Criminalising the Livelihoods of the Poor

The impact of formalising informal trading on female and migrant traders in Durban
Durban’s “World Class City” vision steers towards a street trader-free city.

Photo by Blessing Karumbidza
Criminalising the Livelihoods of the Poor
The impact of formalising informal trading on female and migrant traders in Durban

Blessing Karumbidza
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The Socio-Economic Rights Institute of South Africa (SERI) is a new non-profit organisation providing professional, dedicated and expert socio-economic rights assistance to individuals, communities and social movements in South Africa. SERI conducts research, engages with government, advocates for policy and legal reform, facilitates civil society coordination and mobilisation, and litigates in the public interest. Our thematic areas are:

- Housing and evictions;
- Basic services (water, sanitation, electricity); and
- Migrant rights and livelihoods.

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Abstract

In this report, the focus is on migrant rights and livelihoods in the City of Durban. An earlier report by Kate Tissington - “The Business of Survival: Informal Trading in Inner City Johannesburg” (http://web.wits.ac.za/NR/rdonlyres/4376D73D-E127-4C14-A579-1C61F681AF70/0/CALS_BusinessofSurvival_Dec09.pdf) - painted the broad picture of the survival tactics of informal traders in the city of Johannesburg. This report examines the impact of attempts to formalise street trading in eThekwini Metropolitan Municipality (City of Durban, or CoD) since 2000 on the livelihood of traders, particularly female and migrant traders. Durban has been at the forefront of developing policies to manage and control informal economy activities; however, as the report notes, the effect of the push for formalisation is exclusionary and mimics the influx control regimes of the apartheid administration, which prevented black communities from pursuing business opportunities in central business districts. Such regulation has a particularly adverse effect on migrants and poor women, since they struggle to meet the requirements for registration, permits and rentals.

This report was researched and written by Blessing Karumbidza, researcher at SERI, and commented on by Jackie Dugard, executive director at SERI and Kate Tissington, research and advocacy officer.

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Abbreviations and Acronyms

ACHIB  African Chamber of Hawkers and Informal Business
ANC  African National Congress
ASGISA  Accelerated and Shared Growth Initiative for South Africa
ATM  Automated Teller Machine
BPCC  Best Practice City Commission
BSD  Business Support Division
CASE  Community Agency for Social Enquiry
CBD  Central Business District
CCMA  Commission for Conciliation, Mediation and Arbitration
CMDA  Cato Manor Development Association
CoD  City of Durban
DED  Department of Economic Development, KwaZulu-Natal
DIEP  Durban Informal Economy Policy
DMA  Durban Metropolitan Area
DSTPD  Draft Strategy Trading Policy Directive
DTI  Department of Trade and Industry
EDD  Economic Development Department, Durban Metro
eMSTB  eThekwini Municipal Street Trading Bylaws
GDP  Gross Domestic Product
GEAR  Growth, Equity and Redistribution (Policy)
GGP  Gross Geographical Product
HIV/AIDS  Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
IDP  Integrated Development Plan
ILO  International Labour Organisation
ITMB  Informal Trade Management Board
ITRUMP  Inner-Thekwini Renewal and Urban Management Programme
ITSBO  Informal Trade and Small Business Opportunities Branch
KZN  KwaZulu-Natal
LED  Local Economic Development
LTDP  Long-Term Development Plan (Durban Metro)
NGO  Non Governmental Organisation
N&SCLCs  North and South Central Local Councils
PRMP  Public Realm Management Programme
SADC  Southern African Development Community
SAMP  Southern African Migration Project
SAMWU  South African Municipal Workers Union
SAPS  South African Police Services
List of General Informal Economy Participants and their Street Trading Activities

- Garbage pickers
- Taxi drivers
- Cardboard collectors
- Live chicken sellers
- Child carers
- ‘Bush mechanics’
- Commercial sex workers
- Newspaper vendors
- Caterers for big events
- Caterers for school tuckshops
- Mielie cookers, as well as
  - Those who sell to mielie cookers; and
  - Suppliers of wood and water to mielie cookers
- Welders
- Pinafore makers
- Pinafore sellers
- Second-hand clothes dealers
- Sellers of seawater
- Hairdressers
- Shoemakers
- Fruit sellers
- Vegetable sellers
- Spaza shop owners
- Spaza shop workers
- Mr Phone dealers
- Phone repairs
- Drum sellers
- Informal construction workers
- Muthi traders
- Bovine head cookers
- Bead workers
- Shoe polishers and repairers
- Shebeen owners
- Knob-kierie makers
- Cosmetics sellers
- Photographers
- Domestic workers

They may work:
- From home (individually or in groups)
- On a fixed site on the street
- In a flea market
- At a pension queue
- In a spaza shop
- In a built market
- In an office block
- At a garbage dump

This report concentrates on those who work on the streets.
List of Key Legislation and Regulations

- Population Registration Act, No. 30 of 1950 (Population Registration Act)
- Group Areas Act, No. 41 of 1950 (Group Areas Act)
- Bantu Authorities Act, No. 68 of 1951 (Bantu Authorities Act)
- Reservation of Separate Amenities Act, No. 49 of 1953 (Separate Amenities Act)
- Promotion of Black Self-Government Act, No. 46 of 1959 (Black Self-Government Act)
- Bantu Investment Corporation Act, No. 34 of 1959 (Bantu Investment Act)
- Black Homeland Citizenship Act, No. 26 of 1970 (Homeland Citizenship Act)
- (KZN) Licensing and Business Hours Ordinance, No. 11 of 1973 (Business Hours Ordinance)
- Health Act, No. 63 of 1977 (Health Act)
- Licensing and Business Hours Act, No. 11 of 1984 (Business Hours Act)
- Business Act, No. 71 of 1991 (Business Act)
- Business Act Amendment, No. 186 of 1993 (Business Amendment Act)
- Proclamation Act, No. 18 of 1995 (Proclamation Act)
- National Small Businesses Act, No. 102 of 1996 (Small Businesses Act)
- Local Government Act, No. 52 of 1997 (Local Government Act)
- South African Police Service Amendment Act, No. 83 of 1998 (Police Amendment Act)
- Immigration Act, No. 13 of 2002 (Immigration Act)

List of Key Policy Documents

- Durban Unicity Municipality, Durban’s Informal Economic Policy, 2000 (DIEP)
- DED, Green Paper on KwaZulu-Natal’s Informal Economy, 2005 (Green Paper)
- DED (written by Makho Communications), Draft Policy for the Informal Economy of KwaZulu-Natal, March 2009 (DPIE)
- DED, National Spatial Economic Development Strategy, 2008 (NSEDS)
Street trading is a major source of livelihood for many poor families in South African cities, including Durban. Generally speaking, urban governance of this economic activity has gone through three phases: firstly, a restrictive phase under apartheid; secondly, a brief period of relaxation following the dismantling of official apartheid; and thirdly, a more recent effort towards formalisation. Officially, the reasons given for formalisation \(^1\) include the need to support the street traders and to ensure mutual co-habitation between the informal and formal sectors. \(^2\) However, the general lack of information on registration; haphazard site-allocation policy; high rentals levied; and pervasive police harassment lead to the marginalisation and criminalisation of street traders. The additional burden imposed by the need for registration and exclusionary allocation policies makes the life of foreign and female traders even harder.

The formalisation process constitutes the requirement for traders to register and pay registration fees to acquire a trader’s permit and be subject to street trading bylaws that determine the terms of trading. Due to the cumbersome nature and lack of clarity of procedures, as well as poor institutional mechanisms to facilitate registration among other bylaw requirements, formalisation has become prohibitive and undermines informal street trading. In particular, women and foreign participants are disadvantaged in many ways. Women generally start trading with very little capital, and are also burdened with the double demand to maintain their households. As a result of these factors, women often find themselves in the most survivalist areas of street trade and make the least profit. Foreign traders suffer from a variety of prejudices and xenophobic reactions from fellow traders, officials, as well as from the buying public.

Based on in-depth desktop and fieldwork research, this study makes the following recommendations:

- Street committees must be central to site-allocation processes;
- The CoD must develop a credit line tailor-made for street traders as part of the formalisation process;
- The CoD must invest more in infrastructure development to improve the working conditions of traders, as well as their profit margins;
- The CoD must change site allocation from being on a short-term to a long-term basis to provide stability and impetus for re-investment by traders; and

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\(^1\) Formalisation is used here to refer to the regulation, control and taxation of those activities that were hitherto unregulated. ‘Informalisation’ relates to the movement of goods, services and trade, which used to be located in the organised business sector, to the informal sector.

\(^2\) The ‘two economies’ formulation by former president Thabo Mbeki glosses over the intrinsic linkages between the formal and informal economies, thus distorting the policy space for political and development design in a society undergoing transition. In his weekly Letters from the President on ANC Online, Mbeki argued that: “One of the major consequences of the change in the structure of the (South African) economy is that ‘two economies’ persist in one country. The first is an advanced, sophisticated economy, based on skilled labour, which is becoming more globally competitive. The second is a mainly informal, marginalised, unskilled economy, populated by the unemployed and those unemployable in the formal sector. Despite the impressive gains made in the first economy, the benefits of growth have not yet reached the second economy, and with the enormity of the challenges arising from the social transition, the second economy risk falling further behind, if there is no decisive government intervention.” (see www.anc.org.za /list.php?t=ANC%20Today). The informal economy’s link with the formal economy through access to trade goods and storage allows the informal economy to maintain activities of small traders, artisans and service providers, albeit on the margins. Progressive policies and programmes for informal trading should therefore aim to mainstream these activities into the social and economic frame with the primary goal of reducing vulnerability and exclusion.
The CoD must endeavour to bring an end to police harassment of traders.

Specific recommendations for female traders include:

- In implementing the permit system, the CoD should take into cognisance the dual role female traders play in the home and as bread-winners, thus providing for increased flexibility;
- The Metro Police and the street committees must work to ensure that all sexual harassment of women and any other forms of gender abuse must be brought to an end; and
- The CoD must improve its provision of social services for women to encourage them to feel confident to report offenders.
- The CoD must also provide facilities that support women in their dual economic and social reproduction roles such as child care/ crèches.

Specific recommendations for foreign traders include:

- In implementing the registration and permit system, the CoD must be flexible and recognise temporary permits and application receipts of foreigners as valid documentation;
- The CoD and street committees must endeavour to integrate foreign traders’ organisations with those of local traders; and
- The Metro Police and street committees must bring to an end any forms of extortion and bribery demands on foreign traders.
The lack of national and provincial legislation on the informal economy in general, and regarding informal street trading in particular, has led to ad-hoc responses to informal trading activities by local government authorities throughout the country, especially in the first decade following the end of apartheid. In 1999, Durban was the first city to develop policy relating to the informal economy, with the intention to mainstream and integrate the informal economy into the formal economy and make it an integral part of the Local Economic Development (LED) strategy. The formalisation policy was hailed as progressive by role-players. However, the implementation of this policy revealed many fault lines which had the unintended consequence of impacting negatively on traders, especially on female and migrant traders. This report examines this process of formalisation and its impact on informal street trading in the CoD.

The decision to develop an informal economy policy by the CoD was informed by an acknowledgement of the contribution of the informal economy, particularly informal street trading, in sustaining the livelihoods of many poor urban dwellers. A common phenomenon in most informal economy sectors, especially in street trading, is the domination of the sector by women and marginal communities such as migrants. The inner city is a choice location for traders, especially along public transport hubs, as there are large numbers of passersby and therefore of potential customers. These areas, however, are also characterised by heightened urban management as City officials grapple with facilitating the free flow of traffic, humans, goods and services.

This report maps (a) the shifts in the legislative context and policy framework; and (b) documents the impact of such shifts on street traders, especially female and migrant traders operating in the CoD. As such, formalisation itself is not contested. What is at issue is the implementation of laws and policy, and the lack of resources available to build the institutions of traders so that they can effectively negotiate policy development and implementation.

SERI would like to acknowledge the funding support of the Atlantic Philanthropies, Ford Foundation, Misereor and the Open Society Foundation, which made this research possible. In addition, the value of the support of the co-ordinator and staff at StreetNet International (StreetNet) in Durban and access to its rich resources on street trading cannot be over-emphasised. Through StreetNet it was also possible to participate in a stakeholder discussion where the impact of formalisation was discussed, as well as to meet other organisers of Durban street traders.

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1 The informal economy generally describes those economic activities which are legal but unregulated (including but not limited to those listed above). Street trading is one of the main components of the informal economy. Dan Gallin and Pat Horn define these activities as “an economy where no social rules apply, where the strong prevail by the sole virtue of their strength because they do not meet with organised opposition ... adding that the social organisations which [are] dominant in that society come to prevail [in the informal economy] by default”. See Dan Gallin & Pat Horn, Organizing Informal Female Workers. Global Labour Issue, 2005, www.globallabour.info/.../organizing-informal-female-work-1.html.


