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Exploring the legal context of informal trade in South Africa

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1. Purpose of the study

The purpose of the study is threefold. To provide

- important information about relevant legal measures that support informal trade in South Africa
- succinct analytical insights into the content and impact of policy statements on informal trade
- information about existing spaces for citizenship participation that informal traders can use to advance demands and to claim rights

ESSET will use the data to produce educational material for raising awareness amongst informal traders, especially women informal traders, of the South African national and local legal environment in which informal trade, particularly street and market trade, is taking place and of the relevant participatory space in the South African public sphere for informal traders.

Limitations of the study

My literature search was unable to locate existing analytical studies that track the implementation of the abovementioned policy statements and so I relied on studies that were conducted after their adoption for possible indications of their impact. In addition, no policy was found in the Rustenburg local municipality and so I looked at the city's street trading by-laws.

2. Introduction

One of the main themes of discussions on the informal economy concerns government intervention in the informal economy. In this regard, Chen et al (2001) indicates that there are those (mainly orthodox economists) who oppose government intervention based on an untenable freemarket position that it would distort the economy or on the premise that the informal economy is ephemeral – that it will disappear as the formal economy grows.¹ On the other hand, those who support intervention feel that it will address concerns over equity in the context of pervasive unequal relations between men and women in the economy and the market place or that it would enhance the growth of the informal economy and the productivity of its inhabitants.²

Evidence of causes of informality, especially here in Africa, validates the idea that the informal economy is here to stay³. In sum, it suggests that the unemployed and the working poor (majority women) in most African countries are still suffering from the economic misery that the structural adjustments programmes of the 1980s and 1990s have visited on them⁴. Economic restructuring has generated formal economy employment policies that are out of sync with the human development capabilities of poor people. Meanwhile, the structure of the economy and the market place continues to favour men⁵. Thus, in the absence of sufficient wage employment or low paid jobs, the informal economy will remain an alternative field of activity to earn or eke out a living for most of the world's unemployed and working poor people (especially women), who huddle in-and-around cities. The real debate is therefore not about whether a legal framework is needed or not, but about the appropriate one for increasing the productivity of those operating in the informal economy to boost their incomes. In the case of street or market traders, this would mean being able to sell large quantities of goods.

Meanwhile, it is safe to surmise that a legal framework generally represents the government's stance towards the informal economy⁶ and that it shapes the environment in which informal traders operate. That is, punitive or restrictive legal measures that encourage eviction and containment will engender an environment that either criminalises or inhibit the growth and sustainability of informal economic

¹ Chen, M.A., Lund, F. & Jhabvala, R. (2001) Supporting Workers in the Informal Economy: A Policy Framework, paper prepared for the ILO Task Force on the Informal Economy, Nov. 2001, www.wiego.org/papers/policypaper. pp.18

² Ibid, pp.18

³ Heintz, J. & Valodia, I. (2008) Informality in Africa: A Review, paper prepared for SIDA by the WIEGO Network, http://www.wiego.org/publications/SIDA_regional_reviews

⁴ Skinner, C. (2008) Street Trade in Africa: A Review, Working Paper No.51, www.wiego.org/program_areas, pp.9

⁵ Heintz & Valodia *ibid*

⁶ Chen et al, *ibid*, pp.21

activities, such as street or market trade. For example, Mitullah's synthesis of empirical studies on street vending in African cities found that most local authorities are using restrictive and punitive policy measures to control street trade, leading to widespread harassment and evictions of street traders⁷. Skinner (2008), quoting Potts (2007), indicates that 75 000 street traders were unable to work during the Zimbabwean government's clean-up operation called 'Operation Murambatsvina', in May 2005.⁸The Operation targeted the trading sites of street traders and urban informal settlement.⁹ Many Zimbabwean street traders thus lost both their homes and livelihoods during this time.

On the other hand, promotive legal measures¹⁰ that recognise the informal economy as a constitutive element of local economic development and commit local authorities to support and protect informal traders will create a facilitating or enabling environment, in which the urban poor are able to earn a living, whilst contributing to the health of the municipal fiscus. However, a legal framework could also contain a combination of restrictive and/or punitive and promotive measures that engender both an open and closed informal economy environment, which reflects a contradictory government stance. Meanwhile, subdued implementation approaches could undermine the progressive cast of policy statements on the informal economy.

In this context, the following sections will present a broad-brush overview of the legal context of the South African informal economy and makes critical sense of the content and impact of the policy statements of the City of Johannesburg, the Rustenburg Municipality and the eThekweni Municipality. The discussion is structured as follows:

- Section four highlights relevant legislation for and policies on the informal economy in South Africa as well as spaces for citizenship participation that informal traders can use to make demands and to claim rights.
- Section five analyses the content and the impact of the City of Johannesburg's informal trading policy, The Rustenburg Municipality's street-trading by-laws and the eThekweni Municipality's informal economy policy.

