential to report back regularly to members. Membership-based organizations cannot afford to fail to do this, because leaders then risk being seen as collaborators in applying inappropriate top-down policies and measures. MBO members must be involved every step of the way.

From the start of the planning stage, there must be inclusive involvement in every new development. MBOs should develop guidelines jointly with authorities – and cooperate in the implementation of the resultant inclusive guidelines.

MBOs need to find ways to get their organizations’ leaders into national tripartite negotiating forums to directly represent the interests of workers in the informal economy in national policy issues.

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About WIEGO

Women in Informal Employment: Globalizing and Organizing (WIEGO) is a global network focused on empowering the working poor, especially women, in the informal economy to secure their livelihoods. We believe all workers should have equal economic opportunities, rights, protection and voice. WIEGO promotes change by improving statistics and expanding knowledge on the informal economy, building networks and capacity among informal worker organizations and, jointly with the networks and organizations, influencing local, national and international policies. Visit www.wiego.org.