3 Since 2002, the names Durban and eThekwini seem to be used interchangeably. However, the proper use is that Durban refers to the city while eThekwini is the Durban Metro Municipal Authority managing the City of Durban. To avoid confusion therefore, the name Durban will be used to refer to the City and eThekwini only where the reference is to the municipality.
In 1999 the combined councils of North and South Durban developed the Durban Informal Economy Policy (DIEP), which was adopted by the newly consolidated eThekwini Municipality in 2001. The provincial government also developed and published a Green Paper on the Informal Economy (Green Paper). These economic development strategies are intended to regulate and inform the relationship between informal traders and government officials, while seeking accommodation for this hitherto deregulated informal economic activity within the formal urban economy. The long-term policy goal for formalisation is:

... to support the move of informal economy workers into the formal economy [noting that] the formal economy is informalising rapidly [and acknowledging that] the informal economy offers diverse opportunities for absorbing those who have lost their jobs, and for new entrants into the economy.

The interdependent nature of the formal and informal economies on the one hand, and the tensions that exist between them on the other, provide the basis for regulation. Formalisation is proposed as being capable of reducing such tensions and maximising the potential benefits for both ends of the economic spectrum. The fault lines in implementation notwithstanding, the DIEP is built on the progressive realisation that:

On paper, the formalisation process is intended to facilitate a progressive link and integration between the informal and formal economies, through the diversification of economic activities in the City. Unfortunately, the policy intentions and results of implementation remain worlds apart, with seriously adverse implications for traders.

1.1 Aims and methodology

This report presents the results of an in-depth study of the current lived reality of informal traders in the Durban Metropolitan Area. It aims to highlight the unintended consequences of the City’s attempts to formalise the street trading sector. The lessons from the Durban formalisation experience show that, by nature, informal economic activities thrive much better in an informal environment. Formalisation, no matter how well-meaning, will deliver negative results as it is in the informality that such activities are able to economically thrive. The CoD experience reveals that formalisation of informal street trading impacts negatively on street traders, especially those at the bottom end, such as female and migrant traders.

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9 DIEP, p. 3.
10 Ibid., p. 3.
The CoD was chosen as the site for this case study because it was the first city to establish policy on the informal economy aimed at facilitating the integration of street traders into the urban economy.11 Caroline Skinner also notes that the CoD has the most progressive policy on informal traders12, while Francie Lund also suggests that, comparatively, the CoD has also invested the most in developing facilities for the improvement of working conditions of street traders.13 The CoD also changed some aspects of the legal framework governing street trading from criminal law to administrative law.14 The lived experiences of informal street traders are used to measure the impact of this policy and the resources allocated.

The report was researched and written over a relatively short period in 2010: between August (desktop research), September (fieldwork) and October (report write-up). The desktop component comprised of an examination and review of relevant policy, legislation, City reports and previous scholarship on street trading. The fieldwork research involved primary interviews with street traders, as well as focus group discussions with their representatives.

Individual interviews were held with 21 street traders (13 female and eight male) located throughout Durban’s CBD. Of the female interviewees, three were migrant traders, while five of the eight male respondents were migrant traders. On the one hand, there are fewer female migrant traders than male migrant traders (in some cases, female migrants work under a male migrant rather than establishing themselves as traders). On the other hand, there are more local female traders than local male traders. Most of the interviews with informal traders took the form of informal discussions as the traders went about their business, as they considered formal interviews to be a waste of time and an unnecessary distraction from their work.15

Two group interviews/discussions were held. The first was a meeting of street trader organisations – a stakeholder forum – organised by StreetNet and held in the South African Municipal Workers Union’s (SAMWU) boardroom. This group discussion did not include any migrant traders’ organisation or representative.16 The second group interview was

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11 The combined councils of North and South Durban (later to be unified under the eThekwini Municipal Council) adopted the Durban Informal Economy Policy (DIEP) in 1999. The work of Kate Tissington (2009) The Business of Survival: Informal Trading in Inner-City Johannesburg, produced by the Centre for Applied Legal Studies, makes an important contribution to an understanding of the legal and policy context of informal street traders, the treatment they experience from officials, and their changing circumstances working on the streets of Johannesburg. This report seeks to contribute to this body of knowledge. See also, Paul Kariuki, ‘Can informal traders influence urban spatial policies? The case of fresh produce traders and Warwick Junction developments in Durban, South Africa’, Reform Development Consulting Report, July 2009.


14 F. Lund and C. Skinner, ‘The investment climate’, p. 13. For instance, the fine slip given to street traders for violation of street trading bylaws (which also doubles as a notice to appear in the Magistrate Court) is still governed under Section 56 of the Criminal Procedure Act, 51 of 1977.

15 One organiser of street traders articulated the frustration with researchers/research in general. He argued that researchers come to ask questions and then never return to give feedback. He also suggested that traders are aware of the personal gain to researchers from the information they gather from poor people, stating that some use the information to access money from abroad and government, while others use the information to advance academically. As such, poor people have become uninterested in participating in research.

16 The organisations represented argued that migrant traders tend to isolate themselves and feel that their challenges are not similar to those of South African traders. As such, they tend to organise along country of origin or deal individually with the authorities, giving rise to the perception that they advance corruption and bribery.
Introduction

1.1 Introduction to the study

The study was conducted in Durban, South Africa, and focused on street traders. The research was carried out through interviews with migrant traders held with the aim of understanding their experiences and challenges. The interviews were conducted in various locations, including a Eritrean Restaurant on West Street. The group included street traders from Cameroon (two); the Democratic Republic of Congo (two); Eritrea (three); Ethiopia (three); and Tanzania (three). Of these 13 migrant traders, only three were female (one Congolese, one Eritrean and the other Ethiopian), and all were registered as either asylum seekers or refugees.17

1.2 Structure of the report

Chapter Two of the report outlines the legal and regulatory framework for street trading. It also provides the contextual background of street trading in Durban. The chapter is divided into three subsections on a periodisation basis. The first covers the apartheid period from 1950 to 1990, during which black economic activity was stifled and prohibited. The second looks at the period 1991 – 1999 when black urban economic activity mushroomed and expanded due to the relaxation of state control and the prohibition on trading (by default rather than active policy). Finally, the report deals with the period 2000 and 2010, when the formalisation of black urban informal economic activities was implemented.

Chapter Three deals with the formalisation process since the development of the DIEP in 1999 by the CoD, its subsequent adoption in 2001 by the eThekwini Municipality, and the Provincial Green Paper on the Informal Economy in KZN (2005). Formalisation took the form of policy development as well as the enactment of the legislation, especially in the form of trade bylaws to facilitate the policy implementation. This chapter outlines key aspects of informal street trading bylaws adopted by the CoD to control and formalise the informal street trading sector.

Chapter Four is the main chapter of the report, presenting the research findings on how the formalisation process impacts on street traders. This chapter is divided into three subsections: the first looks at the impact of formalisation in general; the second focuses on the impact of formalisation on female traders and the third outlines the impact of formalisation on foreign traders.

The fifth and final chapter concludes that, for the formalisation process to work to the benefit of both the CoD and the street traders, a consultative process must be embarked upon to empower street traders’ organisations and thereby enrich the engagement between the City and the traders. Unfortunately, the formalisation process in its current form is neither meeting the CoD’s objectives of increasing registration and rental collection, nor working for the traders in providing them with good working conditions. As such, the process requires a major rethink.

17 According to the Durban Refugee Office of Home Affairs, Burundi, the DRC, Eritrea, Ethiopia and Rwanda have the highest number of Asylum seekers/refugees in Durban, of which the majority are female (Interview, Migration Officer – Umgeni Home Affairs Office, 13 October 2010).
The historical, legal and policy context for the regulatory development in street trading in the CoD is discussed in three broad periods:

- The period from 1950 to 1990 during which access to urban areas by unemployed black people was controlled and discouraged;
- The period from 1991 to 1999 when influx control was somewhat relaxed; and
- The period from 2000 to 2010 during which the CoD moved more aggressively towards re-regulation and repression of informal street trading activities.

2.1 1950 – 1990: Apartheid informal trade intolerance

Apartheid social and economic planning developed a regime of strict rules controlling street trading and the establishment of built markets for blacks in cities. Apartheid planning placed restrictions for black social and economic activity in the urban space. The first ‘grand’ apartheid law was the Population Registration Act No. 30 of 1950 (Population Registration Act), which formalised racial classifications. It paved the way for the Group Areas Act No. 41 of 1950 (Group Areas Act), which limited black access to urban areas by restricting black movement, residential options and economic mobility. The Reservation of Separate Amenities Act No. 49 of 1953 (Separate Amenities Act) was enacted to ensure that municipal grounds were reserved for a particular race, creating, among other things, racially segregated beaches, buses, hospitals, schools and universities. This policy regime made black urban economic citizenship and participation illegal.

By the 1970s it had become clear that complete control of black activity in cities was difficult to achieve completely. The Licensing and Business Hours Ordinance 11 of 1973 (later the Licensing and Business Hours Act 11 of 1984) was enacted to control and manage the rising street trading activities in some areas of cities. This Act provided for the provision of a permit and levying of a fee to operate as a street trader in cities. Through this policy regime, it was also possible to control the number of people who could enter a city for the purpose of street trading, thus serving as an influx control measure.

The 1970s and 1980s witnessed increased violence as blacks resisted apartheid and, by 1990, it was clear that apartheid was no longer sustainable. The unbanning of political parties, political activities and the release of leaders such as Nelson Mandela ushered in the negotiation period leading to the first democratic elections in 1994. As this unfolded, the apartheid regime repealed some of the racist instruments in the legal system. The period 1991 until the end of the decade was therefore a period when apartheid policies were relaxed.

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2.2 1991 – 1999: Tolerance of informal street trading

Various freedoms and rights of street traders are guaranteed by the Constitution. For example, Section 22 relates to freedom of trade and states that “every citizen has the right to choose their trade, occupation or profession freely”. However this is qualified by the clause that states “the practice of a trade, occupation or profession may be regulated by law”. Therefore, while freedom of trade is extended to informal trading, it can be regulated. Section 25(1) relates to property and states that “No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.” Further, Section 33 relates to just administrative action and states that everyone has the right to administrative action that is “lawful, reasonable and procedurally fair”, and that those adversely affected by this have the right to be given written reasons. Section 33 is also relevant to decisions taken by City officials on what areas are demarcated as restricted or prohibited.

The CoD was ahead of other cities in its efforts to officially accommodate informal street trading, as it was “the only city to have set up a separate department to oversee street trader management ... and had allocated more resources for the provision of street trader infrastructure than any other city” by the end of the 1990s. The relaxation of access to the urban area for economic opportunities for black traders can be traced back to the early 1990s, and was characterised by tolerance rather than a result of direct policy. The impending political transition, and pressure from formal businesses against the extent to which apartheid undermined business development, also influenced official attitudes towards black business activities in the city. For instance, for the first time, a policy was enacted (the Business Act No. 71 of 1991) that mentioned street trading, a major step in the recognition of black urban economic activity. The relaxation of legislation restricting black access to cities in the early 1990s led to a dramatic increase in street trading activities in all South African cities and towns. The Business Act “sought to reduce the powers of local authorities to develop and implement laws that would restrict informal trading”. This represented a complete legal turnabout from a situation where traders were not allowed to trade, to traders being allowed to trade freely. According to Skinner, this legislation was a key measure for deregulating business activities, removing barriers to the operation of informal activities and making it an offence to enforce the move-on laws.

Through the Amendment to the Businesses Act (No. 186 of 1993), municipalities were designated as Licensing Authorities for the purpose of issuing and/or refusing licences to applicants. Through the amended Businesses Act, the conducting of business without a licence rendered a trader ‘illegal’. The Businesses Act changed the legal framework for street trading and acknowledged it as an important sector which contributes to the economy and individual livelihoods and should be supported.

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23 The historical and legal context in which increased black urban activity increased has been dealt with in section 2.1 above.