⁷ Mitullah, W.V. (2003) Street Vending in African Cities: A Synthesis of Empirical Findings from Kenya, Cote D'Ivoire, Ghana, Zimbabwe, Uganda and South Africa: Background paper for the 2005 World Development Report, 16 August, www.wiego.org

⁸ Ibid, pp.13

⁹ Ibid, pp.13

¹⁰ Borrowed this term from Martha Chen (2001)

4.1. The legal framework for the informal economy in South Africa

The following are some relevant legislation and policies that embody the legal framework for the informal economy in South Africa.

- **Section 22 of the Constitution** guarantees the right of every citizen to choose freely his or her trade or occupation, which might be regulated by law.
- **Section 152 (1) of the Constitution** provides for the involvement of communities in matters of local government. The objective is to stimulate community participation in governance.
- **Sections 26 and 27 of the Constitution** provide for a substantive element of socio-economic rights which informal traders are entitled to as poor members of the South African society. These rights include access to adequate housing, health care, water and sanitation. And, even though no explicit provision is made for electricity, it is inconceivable that the right to adequate housing will be realised without electricity. It is thus an implicit right.
- **The Business Act of 1991** explicitly cites locations where local government restrictions cannot be imposed on those who engage in food and perishable food trade, amongst other. The Act empowers a local authority to make by-laws that regulate informal trade, especially street and market trade, near parks, gardens, state-owned buildings, museums, churches, etc. However, the Act recommends that the local authority first consider the effect on business in the case of a by-law or regulation that will restrict trading in an area where large numbers of informal traders operate. In such cases, the Act encourages the local authority to negotiate with the informal traders before instituting a restrictive by-law or regulation.
- **The White Paper on National Strategy for the Development and Promotion of Small Business in South Africa of 1995** commits government's legal interventions and other resources towards creating an enabling environment in which small and survivalist enterprises can contribute to economic development in conjunction with bigger enterprises. It recommends literacy and entrepreneurial awareness as two important interventions for survivalist enterprises. In the foreword of the national strategy, small businesses are recognised as an important platform for job creation in the context of mass

unemployment and underemployment. To this end, the main objectives of the strategy are:

1. to create an enabling environment for small enterprises,
2. facilitate greater education of income, wealth and earning opportunities,
3. address the legacy of apartheid-based disempowerment of black business,
4. support the advancement of women in all business sectors,
5. create long-term jobs,
6. stimulate sector-focused economic growth,
7. strengthen cohesion between small enterprises,
8. level the playing fields between smaller and bigger businesses as well as between rural and urban businesses and;
9. prepare small businesses to comply with the challenges of an internationally competitive economy.

➤ **The Green Paper on a Skills Development Strategy for Economic and Employment Growth in South Africa of 1997** identifies small enterprises as part of an overall vision for skills development. Its focus on very small enterprises is based on notions of sustainability for self-employment and increased standards of living. The objectives of the strategy in relation to target groups are:

1. -to support target groups to enter regular employment or to sustain micro-level income generating activities,
2. -to support the establishment of viable small and micro-enterprises and
3. -to increase access to entry-level education and training

➤ **The eThekweni Informal Economy Policy of 2001** highlights, inter alia, the following challenges as key impediments to work in the informal economy: cumbersome, complex and costly licensing and permit procedures, negative perceptions (stigmas) of work in the informal economy, tensions around the status of foreign informal traders, relations between formal and informal businesses and in-fighting in organisations of informal traders. To address these and other challenges, the policy recommends a holistic and integrated approach to addressing the informal economy, including recognition, access and support. In addition, it recognises the right to work of informal traders, the links between the formal and informal economy and sees informal economic activities as local job creation initiatives. It sets out the payment procedures and conditions for rentals of urban public trading spaces. Moreover, the policy indicates that very small and survivalist enterprises are receiving very little support from the national SMME policy. Thus, the policy stresses access to basic social infrastructure, area-based development and

management, sector-based support for small informal economy enterprises and individuals engaging in survivalist activities. In addition, it emphasises inclusive participatory planning and policy as well as capacity building for informal economy organisations or associations.

- **The KZN Green Paper on the Informal Economy of 2003** recognises the informal economy as a permanent part of the broader economy. It highlights the lack of an overall vision and policy on the informal economy and the paucity of a cohesive legal framework between the different spheres of government. It also encourages an area-based management system, sector-based support to particularly small and survivalist enterprises as well as capacity building for informal economy organisations or associations. Importantly, it stresses that informal economy interventions have to be gender sensitive. It advocates for the establishment of a Provincial Authority that will be responsible for coordinating informal economy activities and promoting participatory governance on informal economy policy. In addition, the Green Paper calls for the informal economy to be integrated in municipal IDP programmes and commits the Province to providing financial support and skills training to those operating in the informal economy.
- **The Growth and Development Summit Agreement of 2003** commits the NEDLAC social partners –government, business, labour and communities - to contribute to and support local economic development in local governments. In this regard, the NEDLAC social partners identified local government as the most relevant platform to support small and micro enterprises. Thus, they agreed that mechanisms should be explored that make it easier for SMMEs to tender for local government work and that Multi-Purpose Community Centres be used to support the development of SMMEs and cooperatives.
- **The City of Johannesburg’s Informal Trading Policy of 2006** is anchored in the following six principles: the proactive absorption of the poor, balanced and shared growth, facilitated social security and mobility, settlement restructuring, sustainable and environmental justice and innovative governance solutions. Based on these principles, the policy commits the city to create job and entrepreneurial opportunities within the informal trading sector, to facilitate the migration of informal enterprises into the formal economy and to build a positive relationship between formal and informal enterprises.

