Understanding the problem:
A South African policy reflection on the social protection of unauthorised migrant workers
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ABSTRACT
Social protection is a fundamental human right; yet a great proportion, about 80 percent, of the world's working-age population (and their families) has no access to social security. This trend is undoubtedly worse when observed in individual countries. In South Africa specifically, there appears to be a social protection gap. Domestically, work-related social protection coverage is concentrated in the formal economy (i.e. on formal sector workers) and when it is not, nationality or residency is a key requirement for access. Such restrictive provisions unfavourably impact on the social security rights of many foreign workers in the country. The situation is particularly severe for unauthorised or irregular migrants as they are categorically precluded from any legal coverage owing to their precarious legal status. The exclusionary nature of the welfare policy highlights a complex interplay between immigration, labour and social security laws when considered in the context of clandestine labour migration. Research suggests that the level of social and labour protection that a foreigner can enjoy is directly related to his/her immigration status. Thus, the more tenuous one's immigration status is the more barriers to access to social protection. The legal disparity in access to social protection raises issues of serious human rights concerns; especially considering the fact that the main purpose of social protection is to protect the most vulnerable members of a society. Short of completely eroding the power of policy makers, it is important to ensure that immigration, labour, and social security laws are carefully juxtaposed so as to ensure that while the state is exercising its territorial right, it will still ensure that everyone's right to access fundamental social and labour rights are given effect. A fair balance of these laws needs to be struck if we are to manage migration effectively to the benefit of all stakeholders. The paper argues offers a pragmatic argument for promoting the rights of unauthorised migrant based on a structural analysis of clandestine migration trend.

CONCLUSION
The categorical preclusion of these migrants from social security law is concerning given contemporary conception of social protection has evolved beyond simply reducing poverty or managing risks to include a transformative element intended to shield people against social risks such as discrimination or abuse. Analysis of immigration policy reveals an implicit clandestine invitation that give rise to irregular guests needing special hospitality. Transformative social protection requires legal and regulatory reforms in order to assist these and other workers locked in exploitative relationships.

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