Hours Acts can be considered the beginning of a formalisation process which later received elaborate implementation from 2000 onwards. Proclamation 18 of 1995 allowed for the devolution of the Businesses Act from national to provincial legislation, making it possible for provinces to make amendments to the Act. \[25\] This gave municipalities the mandate to draw up and implement street trading bylaws that demarcated restricted and prohibited trading zones and the manner in which street trading could proceed. The amendments gave local authorities much greater autonomy over how they manage street trading, and different local authorities have adopted very different approaches. \[26\]

An important clause in the Businesses Act is section 6A(2)(a) which states that “a local authority may ... by resolution declare any place in its area of jurisdiction to be an area in which the carrying on of the business of street vendor, pedlar or hawker may be restricted or prohibited”. However, Section 6A(2)(c) goes on to add that before such a motion is adopted, the local authority shall have regard to the effect of the presence of a large number of street traders in that area, and shall consider whether more effective supervision or control in that area, including through negotiations with any person engaged in street trading in that area, or their representatives, would make a declaration unnecessary. The local authority must also consider whether the intended restriction or prohibition will drive out of business a substantial number of street traders. If either of these is found to be the case then there is an official procedure that needs to be undertaken as per sections 6A(2)(d) to (k) of the Act. \[27\]

In 1997, the Economic Development Department of the then Durban Metro Council commissioned a census and survey on street trading. Following the survey, Durban demarcated street trading sites throughout the City and launched the Warwick Junction Urban Renewal Project in July 1997, as part of the Inner Thekwini Renewal and Urban Management Programme (ITRUMP), which aimed to address the issues of economic stagnation and decay in the innercity and the increase in micro-enterprises. \[28\] The ITRUMP unit noted that following the end of apartheid:

> Although informal trading was now widespread throughout the city centre, it is still not legal in terms of the by-laws and actual policy has moved from rigorous enforcement of the law, to tolerance, to the extension of facilities on the high streets. \[29\]

The DIEP of 1999, which was adopted by the Council’s successor, the eThekwini Municipality, in 2001, became the bedrock for the CoD’s formalisation process. The implementation of this policy ended the brief honeymoon of a relaxed enforcement regime on by-laws as well as the consultative and participatory environment which had characterised the period preceding the adoption of the policy. However, as shall be seen, the implementation failed to follow through the noble intentions of “consultation with stakeholders and provision of incentives”. \[30\]

### 2.3 2000 – 2010: Attempted re-regulation and formalisation

This is the third and current phase under which formalisation is vigorously pursued as a policy of the CoD. In 2001 the eThekwini Municipality adopted the DIEP as its formal policy on the informal economy. In 2005 the Department of Economic Development (DED) at the provincial level developed a Draft Policy on the Informal Economy. \[31\] Key aspects of this policy (registration, the permit system, and rental regulations) are appended below. The CoD also enacted Street Trading Bylaws in 2004 which gave

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25 To date, only Limpopo has amended the Business Act of 1991 through the Limpopo Business Registration Act No.5 of 2003; and Gauteng, by revising some sections through the Gauteng Province general Law Amendment Act No. 4 of 2005.


27 This is an important qualification; however the extent (if at all) to which this meaningful consultative process with street traders has been undertaken in relation to the creation of central improvement districts (CIDa) which ban street trading or in other prohibited and restricted areas, is questionable.


29 Ibid.


31 DED Green Paper, 2005, p. 16.
The informal economy policy legal support. These are discussed in detail in the section on formalisation below.

The city planners seemed to have grasped the links between the informal and formal economies very well, moving beyond the dual economy formulations that view economies as disarticulated and unlinked. However, the enforcement regime undermined the ability of street trading to advance the livelihoods of the poor. The DIEP document states that:

> The health of the entire economy is important. The economy does not divide neatly into ‘formal sector’ and ‘informal sector’. Rather, the different sectors, such as manufacturing, tourism, services, and construction, are on a continuum which has a more formal end and a more informal end. The great challenge to local government, in its support for economic development, is to enable the creation of as many opportunities for work as possible, at different points along the continuum, while ensuring health and safety, orderly planning and management (eThekwini, 2001).

Unfortunately, such a clear and moving analysis of economic relations, sound policy pronouncements and intentions has hardly lead to positive changes for informal traders in Durban. The tendency of states to adopt pro-poor discourse in order to advance elite policies is not limited to Durban and South Africa. Internationally, the development world as dominated by the Washington Consensus and the leading development agencies is also replete with such examples. Pro-poor discourse is deployed strategically in order to ensure buy-in for elite policies. For instance, development discourse refers to and acknowledges the need for bottom-up approaches, poverty alleviation, gender mainstreaming and consultation with poor communities, among other things, while in practice implementing policies that deviate from this pronounced intent.

Another contextual shift in terms of how the street traders were viewed by policy makers relates to the preparation for the bid to host the 2010 Fifa World Cup and, subsequent to the success of the bid, preparation of Durban as a host city. The interests of informal traders were overtaken by the idea of establishing Durban as a ‘World Class City’ ahead of the 2010 Fifa World Cup (Pat Horn, Interview). City authorities used policy bylaws to pursue an image of a ‘twenty-first century city’ rather than as a space for economic interaction by its citizens. The CoD aspires towards a establishing a city:

> ... which is safe and secure for its citizens; where people live in a healthy environment; where the urban environment is well-managed. Durban’s future economic and social health depends on its being investor friendly, with incentives for new and existing business to put down roots and grow. Good planning and management must include long term thinking about spatial development and transport planning.

Thus all work, whether in the more formal or more informal ends of the continuum, is to be valued by the CoD, especially when the unemployment rate is so high, and when there is a strong link between unemployment and crime. Unfortunately, the emphasis on being investor friendly places a managerial and planning-heavy city at odds with the interests of street traders to have an accessible city space and a supportive city administration.

The formalisation process is detailed in Chapter Three.

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52 Pat Horn is the Coordinator of StreetNet International, as well as founder of the Self Employed Women’s Union (SEWU).
54 Between 1996 and 1998, the greatest growth in unemployment occurred among the African population (a 6.8% increase), compared to 4% for Indian people, 3.9% for coloured people, and only 0.7% for whites.
Several surveys and estimates testify to the increase in informal street trading since the early 1990s. The informal economy contributes substantially to job creation. In 1996, there were about 20,000 street traders in the Durban Metro Area (DMA). By 2006, this number was estimated to have more than doubled to nearly 50,000, with about 60% of these traders being female. This figure also includes thousands of people trading from their homes. It is, however, difficult to quantify migrant street traders as they tend to keep below the radar.

The implementation of the DIEP was intended to formalise informal street trading. The City viewed the increased informal street trading as chaotic and difficult to support. As such, formalisation was seen as a way to organise the sector and be better able to support it. The DIEP and the Municipal Street Trading By-laws form the key pillars of the formalisation process and they sought to achieve:

- The registration of traders and issuance of permits;
- The extraction of fees/rentals from traders;
- A commitment to consultation with street traders organisations by the municipality in negotiating the use of urban space for trading;
- A commitment to provide a range of support mechanisms and institutions to facilitate organised trading; and
- Setting up a management, control and monitoring mechanism for the activities of street traders within a set of bylaws.

Formalisation was seen as an efficient way of mainstreaming the informal economy. The policy and its implementation included:

- Simplification of registration costs and the reduction of rental costs, as well as costs of entry for vendors and home-based workers, with incentives for registration;
- Representation of informal trader organisations on planning and policy committees;
- Provision of support to trader organisations (such as meeting places, legal advice, and secretarial help), using existing municipal assets; and
- City officials and traders working together to improve the image of the informal economy.

In the preamble to the 2002 Draft Street Trading Policy Directives (DSTPD), the CoD articulated a clear understanding of the role and place of street trading in poverty alleviation, pointing out that formalisation was pursued:

BEARING in mind the high level of unemployment in KwaZulu-Natal generally and within eThekwini Municipality region in particular; KNOWING that the formal economy has failed to provide a sufficient number of economic opportunities to those who seek such access; NOTING the duty of the eThekwini Municipality to give priority to promoting economic developing and social justice in the community; CONSIDERING that street trading is a viable means of providing a significant number of economic opportunities for those wanting to pursue a livelihood;

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36 In the case of CoD, the word ‘rental’ is used to refer to payment for a place. In Durban, ‘rental’ refers to payment for the right to operate, whether at a fixed site, or as an itinerant or mobile worker.
The Formalisation Process

RECORDING that the municipality seeks to regulate and encourage the growth and development of the informal economy for the mutual benefit of all concerned; RECOGNISING that the municipality has the duty to administer and regulate the control of public spaces and hence ensure that street trading occurs in a safe, hygienic and orderly environment.

The DIEP was given legal expression in the eThekwini Municipal Street Trading Bylaws (eMSTB), promulgated in May 2004. The focus of the bylaws included the “protection of businesses, public buildings and monuments, pedestrians and traffic flow, as well as the maintaining of cleanliness, hygiene, safety, public order and open space within the City”. The street trading by-laws are enforced by the Metro Police in the inner city of Durban, whose mandate is derived from the South African Police Service Amendment Act No. 83 of 1998 (Police Amendment Act). The main aspects of the eMSTB which underlined the formalisation process included, among others, “prohibited conduct, restricted conduct, cleanliness, erection of signs indicating restricted and prohibited areas, removal and impoundment, vicarious responsibility of persons carrying on business, and offences and penalties.” Some of the critical aspects are articulated below.

3.1 Registration, permits and rental/operation fees

The registration of a trading opportunity and the application for a relevant permit to trade (Annexes 6.3 and 6.4 refers) is considered by the CoD as the basis upon which a trader can become legitimate. This registration requirement is compulsory for anyone seeking to engage in informal street trading in the City, whether on a temporary short-term or a long-term basis. The permit is defined as “the document issued to a street trader by the municipality containing the terms and conditions that apply to a particular trade opportunity”.

Registration is repeated annually and part of the process involves paying registration fees, commonly understood by traders as rental for the trading opportunity. Rentals are linked to site size, desirability of location, and the level of services provided. A basic site rental is set, and then differentiated rentals charged for different levels of service provision. Components of a package of basic services are basic shelter; solid waste removal; water; toilets; lighting; and storage facilities. However, while the term ‘rental’ usually refers to payment for a place, the informal economy policy advocates for a move towards payment for the right to operate, whether at a fixed site, or as an itinerant/mobile worker. The CoD suggested that:

It may be prudent to move away from ‘rental’, or ‘permit’, or ‘license’ – all of which cause some confusion in the existing situation - to a changed term such as ‘registration fee’, or ‘operator fee’.

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62 Ibid.
64 eThekwini Municipality, DIEP, 2001, p. 12.
A number of surveys of trade activities have indicated that the majority of street traders are involved in fast food, fruit and vegetable retail. The permit application for food retailing is still administered under Regulation 918 of the Health Act No. 63 of 1977. Neither the Health Act nor the Business Act cover other activities that have implications for health, such as hair dressing or the sale of recycled products such as drums and cardboard. The policy allows for a permit to be withdrawn if a trader has not been trading for a period of two weeks (14 days); and in the event of death, a permit is automatically terminated with no possibility of transfer.

3.2 Planning and zoning of markets

City officials vigorously pursued spatial planning with the intention of establishing an ordered and organised city, where the ‘important part’ of the City’s economic life, the formal sector, was not subjected to the ‘nuisance’ of ‘badly behaved’ poor people. The CoD suggested that:

... new markets and trading opportunities must be properly planned, bearing in mind the economic needs of traders, the need for more vibrant land use, and the need for orderly town, spatial and transport planning, as well and health and safety [recognising that ] in some parts of the central city there are few sites available while new spatial opportunities exist largely in the former township areas; markets have been established without adequate reference to environmental impact, provision of infrastructure, town planning, or transport planning, and [...] some of the new satellite markets are empty because of the lack of planning and policy.

The duty of determining ‘trading opportunities’ within a particular area is vested in the municipality, which has to consider, among other things: the viability of any public space using town planning schemes; existing land use; the nature and volume of traffic and pedestrian streams, with the interest of minimising disruption of such traffic; and the requirements of any relevant laws and bylaws. These formalisation aspects are implemented within a context where City officials’ attitudes consider those surviving in the informal economy as a nuisance to those in the formal economy, and informal street trading as a practice that needs to be minimised or, better still, completely curtailed. The fact that spatial planning is a prerogative of the municipality for which there is no legal requirement to consult with informal street traders often leads to the inappropriate location of trading sites. In many instances, unfavourably located sites remain under-utilised, while preferred trading spots become congested. This often leads to confrontations between officials and traders, and unnecessarily hostile relations.

Through the spatial planning strategy, the CoD implemented the Public Realm Management Programme (PRMP) in 2005 to advance the formalisation process. The PRMP is designed to enforce registration and permit holding, followed by the immediate expulsion from the City of non-permit holders. The implementation of the PRMP is in direct contradiction to the DIEP, as well as the spirit of the Green Paper, as it involves an old-style crackdown against informal street traders in Durban. The PRMP has led to the direct criminalisation of those informal street traders without permits as they are now classified as ‘illegal traders’, as well as setting traders against each other, dividing informal street traders with permits from non-permit holders.


46 DED, Informal Trading Policy, 2001: The term ‘nuisance’ is defined in the Draft Policy for the Informal Economy of KwaZulu Natal (2009) as "any conduct which brings about or may bring about a state of affairs or condition which constitutes a source of danger to a person or property of others or which materially interferes with their ordinary comfort, convenience, peace or quiet".