To this end, the policy recommends the creation of a holistic and integrated environment for informal trade in the CoJ, including recognition, access and support. It defines informal trade as trading in legal goods in locations designated for informal trade. The focus of spatial development will be on upgrading blighted and poorly serviced urban informal trading spaces. And, it commits the city to consult with the Metropolitan Trading Council (MTC) on infrastructure development interventions. In addition, the policy provides for the issuing of a smart card that (1) identifies individual traders as legal informal traders, (2) names their designated trading locations and (3) specify the rental amounts payable to the city. Moreover, it calls for the establishment of an Informal Trading Chamber as a platform for dialogue between formal and informal traders and the city.

The policy seeks to establish compliance and cohesion between the informal trading policy and other national and local pieces of legislation and policy, such as the Business Act of 1991, the Noise Control Regulations No.75 promulgated under the Environmental Conservation Act 73 of 1989, public health by-laws and street trading by-laws, etc. The implementation of the policy is primarily the responsibility of the city's Department of Economic Development, who is in charge of the demarcation of trading spaces, the Metropolitan Trading Company (MTC), who deals with the administration and management of informal trade in the city, and the Johannesburg Metro Police Department (JMPD), who tends to law enforcement. Other city departments and entities responsible are the Department of Environmental Health (DEH), the Johannesburg Fresh Produce Market (JFPM) and the Johannesburg Development Agency (JDA).

4.2. Spaces for citizenship participation

4.2.1 Informal trader participatory forums: These are the most important participatory spaces, as they were specifically created to facilitate interaction between informal traders and their local authorities on issues of urban governance policy and practice, such as the Johannesburg Informal Trading Forum and the eThekweni Informal Economy Forum. In Johannesburg, the purpose of the Informal Trading Forum is four-fold:

1. to serve as a multi representative, collective and united body of business in Johannesburg informal trading

2. to provide guidance, oversight and advisory support towards policy and by-law review processes where necessary as well as effective and successful implementation of the informal trading policy.
3. to become a legitimate institutional and coordination instrument through which the City, government and other development institutions would be able to engage with business formations in the City of Johannesburg.
4. to provide guidance, oversight and advisory support towards the effective and successful implementation of the Informal Trading Policy and by-law framework.

The responsibilities of the Informal Trading Forum are, amongst other, to assist in overseeing the implementation of the Informal Trading Policy, review process and programmes including by-law enforcement

1. provide a platform for dialogue between all actors in the informal sector of the City of Johannesburg
2. provide an opportunity for a wide discussion on key issues of Informal sector importance in economic development for the informal sector, advise on resource requirements needed for the infrastructure developmental needs and implementation of the policy framework
3. advocate for the integration of informal sector development with other City strategies and plans
4. assist in ensuring that the management of the informal trading brings together various role players critical to the successful execution of the all the informal trading programme
5. assist in reviewing the informal sector programmes / policies operational circumstances dictate and encourage formal business-wide coordination and support of the informal trading policy and strategies

The city's Department of Economic Development (DED) coordinates the activities of the Forum.

4.2.2 Informal trading by-laws: A by-law is a municipal regulatory law within a specific area¹¹. Thus, an informal trading by-law regulates the business of informal trade within a specific jurisdiction. As mentioned, Section 152 (2) of the Constitution commits local authorities to involve communities in matters of local government and so, amongst other, provides the legal basis for the participation of informal traders in the making of informal trading by-laws.

¹¹ <http://en.wikipedia.org/wiki/By-law>

4.2.3 Integrated Development Planning (IDP): An IDP is a development plan that specifies the spending priorities of a municipality for a 5-year period. The Municipal Systems Act (2000) commits municipalities to consult local communities on their development needs and priorities and provides for the involvement of local communities in the drafting of an IDP. According to the Act, the Municipal Executive Committee or the Executive Mayor is responsible for managing the drafting process. Communities participate in an IDP representative forum, which is made of the Executive Mayor, Executive Committee members, representatives of community organisations, etc.