3.3 Removal and impoundment

The eMSTB allow City officials to remove and impound the goods of street traders found to be in contravention of the bylaws, following due process. According to Section 7 of the bylaws, the Metro Police and City Authorities can remove and impound any goods:

(a) which he reasonably suspects are being used or are intended to be used or have been used or in connection with the carrying on of any business of a street trader; and

(b) which he finds at a place where the carrying on of such business is restricted in terms of bylaw (3)(h) or bylaw 5 or prohibited in terms of bylaw 2(a) to (g) and which in his opinion constitutes an infringement of such provision, whether or not such goods are in the possession or under the control of any person at the time of such removal or impoundment.

Section 7 of the bylaws absolves City officials from liability “for any loss of or damage to any goods removed and impounded”. However, in so doing they are in contravention of section 25 of the Constitution which protects individuals from “arbitrary deprivation of property”. Francie Lund and Carole Skinner noted that:

Clauses such as indefinite confiscation of goods with no warning, or the imposition of high fines for trading in non-demarcated areas can be detrimental to traders’ businesses [suggesting that] ... traders need to be warned if their goods are going to be confiscated.  

The police’s interpretation of “property” seems to be limited to assets such as land and other high value economic assets, excluding trade goods of the poor from such protection.

3.4 Prohibited and restricted conduct

The eMSTB also stipulate certain prohibited areas where street trading is not allowed, including where it may obstruct traffic, pedestrians on a sidewalk, or access to residential and commercial property. Section 6(1) states that “no person shall carry on the business of a street trader at a place or in an area declared by the Council in terms of Section 6A(2)(a) of the Businesses Act as a place or area in which street trading is prohibited”. Section 6(1)(h) of the street trading by-laws states that "no person shall carry on the business of a street trader on a stand or in any area demarcated by Council in terms of section 6A(3)(b) of the Act, if he or she is not in possession of a written proof that he or she has hired such a stand or area from the Council, or that such stand has otherwise been allocated to him or her". In order to enable compliance if this action is undertaken, the Council must, according to section 9(a), prescribe or make signs, markings or other devices indicating (i) specified hours, places, goods or services in respect of which street trading is restricted or prohibited; (ii) the locations of boundaries of restricted or prohibited areas; (iii) the boundaries of a stand or area set apart for the purposes of the carrying on of the business of street trading.

Clauses such as indefinite confiscation of goods with no warning, or the imposition of high fines for trading in non-demarcated areas can be detrimental to traders’ businesses [suggesting that] ... traders need to be warned if their goods are going to be confiscated.  

The police’s interpretation of “property” seems to be limited to assets such as land and other high value economic assets, excluding trade goods of the poor from such protection.

3.5 Supporting the institutional and organisational capacity of traders

The Informal Trade and Small Business Opportunities Branch (ITSBO), later called the Business Support Unit (BSU), was established to manage the institutional support and organisational development of traders and small businesses in the CBD. For efficiency, this requires administrative and support capacity, yet the CoD has not invested enough to make this possible. The Metro Police are the most visible arm of the CoD machinery in the street trading area, albeit in a manner that undermines the street traders’ activities. Organisationally, the ITSBO seems uninterested in developing and working with an independent and vibrant traders’ organisation; instead, City officials have contributed to disunity in the informal economy organisation. The organisational capacity of many organisations and associations has been undermined by the CoD’s cherry-picking of who it would work with, including some and excluding others without clearly defined and communicated criterion. One of the major fault lines in the DIEP is the failure of the Business Support Unit (BSU) to provide integrated business support services to informal traders to enable them to undertake income-generating activities. Instead, the more visible unit of the CoD’s machinery for formalisation is the Metro Police, whose heavy-handedness in arresting traders and confiscating their goods generate tension and negativity towards formalisation.

The pronounced progressive intentions of the DIEP were thus overtaken by the cumbersome bureaucratic procedures and spatial planning designs of the City. Rather than supporting the livelihood opportunities of traders and workers entering the City as had hitherto been the case, the City opted for an inflexible and controlling regime. The goal of establishing Durban as a ‘World Class City’ became a source of contradiction between the claimed intentions of the DIEP and its implementation.

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50 For more on the history of black access to the City, see Chapter Two, Section 2.1, which outlines the historical context of access to the City under apartheid.
Informal trading is an important source of livelihoods in the CoD and beyond. At a provincial level, 19% of the workforce operates in the informal economy, of which 98% are black, 48% female and 14% foreigners. A study by Imraam Valodia in 2000 estimates that approximately 83% of informal economy participants are black, of which females constitute approximately 57%, with black women making up 49% of the female segment. However, Lund and Skinner in 2002, calculated that informal trading accounts for more than 70% of informal economic activity, and that more than 90% of those involved in the sector are female. The studies show two trends; firstly, there is an increase in the participation of males in the informal economy, mainly as a consequence of globalisation and retrenchment in the formal economy (which is largely dominated by men). Secondly, the increase in male participation has reduced the proportion of female street traders as a percentage of the total. As male participation in street trading increases, they also dominate the higher margin trades, as well as those with higher entry costs (see Table 4.1 below).

EThekwini Unicity estimated in 2002 that one in every three economically active people in Durban was employed in the formal sector. The contribution of the informal economy to GDP is often difficult to quantify. However, Desai and Maharaj estimate that between 1- and 2.3-million informal businesses in South Africa contribute between 7 and 12% of the country’s GDP. Informal street traders also contribute to job creation. Many informal workers, such as street traders generate work along a chain of supply and distribution. For instance, the muti trade (trade in traditional medicine consisting largely of herbs) has been estimated to generate about 14 000 jobs in Durban (see Table 4.1 below for the main activities in which street traders engage). Informal outlets trade in many goods which are important in the cultural and religious life of many Durban residents and visitors. For example, about 80% of the African population uses traditional medicine, the basis of the muti trade; sea water is an important ingredient for various cultural and religious practices, including weddings; and apparel and decorations for temples and mosques are sold in informal and formal outlets. The provision of cultural artefacts is important for local people, as well for the tourist market.

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55 Ibid.
### Table 4.1: Street trader activities

<table>
<thead>
<tr>
<th>Trade activity</th>
<th>Key Participants</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muti trade</td>
<td>Largely older traders (mostly men, but also women), dominated by South Africans. Migrant traders in the muti trade sell different products to those of the local muti traders, such as sorcery, magic and exotic potions.</td>
<td>The muti trade is mainly carried out at the Warwick Junction market, although there are some who trade in smaller quantities in the CBD.</td>
</tr>
<tr>
<td>Vegetable trade</td>
<td>Mostly women.</td>
<td>Transport nodes.</td>
</tr>
<tr>
<td>Fruit trade</td>
<td>Mostly young men.</td>
<td>Transport nodes and CBD streets, although traders tend to be mobile.</td>
</tr>
<tr>
<td>Fast food trade (including boiled and roasted maize cobs, cooked and roasted beef/chicken, boiled bovine heads, vetkoek , etc)</td>
<td>Mostly women.</td>
<td>Usually in transport nodes such as taxi ranks. Some trade from door to door, while others use portable braai stands on busy corners or close to commercial areas.</td>
</tr>
<tr>
<td>Trade in drums and cultural items</td>
<td>Mostly Zulu men, mainly supplying cultural functions.</td>
<td>Dalton Market.</td>
</tr>
<tr>
<td>Beading</td>
<td>Mostly women.</td>
<td>On streets and in designated markets.</td>
</tr>
<tr>
<td>Shoe polishing, making and repairing</td>
<td>Mostly men.</td>
<td>On streets and in spaza shops.</td>
</tr>
<tr>
<td>Watch repairing</td>
<td>Mostly men.</td>
<td>On streets and in spaza shops.</td>
</tr>
<tr>
<td>Mr Phones, phone dealing, airtime vending and phone repairing</td>
<td>Mostly foreign men.</td>
<td>On streets and in phone shops.</td>
</tr>
</tbody>
</table>

In Durban, as in many cities, global economic pressure accompanied by weak accumulation in the formal sector and the endemic short-comings of the government’s growth model has led to massive unemployment and retrenchment which are pushing the economy into the informal terrain. Ironically, instead of looking to the informal economy as a critical site of livelihood generation and working to help it reach its potential, the CoD’s formalisation process tends to undermine it.

4.1 Experiences of informal street traders in general

Based on this study’s fieldwork interviews, the general perception among informal street traders is that all levels of government (national, provincial and local) seem to fail to appreciate and support their activities. Interviews and discussions with traders indicate a general perception that the CoD would rather not have the informal economy at all, and that officials go to extra lengths to deliberately frustrate and inhibit activity in this sector, in spite of its rhetoric that suggests progressive positions. Traders feel that City officials employ sympathy with the plight of the poor as political rhetoric, but do not help the poor to improve their livelihoods.

For instance, the traders feel that it is not proper for the City to levy rent (otherwise referred to as ‘registration fees’ or ‘operator fees’) on the poor traders as it increases the costs of entry for traders. Rental prices range from R39 per month (R468 per annum) for a trading site without shelter, to R68 per month (R812 per annum) for one with shelter. Some prices depend on the site’s location within the CBD, with stands at transport hubs fetching much higher prices and usually out of the financial reach of entry traders, especially those who are female traders and migrant traders. Further, the payment system in place for registration requires that traders shut their operations entirely until their registration is finalised. Such factors have led to the perception that,
through the rental policy, the CoD is only interested in generating income from the poor traders. Yet this is a sector requiring more government support and in which the developmental function of local government should be more elaborately employed.

The procedures for the application of permits are not clear to those trying to enter the informal trading sector. In the Vilakazi case, Mr Vilakazi states that:

Informal traders, whether on the sea-shore or elsewhere, simply do not know how applications for permits are dealt with by the municipality. My attorney has been advised by Patricia Horn [Coordinator of StreetNet International] that she has in the past requested information and transparency about these issues but on each occasion she is given different explanations. She has failed to obtain a comprehensive and consistent official written version of the requirements and procedures informal traders are expected to comply with. It follows that the municipality is performing functions with arcane, opaque and unknown informal procedures and criteria.

The information required for the permit application does not help towards building useful poverty profiles and understanding the nature and extent of poverty, and the efforts of the poor to improve their economic situation. As noted by Mr Vilakazi:

The information required does not prioritise the needs of the most desperate, marginalised and vulnerable. For example, the Pamphlet only requires the most rudimentary details to be furnished in support of an application. If care and thought had gone into designing the Pamphlet, then the socio-economic circumstances and needs of an applicant would have ranked high on the list of details to be furnished, and these would have informed the decision maker in a meaningful way.

On this basis, Mr Vilakazi told the High Court that “the obstacles and difficulties that the municipality had devised to guard against informal trading does not pass the test set out in Section 36 of the Constitution because they are unreasonable and unjustifiable”. It was argued that the regulation by the municipality had no other positive effect on the economy other than hindering the poor from earning a lawful income “because their appearance or the activity they seek to engage in, is out of synch with the image that the City fathers seek to portray of Durban as a glamorous first world ‘fun in the sun’ city”. The judge subsequently granted the relief sought in this case.

To facilitate aspects of the informal trading bylaws, such as the permits and rental aspects of the DEIP, the CoD engaged a consultant, Urban-Econ to establish a implementation plan for the informal trading sector in the eThekwini Unicity.60 The CoD was mostly concerned by the fact that by 2003 only 20% of traders had permits and 6% paid rent.61 Traders view registration – which has to be renewed annually - as an automatic acceptance of paying rent. Those operating without permits are not paying rentals, which mean that rentals become a disincentive for permit application. The 2003 Informal Trader Census indicated that 47% of the traders interviewed operated from areas that were not demarcated in order to avoid paying rent.62 Street traders view the change from ‘permit’ to ‘registration’ as nothing but a change of terminology, amounting to little more

58 Section 36 provides for legal limitations to other rights enshrined in other sections of the Constitution. For instance, Section 22 of the Constitution states that “Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law”. However, Section 36 stipulates that limits on rights must be “reasonable” and must be imposed only because of “an important objective”. Limits should also employ “less restrictive means”.


60 Urban-Econ is a development economics consultancy firm which prides itself on offering market-related solutions to development. See www.urban-econ.com. It produced a report in 2004, entitled A Consistent Rental Policy for Informal Trading in eThekwini Unicity, Ref. N/04/09


than a fundraising scheme by the City as there are no benefits or incentives for traders who comply.

The registering and levying of fees from the informal economy has two major consequences: the reduction of the number of first-time and very poor people from participating; and the creation of a revenue flow for the City. Registration and rental collection remain poorly coordinated with an orientation towards revenue collection rather than keeping updated records of trading activities and profiles so as to effectively plan for further support and facilitate development. Street traders feel undermined by some of the terms and conditions, such as the requirement that informal street traders should not “carry on street trading in such a manner that causes a nuisance”, and that “the street trader does not shout unreasonably loud, or ring bells or horns or use any other device to attract attention to his merchandise or service.”

The irony of the latter requirement is that formal businesses employ touts who use loudhailers and microphones to invite people to their shops for a ‘sale’. Another requirement controls the street traders from “selling anything or providing a service that is similar to that provided by a regular store owner in that vicinity.” This shows double-standards on the part of City officials as formal business can compete with each other and sell the same kind of goods, yet informal street traders are expected not to compete with formal businesses.

To make matters worse, by the CoD’s own admission, “under present budgetary and financial policy, it is not possible to earmark money paid in rentals (by informal traders) for the further development of trading facilities.” This means that there is no way of measuring whether the money levied from this sector is ploughed back into institutional and infrastructural development to benefit those paying the money. The requirement that traders pay for urban space follows the neo-liberal cost recovery model. The CoD’s justification is that:

Local government is moving towards dealing with informal traders as small business people. In the same way that built property has a value placed on it, depending on where it is located, so it is important to place value on different informal trading sites, such as pavements.

However, certain registration and licensing constraints placed on traders seem to conflict with the notion of “dealing with informal traders as small business people”. For instance, licensed traders cannot leave their place of operation any time during the day without closing down their businesses.

In a 2006 Durban High Court case, Mr Vilakazi, a photographer who plies his trade along the beachfront area, challenged the CoD, telling the court:

Poverty alleviation is an issue that is constantly bandied about by those in power, but I have yet to see anyone knocking at my door asking whether I need help. I do not ask the government for anything, nor do I seek any concession or charity. I do not beg, borrow or steal. The modest rations that I put on the table every evening are earned through the slog and sweat of my brow. I only ask that I be left to earn a few pennies.

The CoD’s failure to provide Mr Vilakazi with a permit to carry out his trade as a photographer at the beach front, while expecting him to stop trading for failing to have a permit, is a good example of how this policy is seen as a tool for the harassment of the poor. Such a refusal to grant permit by the City is against the spirit of the DIEP.

The CoD allocated R3.7-million to the Durban Metro Police Department to implement the PRMP. Two reasons were offered to justify this programme, whose impact was drastically negative on the traders. Firstly, it was argued that formal shop owners were

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64 Ibid.
66 Ibid, p. 17.
complaining about crime and the clandestine activities of street traders. When this claim could not be sustained, the second argument was offered that the PRMP was necessary to advance a vision of Durban as a ‘World Class City’ more especially in view of preparations for the 2010 Fifa World Cup. It turned out that the sole purpose of the PRMP was to evict street traders who did not have permits, force them to register and pay rentals, and make those who could not ‘illegal traders’. One of the immediate impacts of the rolling out of the PRMP was that it created an opportunity for extortion and permit racketeering by officials and street-lords.

In reaction, a campaign led by trader associations and StreetNet was put in motion demanding, inter alia:

- An end to police harassment and arrests of traders and having their goods confiscated, dumped and illegally appropriated by arresting officers and a stop to police harassment of traders until such a time by-laws have been reviewed, properly published and an agreed method of regulation of trade that involves the traders themselves through their own organisations.

Anna Marriott of the University of KwaZulu-Natal (UKZN) conducted a study in response to the PRMP, which indicated that the relationship between the informal and formal sector was not properly understood, and was not as constrained as the municipality suggested. She concludes that:

The varied responses from formal business, especially concerning the advantages and disadvantages for business of street traders and of the PRMP, demonstrate that a more nuanced and participatory approach to represent and address the needs and wishes of the CBD formal business community is required from the municipality [suggesting that] ... the blanket approach taken to remove traders is unable to cater for the contrasting levels of economic and social co-operation and interdependence between the different formal businesses and the street traders in front of or nearby their premises. Furthermore, many formal businesses raise serious questions about the ethics, effectiveness and sustainability of the PRMP due to the current context of high unemployment and livelihood dependence on street trading; the failure of the municipality to provide alternative trading sites for those traders removed; and the lack of prior consultation with either the traders or the formal businesses themselves.

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68 Street Traders Stakeholders Forum, 14 October, 2010.
69 StreetNet International, Memorandum to Area Manager, 2009.
70 Interview with street traders, West Walk, 13 September 2010.
73 Ibid, p. 15 – 16.
The Marriott study suggests that PRMP had proceeded without any consultation with formal businesses (although they claimed to act on their behalf) in the areas most affected by forced removal of traders, and that the formal businesses asked about the municipal move did not, in fact, support the PRMP. StreetNet approached the City and appealed for a return to an approach which balances the interests and needs of all stakeholders in the interest of poverty reduction, and not deny the poor access to livelihoods. In a second memorandum on the CoD’s digression from the spirit of the DIEP guidelines, StreetNet observes that:

75 As part of StreetNet’s advocacy in the street trading area, a number of memos were send to targeted departments over the period 2000 to 2010.

The Business Support Division has been unable to explain to the street vendors or the general public how it is implementing Durban’s Informal Economy Policy. When complaints are made by stakeholders who object to the presence of street vendors, this Division does not explain the policy or the implementation strategy to the public. Instead, they pass the buck to the Metro Police. We are also gaining the impression that the Metro Police are not being thoroughly trained in Durban’s Informal Economy Policy, which would give them good guidelines for the enforcement of the street vendors by-laws in a manner consistent with the policy’s aim and purpose. As a result we see very inconsistent statements emerging from the Metro Police on the question of the regulation of street vending – which they apparently attribute to inconsistencies on the part of the BSD.

One of the main aspects characterising how the traders experience the formalisation process is the poor grasp of the spirit of the bylaws by the City police, and the apparent lack of good faith in the police and City officials’ engagement with traders. The fact that the City was allocating resources for the eviction of traders without properly briefing the Metro Police on the policy and its implementation can be considered as an illustration of bad faith and lack of interest in implementing the policy. Traders feel that the R3.7-million allocated to the eviction of street traders could have been better used, among other things, to improve the infrastructure in the sector, as well as to improve the organisational capacity of traders.

There are common areas of concern between some informal traders and the CoD officials resulting from a lack of interaction and engagement. Informal street traders are also worried about mobile informal street traders who, by virtue of their mobility, can easily evade registration, permits and rent paying. Increased
dialogue between the CoD and street traders through their organisations could yield a working arrangement to resolve this.

Police engagement with street traders is limited to a mono-language of arrests, leaving street traders and their organisations on the defence (mostly resorting to running away whenever they see the police). Street traders reiterate the importance of dialogue:

*The police must come to us and deal with us as the traders' leaders – this was the agreement when we participated in the formation of the DIEP. Their duty is to deal with lawlessness [and] making a decent living cannot be classified as such. When police arrest traders, they take way not only our permits and stock, but our livelihood.*

When goods are confiscated, traders must pay fines of between R300 and R500. Sometimes the value of the goods confiscated is too low to justify paying the fine to regain them. Non-payment of the fine leads to a warrant of arrest being issued. The admission of guilt and warrants of arrest criminalise poor people who are striving to lawfully sustain themselves. The sight of police with guns endangering the lives of the public by chasing after harmless, unarmed street traders has become common place. It is clear that some police officers are not properly briefed and trained regarding the DIEP and how the permit system works. Consequently, the City would be better advised to give the responsibility for the management of permits to the Small Business Support Unit (SBSU). The participants in the forum discussion make this point very clearly:

*We do not think the Metro Police are doing a good job. We do not think that they are helping the street traders by the way they are behaving. We would like a situation where they are withdrawn from implementing informal trading related bylaws until such a time that they are properly briefed and educated about the bylaws and the spirit of the policy. We would also like the street traders to be involved in joint workshops with the Metro Police about the bylaws. Further to that all bylaws must be clearly spelt out and published on the streets and in a language that street traders will understand.*

One of the major fault lines in the permit system is the rigidity of the terms and conditions of the permit which undermine the efforts of street traders.

For instance, if one's goods are spread beyond the demarcated area, this becomes a violation for which a permit could be revoked. The fine of R300 (see appendix D) was issued to a permit-holding trader as her goods were said to be obstructing the walkway.

Traders are also irritated by the fact that fines for similar offences are given different fines, raising concerns of unfair treatment and a lack of consistent implementation (See appendices B and C).

The lack of clarity about the rules guiding street trading is a serious impediment to the business of traders. Street traders attending the stakeholders' forum discussion in Durban note with dismay that:

*The bylaws used by the City to arrest traders are still colonial/apartheid by-laws created to prevent selling on the street. Their application undermines traders – they are not clear and have not been discussed with traders. The traders are affected by the fact that the trading permit is temporary and as such they are not able to plan in advance. There are people who have made livelihoods in this sector for all their lives and inherited street trading from their own parents. This new permit which is temporary was brought into place in 2004 and we were told that it was a temporary measure but it does not seem to be going away. We believe*

77 Street Trader Interview; 14 October, 2010.
78 Ibid.
79 Ibid.
80 Street Traders Stakeholders Forum Discussion, SAMWU Offices, 14 October 2010.
that this is deliberately done so that no one feels secure and that they can simply not renew the permit and one day you can just wake up illegal, face eviction and lose your livelihood. Making the permits temporary is also a collection strategy. This means that if you do not pay the annual operation fee, your permit will not be renewed.\(^1\)

The BSU limits a permit holder to one worker or assistant. This means that, during holidays and weekends, the children of traders are not able to assist their parents. In the case of sickness or emergency, traders cannot ask someone else to look after their goods and sell on their behalf because of the restrictive nature of the permit. Even when traders go to restock their goods, they have to close shop. A street trader in Durban’s CBD considers this limitation as being one of the most detrimental to traders:

*This permit is like a statement of condemnation. In the case that I become sick or disabled, I cannot transfer it to someone or my child to carry on trading on my behalf. It has so many limitations. If you are not at your permit place for a number of days, you can run the risk of losing that space. Often times one has to attend to urgent things, travel or restock, yet when the police get to your stall and find someone else trading on your behalf, that person is trading illegally – your permit can be taken and your goods too. The police can be so ridiculous in their implementation of these permit conditions.*\(^2\)

These police excesses in implementing permit conditions come at a huge cost to traders and their customers. Once a trader loses his or her permit, the cost of getting a new one is very high and the process cumbersome. Further, in police harassment of traders, customers are often caught in the crossfire. Traders at the Julian Road Market (close to Durban Station)\(^3\), for example, reported an incident in which, while pouncing on traders with expired permits, police also impounded goods from customers from Lesotho who were waiting to load them on a bus. Police raids also negatively affect permit holders due to the police’s lack of understanding of the permit system.

The management of site allocation also affects informal traders negatively. Site allocation is mired in confusion and causes distress among the poor as they scramble for trading sites and permits due to the lack of transparency about the process.

*The informal trade policy provides for the Informal Trade Management Board (ITMB) to allocate sites in conjunction with street trader organisations. We see people being allocated sites while, as leaders of street organisations, we are not involved or consulted as the policy suggests.*\(^4\)

When confronted with this divergence from policy, authorities opted to advertise vacant sites, sites for car wash business and storage facilities as they become available. Street traders do not think that this option will resolve their problems as it is already leading to the displacement of traders from some of the sites, either because they do not have a permit or because of some mistake on the part of the BSU. This often leads to double allocations that normally leave street traders struggling to sort it out among themselves. When disputes arise due to these problems, street traders first port of call is the street trading leadership, who then mediate and involve the BSU. This could be avoided if BSU involved street trader organisations from the outset, as stipulated by policy. Street traders’ leadership is in a better position to advise BSU in terms of sites becoming vacant as they are on the ground every day.

The implementation of site allocation policy opens up space for abuse by authorities and the police. The CoD has an in-house ombudsman who is supposed

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\(^1\) Interview, Street Traders Forum Discussions, Durban 2010.

\(^2\) Street Trader Interview, 10 September 2010.

\(^3\) This is a popular market for traders from Lesotho, Mozambique and Swaziland who come to stock up on various items to sell in their countries.

\(^4\) Street Traders Stakeholders Forum, Durban, 14 October 2010.
to investigate and deal with people’s complaints against officials. However, the ombudsman’s office seems to be too under-staffed and under-resourced to be of much help. For instance, the Ombudsman received a case at the beginning of the year (January 2010) involving a Mozambican national who paid a City official R10 000 for a stand in a lucrative area of town, but received neither the stand nor the permit (See appendix E for the Compliant Receipt from the Ombudsman’s office). The case is still to be investigated.

The case cited above is but one of many such incidents experienced by street traders, many of which go unreported. Further there is no feedback on the progress of cases, leading to a lack of confidence in the system. A female street trader along West Walk in Durban’s CBD argues that:

The blame should go to politicians for leaving officials to do as they wish. The politicians have no idea how these officials make us suffer while those reported are not investigated. When you report they simply say that they will investigate and that is the end of it.\textsuperscript{85}

Site allocations in the CoD still exhibit a generally racialised spatiality which also lends itself to differentiated service delivery on the sites. The remnants of apartheid group areas planning still exist, manifesting itself in black, Indian and coloured dominated markets in different areas of the City. African street traders feel that municipal officials (especially Indian officials) treat Indian street traders preferentially.\textsuperscript{86} Female traders along Russel Street relate their experience:

The councillors are not protecting us from racism within this sector. When white people run their weekend car-boot and table flea markets in the City, they are not harassed. By the Mansel Road market

\textsuperscript{85} Interview with informal street trader, 15 October 2010.