4.2.4 Ward committee: The establishment of ward committees is provided for in Chapter 4 of the Municipal Structures Act (1998). According to the Act, ward committees could be established in each ward of a Category A or Category B municipality, if the municipality so chooses, though, of late government has been suggesting that the ward committee system be made compulsory for all municipalities. These forums are expected to be representative and enhance community participation in IDP processes. Ward committees are defined as important communicative channels for informing municipalities about the needs, preferences and problems of their communities. They are mandated to facilitate substantive grass roots participation in the development processes of municipalities, including the Integrated Development Planning (IDP), budgeting and municipal performance management processes. They are meant to be non-partisan and advance the interests of the ward collectively.

5. Exploring the content and impact of the policy statements of the eThekweni Municipality and the City of Johannesburg

5.1 The case of the City of Johannesburg

In the preamble of its informal trading policy statement, the city acknowledges that informal trade contributes to job creation and poverty alleviation. The policy is grounded in the city's 2030 vision of creating a world-class African city. It reads as follows:

'This will be a city of opportunity where the benefits of balanced economic growth will be shared in a way that enables all residents to gain access to the ladder of prosperity, and where the poor, vulnerable and excluded will be supported out of poverty to realize upward social mobility. The result will be a more equitable and spatially integrated city, very different from the divided city of the past. In this world-class African city for all, everyone will be able to enjoy decent accommodation, excellent services, the highest standards of health and safety, access to participatory governance and quality community life in sustainable neighbourhoods and vibrant urban spaces'¹².

Budlender et al (2006) argue that implicit in this vision statement is a trickle-down approach to development, according to which the lives of the poor will improve as the economy grows¹³. The emphasis on economic growth to catapult the city into a world-class status suggests that the city is employing an investor friendly approach to managing the informal trading sector, which subordinates informal trade to the rules of the formal economy and its ideals of competitiveness.

Spatial planning for urban renewal is arguably the most important part of the city's strategy for bringing to life its 2030 vision. The aim is to create an improved business environment in the Central Business District (CBD) that will attract investment in the local economy. In this regard, Harrison (2006) indicates that city planners have been able to match their designs with the aspirations and views of private capital¹⁴. Although there are still many wrecked buildings in the inner city, there are visible development upgrades marked by improved physical infrastructure and rising property prices¹⁵.

¹² Informal Trading Policy of Johannesburg, http://www.joburg-archive.co.za/2009/pdfs/informal_trading_policy09.pdf

¹³ Budlender et al (2004) *ibid*, pp.63

¹⁴ Harrison, P. (2006) *On the Edge of Reason: Planning and Urban Futures in Africa*, Urban Studies, Vol.43, No.2, Feb.2006, pp.329

¹⁵ *Ibid*, pp.330

However, whilst city planners managed to inspire the corporate sector, their designs reflect an apparent insensitivity to informal systems of operation in the city. Harrison argues that the city's urban renewal interventions have been accompanied by mass evictions of the urban poor from so-called bad buildings in the inner city and relocations of informal traders far away from passing feet¹⁶. This is evidenced by the restrictive nature of the city's by-laws on informal trade. The by-laws place restrictions on the type of goods that can be sold and the locations where traders can sell¹⁷. The city's Informal Trading Development Programme restricted informal trade in 27 areas and channelled informal traders into eight overtraded markets¹⁸. Meanwhile, the by-laws invest power on the Johannesburg Metro Police Department (JMPD) to evict informal traders, based on mere suspicion of wrongdoing¹⁹. This has sparked widespread complaints about harassment by informal traders operating in the inner city. The high-handed way in which the JMPD deals with informal traders affects women informal traders more harshly, as they generally lack the physical strength to defend them and are often the only breadwinners in their homes. Thus, the confiscation of their goods compromises the livelihoods of entire families and so works to sustain existing high levels of household poverty.

Moreover, the policy instructs informal traders to comply with the Noise Control Regulation no.75, amongst other.²⁰ This regulation prohibits informal traders from trading in goods and services that will disturb the "calmness" of city-life, very simply put. By so doing, it does violence to an (African) thinking of citiness that sees the city; inter alia, as an embodiment of informal social networks. It implies imitation of European and American cities by the city fathers and mothers of Johannesburg as a way to conceal the rowdy networks and messy intersections that define everyday life in urban Africa. Moreover, it validates Mbembe and Nuttall's (2004) argument that the problems of the city are perceived as diseases of the social body that need to be cured by policing its population²¹. **'Such way of seeing the city', they contend, 'have determined urban policy, particularly in South Africa'**²².