\textsuperscript{86} Durban has a history of Indian-Zulu tension and the CoD would need to use its spatial policy to re-integrate all groups in all activities. While post-1994 Indians are now politically classified as blacks, this has not resolved the tension between the groups.

A further example is the Mansel Rd Market, which was allegedly hijacked from black informal street traders by mafia-type Indian street-lords, while CoD officials did nothing to make it more racially inclusive.\textsuperscript{87}

As part of the formalisation process, the municipality promised to develop storage facilities for traders. This is yet to materialise. Currently, many traders in front of formal shops enter into agreements with shop-owners to store their goods over-night. This means that traders are not able to take advantage of longer trading hours and public holidays as they

\textsuperscript{87} Informal group discussion on conditions of work with female street traders at the corner of Russell and West Street in Durban, 15 October 2010.
need to synchronise their operating hours to those of formal businesses. The informal economy is dominated by a vulnerable class of people and the CoD should be creating an enabling environment and support infrastructure to traders rather than providing obstacles to trade. The failure on the part of the municipality to provide such infrastructure, concentrating rather on regulating and controlling the sustainable proliferation of the informal economy, has the effect of exercising “extremely wide, unfettered, and unguided powers in determining who can or cannot engage in informal trading”89 in the CoD.

As part of the formalisation process, it is the City’s responsibility to provide facilities such as shelters. Higher fees are charged for both shelters and tables. It is reasonable to expect such facilities to be both adequate and appropriate. The shelters provided for traders, however, are too small and expose them to both rain and sun.

During the rainy seasons the number of traders who are able to carry one their work regularly is reduced. When traders improvise with tents and plastics, some City officials complain about the plastics and tents making the City ugly.

We understand the factors which make it difficult – from the side of the Council – to deal with many different street vendors’ organisations, and which make it tempting to want to have only one structure to represent all street vendors in any particular area. However, we also understand the factors which make those street vendors who have joined the independent organisations of their choice, feel that the Council is failing to respect their rights to freedom of association by refusing to deal with their organisations and forcing them to accept a Council-initiated structure instead. If one looks back over 30 years in our own history, this was exactly the same situation which existed ... when government imposed the notorious Liaison Committees and Works Committees for black workers and refused to engage with the trade unions which black workers had freely chosen to join. ... just like the Liaison Committee and Works Committee system of the 1970s, it is not a credible – and therefore not sustainable – system of representation in the long term. For a sustainable system of representation, it is necessary that the independent organisations which have been freely chosen by street vendors to represent their interests [...] have a credible role in that system.90

Durban Beachfront informal street trader under a shelter vulnerable to rain, wind and sun (left). Traders incur the extra cost of acquiring waterproof sheeting to cover their stalls and are often unable to trade in the rain (right).

Photos by Blessing Karumbidza


90 StreetNet, Memorandum to Lindiwe Mahlangu, 10 November 2003.
The failure to ensure and enlist the participation of various street trading organisations has led to a lack of communication of the policy and strategic intentions of the municipality, as well as a lack of buy-in into the municipal programmes meant to benefit street traders. The above memorandum was ignored and StreetNet had to send yet another in March 2005.

In general, formalisation has proceeded at a huge cost to trader sustainability owing to the fault lines in its implementation. The following section of this chapter examines the impact of formalisation on two specific vulnerable groups: female traders and migrant traders.

4.2 Degrees of vulnerability: Experiences of female traders and migrant traders

The majority of participants in the informal economy are female traders. In most cases, they are poorer than other traders and engage in the lower end of the informal sector (with minor exceptions). The majority of them participate in the retail sector, while male traders focus on those areas that require higher levels of skill, capital outlay and investment stock to enter. As is discussed in more detail below, female traders find themselves at the receiving end of varying forms of abuse from men and the state system.

The upsurge in the number of foreign migrants in South Africa’s cities has a long history. Durban is close to Lesotho, Mozambique and Swaziland and was a destination for many migrants from these and other countries in the 1970s. However, since the mid-1990s, Durban has been one of the main destinations for migrants from countries such as Cameroon, the Democratic Republic of Congo, Ethiopia and Nigeria (figures and trends supplied in 4.2.2 below).

4.2.1 The experiences of females in the informal trading sector

In South Africa, poverty has a gendered dimension, with women making up the majority of those facing high levels of poverty. More generally, women face the double bind of production and reproduction for the family, while race and location also largely determines their station in life. The National Gender Policy Framework (2000) noted that:

Poverty is a major problem in South Africa. The systematic and socially-engineered location of women in rural areas, and the underdevelopment of infrastructure in these areas, has been directly responsible for the poor conditions under which the majority of South Africa’s rural communities live. Apartheid laws, coupled with repressive customs and traditions, disempowered women in many ways that will take generations to reverse.

Office on the Status of Women, South Africa’s Policy Framework for Women’s Empowerment and Gender Equality, 2000

An elderly woman sells a handful of fruits valued below ZAR100.

Photo by Blessing Karumbidza
The gendered nature of poverty has been succinctly articulated by Dugard and Mohlakoana, who point out the structural and material aspects of poverty:

Women have less access to land, agriculture, jobs and credit, and they make up only 38% of the formal labour force. In terms of the poverty indices, the poverty rate among female-headed households is 60%, compared with 31% for male-headed households. According to the 2007 General Household Survey, ‘if you lived in a female-headed household in 2007 you were 63% more likely to experience hunger than if you lived in a male-headed household’.92

It is quite clear that female traders face many hurdles in their effort to sustain themselves through informal trading activities. Their dual role in social reproduction and economic production complicates their situation and calls for greater sensitivity in planning and implementation. For instance, female traders who have young children find it difficult to leave their children at home alone as it would mean employing someone to care for them as the streets and sites of business are dangerous for small children.

The barriers to entering the informal trade sector structurally imposed by formalisation accentuate these hurdles to access for female traders. Female traders face barriers in terms of the difficulties posed by the demands for registration, access to sites, as well as their inability to enter into trade and activities that require high capital outlay. Such factors are part of what make female traders vulnerable to a wide range of pressures and abuses at the hands of fellow male traders, customers and officials (including politicians and the police) who should be protecting them.93

Female traders suffer the double-bind of economic production and social reproduction for the household.94 They are not able to set aside the long hours needed to increase income. Peak hours in the informal trade sector are in the mornings and evenings when workers go to work and home again. The need to make sure that children go to school having eaten and to ensure that when they come home there is food means that female traders cannot devote the whole day to work. A qualitative study cited in von Broembsen (2007) captures this scenario succinctly:

It is common practice that females carry out household chores first before they switched to working on their businesses. These chores could take up half of their day. Being at home in African areas, especially in areas where most people are unemployed, often means attending to visitors or passers-by as it is rude to chase people away. Sadly therefore the business suffers.95

As a result, female traders often have to engage an assistant to take care of their trading tables. On a casual basis, an assistant charges R50 per day, which represents a significant proportion of already-low profit margins.

Most female traders cannot raise enough money for the quantity of goods that would earn them enough to afford permits and, therefore, commonly resort to trading without permits. The elderly female trader pictured above can only buy one box each of two kinds of fruit. In addition, she sells some muti medicine for a traditional healer so as to maximise her income, as well as to pay for her rental.96

One of the things negatively affecting female traders is the lack of security of trading sites. Lund and Skinner found that some female traders would prefer

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93 Interview with SEWU President, 14 October 2010.


96 Interview with elderly female trader, 15 October 2010.
sites being allocated to them permanently, for which they would be willing to pay.\textsuperscript{97}

Sometimes female traders have to resort to offering sexual favours to unscrupulous males who control certain spaces. Some taxi associations feel that they control the spaces where their taxis rank and their bosses get to decide who can or who cannot trade in those sites. Female traders preparing food at taxi ranks and others washing taxis at taxi ranks often have to provide sexual favours to get protection. When these females tell their stories to each other they often find that they have all at some point, especially in the early days of entry, slept with the same man or group of men. We now know that there are families that have collapsed when the husbands find out and blame the female for this as the husbands are afraid to approach these ruthless men. Others even have children from these men. It is a major concern in the context of HIV/AIDS and other infectious diseases that are ravaging the poor, and especially females. Females find it difficult to talk about these things and report such men as the police do not do anything about these cases. The police themselves are also implicated in these abuses. When they arrest female traders and take their goods, sometimes the female can be freed and get their things back if they agree to sleep with these officers. We see the abuse of informal economy females more especially in the informal commercial sex work sector where police arrest the female and take them to places and spots where they could get their freedom from sex. As SEWU we are holding workshops together with StreetNet to raise awareness and encourage females to report these cases.\textsuperscript{98}

SEWU has been demanding that appropriate sites be developed with a crèche and a day-care centre for children below school-going age, so that they are taken care of while their mothers work. However, little progress has been made. In one instance, a crèche that had been allocated in Themba warehouse for street traders in Alice Street was hijacked and is now being used by a known municipal official in the SBSU for his personal business. This abuse of trader-assigned facilities is common practice among CoD officials.


\textsuperscript{98} Interview with President of SEWU, 14 October 2010, Durban.

On the left, a female trader manages a single pay phone as well as selling sweets and chips valued at less than ZAR100. If she is fined ZAR300 and issued with a warrant of arrest, it will take her more than three months to be able to afford to pay the fine and start trading legally again. On the right, a young male trader sells small stock of fruits which allows him to be mobile and to run when the police appear.

Photos by Blessing Karumbidza
For instance, in the Isipingo area a storage facility built for street traders is being leased by an official who charges high prices to the people for whom it was originally built.99

The permit system is not gender sensitive as it does not take into consideration the fact that women perform a double role as home makers and bread winners. For example, the CoD informal traders bylaws require that only the permit holder and one assistant can work under one permit and no one else can operate on behalf of the permit holder. This condition negatively affects females in particular, who lose a lot of income as a result.

Many female traders cannot afford to pay an assistant on a permanent basis who they can register on their permits. As such, they employ different assistants each time they need help with the stall. However, when the police check the permit and note that the assistant is not on the permit, the permit can be revoked, the permit holder arrested, and goods confiscated. SEWU notes that the licensing system discriminates against the poor in general, but female traders most acutely:

> When a shop owner applies for an operations licence, they are not limited in who they can or cannot employ to work in the shop. Why then is this a requirement for poor traders? It is our belief that the municipality always seeks to employ short-cuts to problems. Their argument is that they want to stop permit holders from passing on their permits to others. Our argument has been that if they involved the traders themselves, there are many creative solutions to this problem that need not necessarily undermine the efforts of the traders. We also do not see anything wrong with someone passing on the permit and recover on a pro rata basis the remainder of a permit if a trader wants to pull out.102

The common systematic undermining of women traders by officials is well described in a story published in the Daily Sun (1 March 2010) under the headline, ‘They took my daily bread’. In this case, a street-trading single mother had hired a boy to look after her table and the street committee101 allegedly confiscated her permit from the boy. She was given the run-around by the committee and the municipality and, while being sent from pillar to post, the Metro Police confiscated her stock. After this, the Municipal Area Manager responsible for the informal economy wrote her a letter confirming the termination of her permit without any consultation or communication with her to ascertain her circumstances. She later learnt that her stall had been sold to another trader for R8 000. When approached for comment, the Area Manager said:

> Before we terminated the permit we tried to locate Jabu without success. When we issue the permit we and the trader sign an agreement and the trader keeps a copy to make sure they understand the policies and the by-laws of the municipality. Putting another person in the stall is not acceptable. If Jabu still wants to sell she must come to our offices and we will give her another stall, but at the same time we will monitor her.102

There are many females who lose their permits because they ask someone else to sell on their behalf while they attend to other pressing issues, important to their family’s well-being. Further, some street committees are known to be run by ruthless gang-like male groups who harass females who fail to pay protection money or perform sexual favours.

More generally, another major irony of the formalisation process is that, while the CoD is interested in treating the informal sector like the formal sector in terms of using it to generate income, it is not prepared to provide the same quality of services and accord the same level of operational freedom.

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99 Group Discussion, Street Traders Organisations, SAMWU; 14 October, 2010.
100 Interview with SEWU’s President, 14 October 2010, Durban.
101 Each street or trading area selects a number of people to resolve disputes and represent the traders in that particular area. These representatives form street committees.
The perceptions of the poor that, through its policy of formalisation, the municipality has no intention at all to develop this sector but rather intends to destroy it, are plausible.

4.2.2 Experiences of foreigners in the informal trading sector

The vulnerability of foreign nationals in any economic space has to be understood in the context of perceptions about citizenship socio-economic rights to access, as well as rights to socio-economic goods. Access to resources lends itself to varying contestations often mediated by politics in general, and also by race, class, citizenship and gender. The exercise of ‘othering’ foreigners, thereby creating ‘insiders’ and ‘outsiders’, often determines varying levels of access (or lack of access) to resources. Competition over access to resources often leads to violent clashes between groups.

Durban is home to many migrants. Since 1988, Durban has recorded a high black migrant presence, resulting in some media posting strangely alarmist and sensational headlines that proclaim Durban as being a “haven for illegal immigrants”, as experiencing a “flood in aliens” and as having a “refugee crisis”. As argued by Jonathan Crush (1997), the covert nature of illegal migration makes it difficult to be accurate about figures and negative perceptions about immigrants tend to result in exaggerated figures. African migrants are usually circular migrants, regularly returning home to their countries of citizenship, while spending most of their working life in South Africa. Changes in migration patterns since 1994 are characterised by the increased “arrival of African migrants, immigrants, asylum seekers and refugees from further north”.103

The influx of foreigners into South Africa has recently led to a fierce contest for space and social-economic clashes between foreigners and poor South Africans. The outbreak of extreme xenophobic violence, largely against black foreign nationals in May 2008, provides a window into the class and race character of how citizenship rights are accorded to different individuals in South Africa. Black and poorer migrants are at the receiving end of negative sentiments, often expressed physically and violently. Generally, black and poor foreigners from the African continent face more difficulties accessing livelihoods in South Africa, as they are thought of as being a burden on the economy, thus falling prey to nefarious political and social forces.104 According to Baruti Amisi, Patrick Bond and Trevor Ngwane (2010), “the economics of xenophobia and its structural underpinnings in resource inequality remain unaddressed [...] which creates enabling conditions for discrimination, prejudice and violence against those perceived to be ‘foreigners’”.105

In terms of the informal trade sector, Jeremy Grest’s study of the Warwick Junction Market considers the interplay between the formal and the informal, the planned and the unplanned, in the context of the City of Durban. He outlines the policy processes and context which frames governance of the informal economy in the light of local government’s constitutional responsibility to be ‘developmental’.106

The intersection between regulation and development and its bearing on (urban) citizenship is important to understand in determining how individuals in a polity make certain claims about rights, and why others give up on attempting to access such rights (noting also that some rights are tenuous). If citizenship is defined as both a status, derived from membership of a collective (the modern state, for instance), and a system of rights and obligations that incorporates the ideas of justice, equality and community, it goes without saying that foreign nationals have been excluded from such a citizenship. The high levels of unemployment and poverty experienced by a large number of urban citizens make local government an arena of enabling new forms of economic citizenship through policies which foster the development of the informal economy. Given the extent to which municipal policies undermine the poor, migrants and females, access to urban citizenship is clearly limited. A review of the legislative framework within which foreign traders operate also shows a lack of legal protection for this group.

103 S. Peberdy, ‘Setting the Scene’, 2010, p. 5.
The post-apartheid government’s treatment of migration and refugees has been mired in contradictions. While South Africa is the only country in Southern Africa that integrates refugees into communities, its treatment of foreigners is still legally determined by the apartheid Alien Control framework. Official government policy towards immigrants is embodied in the Alien Control Act No. 96 of 1991 (revised in the Alien Control Amendment Act No. 3 of 1993) which provides for the deportation of culprits, as well as the prosecution of those who employ them, and is “a piece of legislation premised on principles of control, exclusion and expulsion”. The Alien Control Act makes it illegal to employ asylum seekers and illegal migrants, thus making the informal street trading sector the only avenue for their economic survival. However, as discussed below, contestation and confusion regarding ‘legitimate’ documentation to register for a trading permit means that most foreign traders operate illegally.

While the integration of refugees in communities is progressive as it means that refugees do not feel isolated, their access to socio-economic rights, as provided for by the Constitution, is often limited. For instance, the Refugees Act of 2000 expressly denies asylum seekers awaiting permits legal approval to be gainfully employed. The Constitution protects the dignity of all who live in South Africa, but this right is not given expression in legislation administering refugees, such as the Refugee Act (No. 130 of 1998) and the Immigration Act (No. 13 of 2002). Once official status has been accorded, Section (5) (f) and (g) of the Refugee Act actually entitles a refugee to seek employment, and grants him or her rights to access basic services from the government of the Republic. However, the social and economic rights for migrants provided for in the Constitution and other legislation are often contested, with some government officials and politicians openly challenging these rights. This leaves migrant communities to lead a life on the margins, a life characterised by exclusion, rejection, and the fear of a xenophobic backlash.

The economic citizenship of migrants in the informal sector cannot be guaranteed, due to a variety of barriers. These barriers result from the formalisation process on the one hand, and the effects of the disjointed migrant policy on the other hand. The lack of ‘proper’ documentation often leads to the exclusion of foreign traders from licenses to trade legally. They are trapped in a bureaucratic catch-22: While they need official papers to get a trading site, the Department of Home Affairs wants proof of employment (such as a trading permit) before it will issue the papers. Just one example of such paper-work barriers is the case of a refugee who says she had to sell most of the charity goods she had been given by a church in order to raise the money needed for registration and goods to trade, only to find that she could not be allocated a permit because the municipality did not recognise her refugee permit as a form of identification.

On the Durban beachfront, where the tourist curio market is dominated by foreign traders, most traders are operating on the basis of sub-contracts from local people. According to informal street traders from Mozambique and Zimbabwe located at the beachfront, they had never seen or heard of a foreigner with a permit in his or her own right in the 10 years they have been trading. It has become generally accepted by these traders that, to avoid harassment by the police, they need to identify a ‘good local’ willing to register them as an assistant.

The cumbersome documentation requirements are important factors contributing to migrant vulnerability. It opens up opportunities for local traders and officials to exploit foreign traders. For many foreign nationals, bribing officials or giving in to extortion becomes the only way to survive. This increases their costs of involvement in the informal economy and fundamentally reduces their profit margins. Further, although they are the victims, migrant traders are accused of advancing corruption and increasing the cost of operation for local traders. Discussions with South Africans about foreign traders often reveal worrying associations of foreign traders with the high crime rate in urban areas, often on the basis of hearsay. Some attribute the success of migrant traders to the use of muti, corruption and criminal activity. However, research shows that some of the success by foreigners in this sector can be ascribed to the basket of skills they possess, their comparatively high levels of education, as well as the social network they build as a survival mechanism.

The demographic character of migrants influences the kind of trading activities they engage in, and helps explain their general advantage in commercial activity over their local counterparts. The Southern African Migration Project (SAMP) has conducted many surveys on immigration issues since the 1990s. Their 1999 Durban Survey reveals that the majority of migrants are male, and the average age of migrants is 34, with 70% of migrants being between 5 and 44 years of age. The 1996 Community Agency for Social Enquiry (CASE) survey of street traders operating in Johannesburg found that foreign traders had higher levels of education than South African traders. Among the foreigners, 16% had a Matric Certificate or better, compared to 9% of South African traders. Only 4% of foreign traders had no formal education, in contrast to 11% of South African traders. In addition to this, research done by SAMP in 1998 in Johannesburg and Cape Town found that, among the 107 non-South African street traders interviewed in the curio sector:

- Over 90% had some secondary education. Nearly 40% had a formal qualification. Over two thirds had some form of further education or training, and 9% had some university experience.
- More than 20% employed South Africans in their business operations.
- More than 50% of traders spent 40% - 50% of their earnings in South Africa. 56% of non-South Africans and 78% of Southern African Development Community respondents took goods out of South Africa to trade. The value of goods taken out of the country ranged from R500 to R10 000 per trip.
- 71% identified their home country as their permanent home, while only 4% recognised South Africa as their permanent home.

A small study conducted in late 1999 found that among 10 Durban-based Zairian refugees there was a veterinarian doctor, an assistant pharmacist, a high school science teacher, a primary school teacher, a gold prospector with a degree in commerce, a carpenter, a tailor, a body guard and a mechanic. Of these skilled refugees, three were presently engaged as security guards/night watches, two had their own barber shops, one was in an import/export business, one had recently completed his university education, and three were unemployed.

Further SAMP research into Small, Medium and Micro Enterprises owned by foreign Africans in Johannesburg found that 70 entrepreneurs had created 227 job opportunities – an average of 33.3 new jobs per business. Between 47% and 50% of these new employees were South Africans.

One migrant trader, Arimando (from Mozambique) describes his attitude to business and how he has been able to make it in a sector normally associated with survivalism:

I am a trader in South Africa by default. I raised money in Mozambique for many years driving a van transporting anything from people to goods in a rural district. I sold the van and added the money I had been saving to come to South Africa to buy a commuter omnibus from the car import market. Upon arrival in South Africa I was robbed and remain with less than ZAR250. I started to do menial jobs and these were not rewarding so I decided to start buying and selling to raise enough money to go back. I bought and sold anything that could add something. After establishing contacts with other Mozambicans in Durban, I realised that I could make more money buying from the Chinese Warehouse and selling on the street. Within two months I had raised enough money to return but thought I could also raise money to buy the commuter vehicle I had come to buy.

A friend gave me a rundown car which I fixed on my own and made it road worthy. Now I follow pension payout points to sell my goods and also employ other people who engage in mobile trading for me. The inner city was a difficult site of work so I realised that I was better off avoiding it. Now, I also go around schools in town and the peri-urban areas, selling all sorts of things including shoes, perfume and other imported consumer goods. Five years since the incident that introduced me to this life, I now have four stalls in town and employ not less than 15 people, most of them local. I still think about going back, but I need to raise enough money for a van and at least three mini-buses to use as taxis in Maputo. I can say that determination and business skills are responsible for my being where I am today.

The consultative forum also discussed the role foreign traders could play in street trader organisations. It was submitted that:

> Often times, foreign traders do not participate organisationally to respond to pressures and challenges they face. They seem to prefer to deal with issues individually thus advancing the perception that they discriminate against each other and are very territorial about sites of trade. It is a common thing that once a Zairian has acquired trade premises, that area will soon be dominated by Zairians, and so is the case with Ethiopians, Nigerians and so forth. There is need to reach out to them through StreetNet as our struggles are similar.

The majority of migrant traders and refugees are not as lucky or successful as Arimando in the story above, battling to keep shelter over their heads and secure a single meal every day. However, there are a few elements that tend to determine the relative success of migrant traders, even in the face of huge barriers. One is that migrants band together in tight social circles, cushioning each other in the early days of their relocation, often advancing goods to each other on credit and offering each other accommodation. In addition, their skills and education, as well as previous experiences in their own countries surviving very strenuous circumstances, provide conditioning for success.

> The consultative forum also discussed the role foreign traders could play in street trader organisations. It was submitted that:

> Often times, foreign traders do not participate organisationally to respond to pressures and challenges they face. They seem to prefer to deal with issues individually thus advancing the perception that they discriminate against each other and are very territorial about sites of trade. It is a common thing that once a Zairian has acquired trade premises, that area will soon be dominated by Zairians, and so is the case with Ethiopians, Nigerians and so forth. There is need to reach out to them through StreetNet as our struggles are similar.
### Table 4.2: Foreign traders and their main economic activities

<table>
<thead>
<tr>
<th>Activities</th>
<th>Key participants</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone shops</td>
<td>Largely Koreans and Pakistanis, as well as Cameroonians, Ghanaians and Nigerians.</td>
<td>In street spaza shops; sometimes located within formal shops as a stall by arrangement with the shop owner.</td>
</tr>
<tr>
<td>Second hand and imported clothing retail</td>
<td>Largely Koreans and Pakistanis, as well as Cameroonians, Ghanaians and Nigerians.</td>
<td>Operate mostly in flea markets, as well as in designated places with more permanent stands.</td>
</tr>
<tr>
<td>Making food</td>
<td>Mostly Eritreans, Ethiopians and Congolese. They specialise in their native cuisines and tend to cater for people from their own cultural backgrounds.</td>
<td>In street spaza shops and flea markets.</td>
</tr>
<tr>
<td>Trading in blankets, duvets, shoes, perfume and other accessories</td>
<td>Dominated by Eritrean, Ethiopian and Zimbabwean traders who mainly source their merchandise from Chinese merchants.</td>
<td>Mainly mobile trading in peri-urban and rural areas, as well as at pension payout points throughout the month.</td>
</tr>
<tr>
<td>Pawn broking and miscellaneous goods trading (including dealing in gold and other precious minerals; currency exchange; and electrical and domestic goods)</td>
<td>Largely dominated by Asians and Nigerians.</td>
<td></td>
</tr>
<tr>
<td>Trading in tourist goods and curios (either made in the trader’s country of origin, or – increasingly, because of border controls – in South Africa)</td>
<td>Mostly Zimbabweans, Mozambicans and Swazis.</td>
<td>Mainly operate along the beachfront and other areas frequented by tourists.</td>
</tr>
<tr>
<td>Petty commodity trading (such as brooms, dusters, bathing accessories and handmade children’s toys)</td>
<td>Mostly from Zimbabwe, Zambia, Mozambique and Swaziland.</td>
<td>Trading is usually done door to door in the townships and suburbs.</td>
</tr>
</tbody>
</table>

It is important to emphasise that the business ventures that most male foreign traders engage in usually require very high establishment costs and rentals. Generally, the areas of economic activity migrant females are able to access within the informal economy are as restricted as the areas of work they are able to access in the broader labour market. Female migrants suffer a double-gendered oppression, both from their own migrant community and the host community. Some females end up in conditions of enslavement or as victims of human trafficking. An ongoing study by Marlou Schrover on *Migration, Gender and Vulnerability* (2006 - 2011) shows that more female who migrate finds themselves in the informal economy engaging in less capital-intensive economic activities than their male counterparts.