Furthermore, the policy places a high premium on integrating informal trade into the mainstream of the economy. It commits the city to facilitate the formalisation of informal traders into the formal economy. It is my contention that the formalising notion of informal economic activities is embedded in a bounded view of

¹⁶Ibid, pp.330

¹⁷ City of Johannesburg Metropolitan Municipality Informal Trading By-Laws, http://www.joburg-archive.co.za/2010/pdfs/informal_trading_bylaws.pdf

¹⁸ Harrison (2006) *ibid*, pp.330

¹⁹ CoJ Metropolitan Municipality Informal Trading By-Laws *ibid*, pp.16

²⁰ Informal Trading Policy of Johannesburg, pp.7

²¹ Mbembe, J. & Nuttall, S. (2004) *Writing the World from an African Metropolis*, Public Culture, Vol.16, No.3, Duke University Press, pp.353

²² *Ibid*, pp.353

marginality that suggests any form of inclusion is inherently good. Yet, it is hardly conceivable that small and survivalist enterprises could compete with bigger enterprises on an unequal economic and social terrain. The Business Act gives legal expression to this false idea, as it forbids street trade in front of the premises of a formal shop when the goods of street trader are similar to those sold inside the shop. This restrictive measure has been incorporated into the City of Johannesburg's informal trading policy and has led to widespread complaints by street traders that the policy favours big retailers over informal traders, as they are allowed to sell their goods on the pavement, whilst informal traders are forbidden²³. It engenders unfair competition between big retailers and survivalist enterprises and so undermines the policy's stated objective of creating an environment in which **'informal traders can become commercially viable and dynamic'**²⁴.

Inclusion is, thus, meaningless without deliberate interventions that address the structural causes of exclusion. More seriously, the policy is silent on the gender power dynamics in the business of trading, which affect how we see inclusion. It is not wrong to surmise that this is a direct consequence of the existing male dominated environment in which public policies are being debated and formulated. Women informal traders thus have very little to celebrate, as the CoJ's informal trading policy offers them no protection against the harms done by tendencies of male chauvinism and patriarchy to their dignity and woman identity, - both safeguarded by the Constitution - in their working environment. For example, conservative male customers expect women not to trade when they are menstruating, some even demanding to touch their private parts! In addition, they are expected to behave in ways that do not undermine the cultural superiority of male traders.

Finally, the participatory process for developing the city's informal trading policy and by-laws has been another problematic issue. Informal traders feel that the city should have involved them in all stages of the informal trading policy's drafting process. In an earlier analysis of the policy, some informal traders indicated that consultation on the policy was nothing more than a series of information sharing sessions in lieu of genuine engagement on the content.²⁵

This is symptomatic of a political dilemma that bedevils South Africa's system of participatory governance. The objective of Section 152 (1) of the Constitution is to enhance public participation in the affairs of local governments. The dominant interpretation of this clause is that local authorities should facilitate consultation with their communities. However, the meaning of consultation is vague and

²³ Interview with S. Twala, 08:04:2011

²⁴ Informal Trading Policy of Johannesburg, pp.6

²⁵ Steyn, I. (2007) A Birds-Eye-View of the Informal Economy in S.A., paper prepared for ESSET

ambiguous. In consultation the beginning- and - ending points of participation are not always clearly defined which opens it to manipulation by local power holders and bureaucrats alike. Many see it as simply a procedural requirement for the ticking box. Moreover, consultation lacks the power to insure that the views of the consulted will be heeded. Thus, participation without decision-making power lacks the material weight to change the status quo.

Furthermore, a study by Mngoma (2010) on public participation in the revision of the city's informal trading by-laws adds another important dimension to our analysis²⁶. The study was conducted with ordinary informal traders and leaders of informal trader organisations. It found that

-71% of the leader respondents participated, whilst 83% of the ordinary informal trader respondents did not participate

-89% of the ordinary informal trader respondents did not know about the by-laws, whilst 57% of the leader respondents reported that they knew about them

-most of the ordinary informal trader respondents did not know what a by-law is and could not tell the difference between the City of Johannesburg and the Metro Trading Company

His evidence puts into question the advocacy strategies of informal trader organisations that operate in the City of Johannesburg. It reveals a disjuncture between the knowledge that the leaders have of urban governance processes and the levels of awareness amongst ordinary informal traders. This could be the function of a lack of capacity in informal trader organisations to engage in awareness and conscious-raising campaigns around the business of trading. On the other hand, Skinner (2008) indicates that research on trader organisations suggests that many informal traders do not belong to organisations²⁷. This raises questions about issues of mandate and representivity in informal trading organisations. However, more work is needed on the internal dynamics of informal trader organisations in the City of Johannesburg to make sense of the disjuncture uncovered by Mngoma's evidence.

Meanwhile, according to the policy, the city is supposed to establish an Informal Trading Chamber '**as a forum for consultation and resolution of issues**'²⁸. Whilst, the chamber has not been established yet, informal traders are confident that it will

²⁶ Mngoma, S. (2010) Public participation in the informal trading by-laws amendment: The case of Johannesburg innercity, <http://wiredspace.wits.ac.za/bitstream/handle>

²⁷ Skinner (2008) *ibid*, pp.27

²⁸ Informal Trading Policy of Johannesburg, pp.20

be a positive substitute for the existing Informal Trading Forum²⁹. In the meantime, evidence of the nature and quality of participation in this forum will be in order.

This hasty analysis of the City of Johannesburg's informal trading policy suggests that the subtext of the city's response to the informal trading sector is a desire to create a city of order (free of congestion) that will animate a commercial culture, which compares with modern cities of the North. In its pursuance, containing the disorderly and disruptive formations of informal trade in the city has become a key goal of urban governance practice. Indeed, the evidence of Harrison suggests that the city is on course to create an efficient business environment and to address urban decay. However, it also demonstrates the restrictive impulse of the city's approach to managing the informal trading sector, which, in the pursuit of clearing congestion and bringing order to the city, is damaging the livelihoods of informal traders. Such an approach effectively undermines opportunities for the urban poor and vulnerable, access to services and accommodation and participatory governance that are promised by the policy.

5.2 The case of the street trading by-laws of the Rustenburg Municipality (1998)

Most of the by-laws are consistent with the restrictions imposed on street trade by subsection (a) (ii) of the Business Act, including in gardens, parks, state buildings, churches, buildings declared national monuments, fire hydrants, vehicular traffic and in sidewalks where it would obstruct the movement of pedestrians. In addition, the by-laws prohibit street trade that will obscure the visibility of a window display in a formal shop. It is clear from this and the abovementioned restriction on street trade in front of formal business premises that the local state's policy response to the informal trading sector is primarily aimed at protecting the economic interests of formal traders, who regarded as the main contributors to capital accumulation in the local economy. This is often done with little regard for how such protection impacts on the livelihood opportunities of those trading on the street, thus, contradicting political rhetoric about the economic potential of the informal economy, especially since street traders constitute the largest segment of the informal economy globally.

Moreover, according to the by-laws, the Council will give notice of goods impounded in English and Afrikaans newspapers that are circulating in the Rustenburg Municipality area and all goods that are not collected three months after such notice will either be destroyed or sold by public auction. This regulation contradicts the founding provisions of the Constitution and is a very obvious illustration of insensitivity to the social context of street traders, as it assumes that all are able to speak Afrikaans or English or that they are able to afford the newspapers in which notices appear.

²⁹ Interview with S.Twala, 08:04:2010

Overall, the by-laws do not convey a positive intent from the city fathers and mothers of the Rustenburg Municipality to create an enabling environment for informal trade. They thus give context to the confrontations between street and market traders linked to the Kgetse ya Tsie Poor People's organisation and the local municipality, during the 2010 FIFA World Cup tournament. The traders accused the municipality of evicting them in order to beautify the city for the soccer mega event³⁰.

5.3 The case of the eThekweni Municipality

For Budlender et al (2004), the informal economy policy in eThekweni represents '**an important shift in thinking**'³¹ for it acknowledges the informal economy as an important contributor to local economic development and as a creator of jobs³². The policy thus commits the city to create an enabling environment for small and survivalist enterprises to grow by issuing trading permits to the owners and by providing access to basic social services and support services, such as skills training and business information.

So, what has been the impact of the city's informal economy policy? There are no straightforward answers to this question, as the implementation of the policy has remained largely unexplored. As mentioned, for purposes of this analysis, I rely on studies that were conducted on the city's informal economy and official reports published by the eThekweni Municipality, after the adoption of the policy in 2001, for some indication of the impact of the policy on informal trade.

The work of Skinner (2006 and 2008) is particularly instructive. Drawing on the findings of a survey of 507 informal enterprises in the eThekweni Municipality, in 2002, she explores the business environment in which these enterprises operate in terms of the owners' access to basic social services and support services, amongst other³³. Skinner cautions, though, that the survey is not representative of all informal businesses that operate in the city nor does it reflect the interests of the poorest or the richest informal enterprises³⁴. That be the case, the findings paint a picture of some of the salient challenges and gender dynamics that characterised informal trade one year into the life of the informal economy policy in eThekweni.

³⁰ Host Cities Watch, <http://www.streetnet.org.za/wp-content>

³¹ Budlender, D., Skinner, C. & Valodia, I. (2004) Budgets and the informal economy: an analysis of the impact of the budget on informal workers in South Africa, University of KwaZulu Natal: School of Development Studies, pp.61

³² Durban's Informal Economy Policy, Oct. 2000, <http://www.durban.gov.za/durban/invest/bsmtu/policies>

³³ Skinner, C. (2006) Falling through the Policy Gaps? Evidence from the Informal Economy in Durban, South Africa, Urban Forum, Vol.17, No.2, April-June 2006, pp.125-148

³⁴ Ibid, pp.129

Firstly, the findings report high levels of access, including 78% to toilets, 78.9% to water and 76.3% to electricity.³⁵ However, less than half of the respondents (40.6%) had access to storage and slightly more than half (54.2%) reported access to shelter.³⁶ That said it is clear from the evidence that access was not a major concern for the 507 respondents. More than half (52%) indicated that it was not a problem.³⁷ However many cited the cost of social services as a big problem, such as the rent of trading space, transport, etc.³⁸

Many studies on the provision of social services illustrate how the issue of affordability undermines access.³⁹ They show that access without sufficient economic resources does not secure social goods, such as water, electricity, health care, and so on. For example, the 2003 Human Development Report of S.A. intimates that the government's cost recovery policy undermines the provision of social services to the poor and is insensitive to their socioeconomic conditions⁴⁰. In the context of South Africa's socioeconomic rights discourse, access merely obliges the government to adopt reasonable legislative measures to ensure a particular right could be realised, but does not guarantee that it would be immediately fulfilled or that it would be fulfilled in a particular way. The irony is that poor people are more interested in the material value of socioeconomic rights than their legal and institutional specifics.

Moreover, the lack of access and the high costs of services visit a heavier burden on women. For example, informal female traders are more acutely affected by problems of crime and the lack of safety around their trading spaces. Similarly, the lack of electricity due to expensive tariffs make women vulnerable to domestic violence, crime, health risks and other hazardous conditions. Secondly, 36% of the respondents cited business support services as a big problem⁴¹. Eighty-eight percent reported that they never received training or help from any assistance programmes⁴² and only 4% were able to obtain a bank loan for business purposes⁴³. It is worth noting that all the abovementioned services with the exception of financial support fall within the purview of local governments. Interestingly, the findings indicate that male respondents found it easier to open bank accounts and owned more

³⁵ Ibid, pp.136

³⁶ Ibid, pp.137

³⁷ Ibid, pp.137

³⁸ Ibid, pp.137

³⁹ i.e. South Africa Human Development Report (2003) and McDonald, D.A. (2009) *Electric Capitalism Recolonising Africa on the power grid*, HSRC Press

⁴⁰ S.A. Human Development Report (2003), pp.105

⁴¹ Skinner (2006) *ibid*, pp.140

⁴² Ibid, pp.139

⁴³ Ibid, pp.138

established enterprises, whereas women owned 76% of one-person enterprises⁴⁴. The incomes of women operated enterprises are thus lesser compared to those operated by men. Curiously, the informal economy policy in eThekweni is silent on these and other gender (power) dynamics.

The city's informal economy policy draws on the experience of the Warwick Junction urban renewal project, which has been widely touted as a better practice of inclusive urban planning and informal trading management. Skinner (2008) indicates that the informal trading market known as the Early Morning Market accommodates on an average day about 460 000 commuters and at least 5 000 street and market traders.⁴⁵ The traders were actively involved in the infrastructure development process of the market and participated in operations teams that dealt with a diverse set of issues, such as curbside cleaning, ablution facilities, pavement sleeping, health-care facilities, etc.⁴⁶

However, the city's decision to replace the Early Morning Market with a private shopping mall unravelled the participatory nature of the Warwick Junction project and gave rise to numerous confrontations between the city and the traders. During a public meeting to discuss the future of the market in 2009, Skinner indicated that the city had plans afoot to move the traders to an unknown temporary location, which can only accommodate 170 traders. She questioned why the city had changed its approach to consultation: why no tendering procedure was followed and why the traders were not included as shareholders⁴⁷. Approximately 600 traders attended the meeting. Harry Ramlall, the chairperson of the Early Morning Market Association, asked why the traders were not consulted at the beginning of the mall development project and whether there was any need to build another mall adjacent to eight existing ones. He accused the city of simply telling the traders about its plans without engaging them on it.⁴⁸

The Early Morning Market dispute begs the question whether the informal economy policy remains a reference point for the eThekweni Municipality's local economic development interventions. In fact, StreetNet International has accused the city of failing to implement the policy. It called on the city to enforce the recommendations

⁴⁴ Ibid, pp.133

⁴⁵ Skinner (2008) *ibid*, pp.17

⁴⁶ Ibid, pp.17

⁴⁷ Executive summary of the DDP's public forum on the future of the Warwick Early Morning Market, 20 May 2009, <http://www.ddp.org.za/programme-events/civil-society/publicdialogues-fora>

⁴⁸ Ibid

of a 2006 review of the policy and to revamp the eThekweni Informal Economy Forum so to enhance the quality of its participatory process⁴⁹.

According to the review document, the city has invested money in projects that either has been abandoned or that became defunct, which makes it difficult to gauge the success of the policy⁵⁰. It recommends, inter alia, that the city

- (frequently) evaluates projects and activities that relate to informal trading,
- decentralizes services that are needed by traders,
- standardizes the trading permit application process to integrate health, environment and safety regulations into one process,
- improves the capacity of all departments responsible for the implementation of the policy,
- shores up coordination of the implementation process,
- conducts a skills audit of the traders' business knowledge and designs specific training programmes,
- adopts a single set of bylaws and relooks at the way bylaws are being enforced,
- conducts an audit of all municipal facilities and develops suitable infrastructure for informal trading⁵¹.

Finally, Robbins' assessment of the eThekweni Municipality's local economic development programmes suggests that the city has jettisoned its informal economy policy, which has revelled in the acclaim of academics and activists worldwide. In his words

'...the Municipality has effectively set aside this much vaunted project, arguing that it lacks relevance as a guiding plan as the city evolves'⁵².

This is evidenced by the city's 2009 economic review, which offers a comprehensive assessment of the status of employment in the city and description of the unemployed⁵³. However, the word "informal employment" or "informal economy" appears nowhere in the document's 101 pages. Instead, the review urges the city to seek wage employment opportunities in primary and secondary industries, as a way out of its unemployment conundrum.

⁴⁹ Press statement: Durban's street wars – StreetNet International calls on eThekweni Metro to negotiate in good faith with street vendors, 25 June 2007, <http://www.streetnet.org.za/wp-content/pdf/Durban250707.htm>

⁵⁰ Review of eThekweni Informal Economy Recommendations, Gabhisa Planning and Investment-Urban Econ, 2006, <http://www.durban/invest/bsmtu/policies/policies-and-strategies>

⁵¹ Ibid

⁵² Robins, G. (2010) Beyond local economic development? Exploring municipality-supported job creation in a South African city, *Development Southern Africa*, Vol.27, No.4, Routledge, pp.539

⁵³ eThekweni Economic Review 2009: Towards Upliftment and Sustainable Development, Global Insight, http://durbanportal.net/Economic_Issues, 14 July 2010, pp.41

The foregoing analysis on the informal economy policy in eThekweni corroborates the StreetNet International coordinator's observation in Skinner's study on street trade in Africa: **'There are no policy best practices with street trading. Where there have been windows where better practices emerge, there tends to be a continuity problem. There is a change in the bureaucracy, a big event or an election, and the approach changes... With street vending things are particularly fluid'**⁵⁴.

6. Conclusion and ideas for future research

Clearly, except for the street trading by-laws of the Rustenburg Municipality, the policy statements analysed above acknowledge the economic potential of informal economic activities. They commit the city fathers and mothers to create an enabling environment that will facilitate the sustainability and productivity of informal enterprises and provide for the involvement of informal traders in urban governance. They, thus, contain elements that, if effectively implemented, will have far-reaching benefits for informal traders, as alluded to in section two.

However, the evidence of the analytical studies that we surveyed suggests that the local power-holders have generally not been able to translate their progressive policy speak on informal trade into progressive material change. In Johannesburg, the city has made a commitment to strengthen the participation of informal traders in urban governance and informal traders are now part of the decision-making structures of the Metro Trading Company⁵⁵. However, concerns over trading space, trading permits and the city's communication strategy, amongst other, abound. More broadly, the restrictive impulse of the city's approach to managing the informal trading sector, in the pursuit of clearing congestion and bringing order to the city, is undermining the livelihoods of informal traders operating in the city.

In eThekweni, the city has invested significant resources in its informal economy and it established a special forum for discussions on the informal economy. Yet, as indicated by the review document on its policy, many of the city's informal economy projects either have been abandoned or became defunct. Indications are that the city's Informal Economy Forum is also inactive. Meanwhile, it seems as the word informal economy has exhausted its usefulness for the city fathers and mothers of eThekweni, if the 2009 economic review document is anything to go by, which might explain the lack of appetite for the recommendations of the policy review.

⁵⁴ Skinner (2008) *ibid*, pp.13

⁵⁵ Interview with S.Twala, 10:04:2011

What does it say about the policy interventions on informal trade of these two local authorities? It seems as the City of Johannesburg has been intervening in its informal trading sector with a combination of supportive and restrictive measures in relation to both its informal trading by-laws and informal trading policy. Meanwhile, the idea of government being simply a facilitator and not an implementer seems to resonate powerfully with the city's policy response, as it has effectively outsourced management of the informal trading sector to the Metropolitan Trading Council. This approach works to create a political distance between the local power-holders and the anger of the informal traders who are negatively affected by the former's policy measures. On the other hand, the eThekweni municipality's policy seems largely supportive, but it lacks implementation. However, as alluded to above, recent actions of the eThekweni Municipality are undermining the progressive cast of its policy statement. More harrowing, the gender silence in all three policy documents is deafening!

That said more work is needed on the implementation of the two policy statements that will enable us to arrive at concrete judgments about their impact. Work is needed on the provision of basic social services to informal traders in order to determine the extent to which they are able to access their socioeconomic rights. In addition, an impact assessment study of the City of Johannesburg's local economic development programmes would aid our understanding of the projects in which the city has invested resources and the benefits of these for the informal trading sector. Moreover, work is needed on the internal dynamics of the informal trader organisations in the City of Johannesburg that elaborates how they engage ordinary informal traders on the business of trading and that casts light on the gender power dynamics in relations between those who participate in these organisations. Finally, advocacy and lobbying work are required in Rustenburg to create the conditions for the establishment of an inclusive informal trading policy that is gender sensitive.

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