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114 Stakeholder Forum Discussions, 14 October 2010.
5 Conclusions and Recommendations

5.1 Conclusions

Formalisation has largely been a disaster for the informal trade sector as it led to a major increase in the cost of entry. The majority of the players in the informal street trading sector are there because they are poor and operate at a survivalist level. The main pillars of formalisation involve the City bylaws that place requirements on street traders for registration, the acquisition of permits and the payment of an annual rental fee. Further, the lack of good faith on the part of City officials, and the Metro Police’s inadequate understanding of policy, despite being mandated to monitor and enforce the relevant bylaws, has further disadvantaged street traders.

In general, all informal traders are disadvantaged by some aspects of the formalisation process. For instance:

- The rigidity of the permit system, which means they cannot employ assistants to fill in for them when they are fulfilling other responsibilities;
- The restrictions on the number of assistants they can employ, and the long process involved in registering them; and
- The high cost of employing assistants in relation to their earnings from informal trade, among others.

In addition to the above, female and foreign traders are compromised in specific ways by the formalisation process. Female traders for instance, suffer from:

- The lack of targeted credit to assist women traders to break the financial barriers to entry;
- The victimisation of women by some of their male counterparts, the Metro Police and City officials; and
- The inability of women to take advantage of extended trading hours due to domestic demands made on them.

Foreign traders are also negatively affected by the formalisation process in specific ways, such as:

- The registration requirement requires a valid ID, a refugee permit or a working VISA, which most migrants do not have;
- Entry costs escalate as foreign traders are usually charged higher rentals by property owners;
- The police often demand bribes from foreign traders before they are allowed to continue operating; and
- Foreign traders resort to becoming secondary traders under a primary permit holder, which increases their rental obligations.

5.2 Recommendations

This section sets out general and specific recommendations for the improvement of the conditions within which informal street traders operate. The intention of the recommendations is to inform advocacy on policy and engagement between the City and street traders. Sustainable urban planning should take into consideration the role of the informal economy in keeping many households afloat in the context of massive unemployment and poverty. Street trading and other forms of informal economic activity have to be factored in as part of the economic reality and spatial dynamic of the City. The acknowledgement of the role of the informal economy as an economic constituency defining the City should be reflected beyond political rhetoric, and genuinely inform the CoD’s policies. Its contribution to the livelihoods of millions of people is evidence that it is not only a sector to be tolerated and controlled, but one that should be allocated resources for its development.
More generally, one of the most crucial interventions in the informal economy is to ensure that the policy framework is enabling and conducive for participants to reduce transaction costs and increase their margins. National government must prioritise the development of a national policy and strategy on the informal economy. The national policy/strategy will then inform provincial and local level growth strategies and bylaws. It is crucial that the capacity of traders and informal sector organisations be developed to facilitate negotiations with City authorities in areas that affect their sustainability.

Other general recommendations include:

- Street committees must play a central role in site allocation processes;
- A credit line tailor-made for street traders is an important development intervention;
- Infrastructure development is essential for the improvement of the working conditions of traders;
- Information regarding permit application and registration must be readily available and easy to understand;
- Sites should be allocated on a long-term basis; and
- There must be an end to police harassment of traders.

Specific recommendations for female traders include:

- The permit system should recognise the dual role female traders have as home-makers and as bread-winners, and reflect this in improved flexibility;
- There must be an end to all forms of gender-abuse of women;
- The CoD should provide facilities/resources that support women, such as child-caring facilities; and
- The provision of social services should be improved so that women feel confident to report offenders.

Specific recommendations for foreign traders include:

- The registration process for street traders should recognise temporary permits and application receipts of foreigners as valid documentation;
- Foreign traders’ organisations should be integrated with those of local traders; and
- There must be an end to the extortion of and bribery demands made on foreign traders.
Appendices

Appendix A

6.1 Street Traders Demands to DMA

2007 PLATFORM OF DEMANDS

Substantive demands to the Durban Metro

1. Establish an independent Commission of Enquiry into all facets of corruption around the issue of street trade permits - Terms of Reference to be approved by street vendors and their democratically-elected representatives.

2. Develop a database of all the street vendors (with and without permits) operating in different areas of Ethekwini Municipality, in co-operation with street vendors and their democratically-elected representatives, indicating the following information:
   i. name and gender of vendor;
   ii. description of type of work;
   iii. area of operation;

3. Integrate our organisations in the Ethekwini Informal Economy Forum (EIEEF):
   i. Send us the minutes of all previous meetings;
   ii. Send us a schedule of the dates of the meetings for 2007;
   iii. Invite us to all meetings of the Forum.

4. Involve street vendors and their democratically-elected representatives in negotiations regarding increases of all fees (including permit fees) payable by street vendors - any unilateral adopted increases to be suspended until the completion of negotiations.

5. Urgent implementation, with the full participation of street vendors and their democratically-elected representatives, of the “Section 4 - Implementation Framework” of the Review of Informal Economy Policy developed by Cabhisa Planning and Investments and Urban-Economic Development Economists in 2006.

6. Adapt and commit to the WCCA Campaign demands of StreetNet International.

Procedural demands: Changes to the Terms of Reference of the EIEEF

1. The position of Chair should rotate between the different stakeholder groupings.

2. The stakeholder groupings must always include the Metro Police.

3. Representation by Organisations/Associations to be THREE per organization, of whom not less than one must be a woman representative.

4. DELETE the following: “The Forum will not deal with the day to day operational issues relating to specific informal markets or street trading sites. It will not override the mandate of the existing market or street committees.” (N.B. In August 2006 we were informed that the authority of the street committees to undertake this function for the Metro Council expired in September 2006.)

5. Information for clarity on the number of “Trader Representatives” outside of the representation by “Legitimate Trader Organizations/Associations” and a list of their names and which areas they represent.

6. Information for clarity on what is meant by “the Regional Trader Representatives (or Organisation/Association) should represent traders that operate their businesses according to the by-laws of the Council” - which by-laws are being referred to, and does this clause have anything to do with the holding of permits?
6.2 Durban Informal Economy Policy (2001): Allocations Policy

Allocations policy is central to the entire policy for the informal economy – it is the lever through which local government can steer management and support of the informal economy. The aim of the allocations policy is to support growth, and provide opportunities for new entrants, in an economically sustainable and socially useful way.

In the central city areas, the leverage is less, and more medium term, as there are few empty sites, existing sites are over-subscribed, and there is already an amount of capture of more than one site by single individuals. In the areas of greatest need, however, the allocations policy can work as a powerful tool both for job creation and for the inclusion of formerly marginalised people. Further, it is also a lever through which direct links can be promoted between trading in markets and on streets, and emerging patterns of home based work. This policy suggests only the framework principles for allocations; detailed allocations policies should be devised, through negotiation, at local level, in accordance with local conditions.

Framework principles:

1. Criteria for allocating sites will be negotiated with local stakeholders, including civic groups, trader organisations, and councillors. Negotiations about criteria should specifically not be done only with existing traders and their organisations – it is in their self-interest not to introduce new changes.

2. The allocations process itself will be done by officials.

3. The allocations policy should be based on an understanding of the changing demographic and socio-economic structure of the local area. This should include an analysis of race, gender and age patterns and local industry and market opportunities. The allocations policy should strive for a balance between allowing entry to some existing business people, and providing opportunities for new entrants.

4. Allocations policies within existing built markets should be geared towards addressing the present racial imbalances. This can be integrated into the tendering process for sites in existing markets.

5. The allocation policy could be used as a way of encouraging partnerships between existing operators and new entrants. Experienced persons who apply for sites in built markets could be encouraged to provide learning opportunities for inexperienced people.

6. Targeting vulnerable groups, such as poorer people, female, young people, and people with disabilities, will not be achieved by an allocations policy alone. It will only be achieved if the structures and siting of the markets themselves are designed with these groups’ special needs in mind, and providing a diversity of facilities. Thus a sensible allocations policy has to be underpinned by appropriate planning.

7. A moratorium should be placed on granting permission for traders to operate at traffic intersections. A survey should be commissioned in order to inform policy about the extent to which this activity should be restricted. This should be mindful of the fact that newspaper vendors have for many years been allowed to sell at intersections.

8. Local government must work with the national legislative framework regarding the rights of foreigners to trade. Where visitors have the right to work, it would be unconstitutional to deny them the right to a place in which to work.

9. With respect to mobile traders a survey needs to be conducted to establish how many people are involved, what sectors they work in, their special circumstances, and projections for
growth in numbers. It is clear that that, as a minimum approach, their numbers must be limited (possibly in proportion to the number of stationary traders in an area); they should be area/precinct bound; and they should be represented within the same organisation structures as street vendors, in the interests of regulation.

10. An adjudication and appeals process will be established through local appeals committees.

6.3 Durban Informal Economy Policy (2001): Registration Procedures

The policy goal is that all people working in public places will register as small businesses. Registration (as well as sustained payment of rentals) is the action which gives permission to operate, and provides access to services and support. Registration will be integrated into the proposed inter-departmental information system.

1. The registration process involves the granting of the right to work. This right goes along with responsibilities that will be laid out in a code of conduct. This code of conduct should be negotiated with traders as an awareness raising exercise. Traders’ responsibilities with respect to keeping sites clean, health and safety requirements etc. will be laid out.

2. Existing registration procedures will be simplified and move towards the one-stop centre concept being promoted by local government. This will reduce the high cost, to poorer traders, associated with becoming legal.

3. City health requirements will be included in the registration process. City Health is required to issue a certificate of acceptability to a person trading in foodstuffs. The process of issuing this certificate should as far as possible be integrated into the registration process. Health requirements for other informal economy workers such as hairdressers, cardboard collectors and panel beaters should be included in a similar way.

4. The data on registration will be embedded in the inter-departmental information system.

5. Registration cards will be renewed annually. They should be bar-coded. Through the barcode, officials will access information about the nature of the activity, how the business has changed over time, whether or not the operator has rental arrears, has attended health education classes etc. This information will be the basis for the formulation of appropriate support programmes. They could be colour-coded according to area, year of registration, and/or sector.

6. To give opportunities for very small operators and new entrants and to address the issue of fronting, there should be a ‘one trader, one site’ policy. The code of conduct should include a clause disallowing ‘fronting’, and describing the penalties attached.

7. The simplest version of the new registration system should be introduced incrementally for existing traders. At the same time the potential of the system to provide more comprehensive data, linking registration to support services, should be fully piloted in one area.

6.4 Durban Informal Economy Policy (2001): Rentals Policy

Local government is moving towards dealing with informal traders as small business people. In the same way that built property has a value placed on it, depending on where it is located, so it is important to place value on different informal trading sites, such as pavements. The policy principle is that the site is a valuable asset.

The lever through which value will be placed on sites is a system of differentiated rentals.

In sites, whether streets or markets, there is a continuum from less serviced, and very informal, to better serviced, and more formal. The continuum includes:

- unserviced site on a street
- itinerant operators alight at different places, temporarily, either trading, or providing services to other informal operators (water and paraffin carriers, storage workers, etc.)
- fixed spot for a mobile hawker
- serviced site on a street
- built markets
- flea markets
Conclusions and Recommendations

1. The existing principle of differentiated rentals for different trading opportunities will be expanded to cover street vendors and sites built in markets.

2. Differentiating payments according to economic sector is not feasible, as each sector contains people deriving very different incomes within the sector. Rather rentals will be differentiated in terms of the following:
   - size of the site i.e. a price will be charged per square meter
   - desirability of site location in terms of pedestrian flow, proximity to a transport node
   - number and standard of basic services provided specifically to the site - shelter, table, and storage
   - accessibility of other generally available infrastructure – water, lights, public toilets, garbage removal, effluent removal.

3. Rental levels will be determined by considering the cost to local government of establishing and maintaining the facility. Rental levels however are likely to have to be subsidised particularly in the in areas of greatest need.

4. Street vendors will pay a basic site rental. Then, differentiated rentals for different levels of service provision should be introduced. Components of the basic package of services are basic shelter, solid waste removal, water, toilets, lighting and storage facilities. Mobile traders should not pay less than others for permission to operate, as they have the comparative advantage of mobility.

5. The formula by which levels are set needs to be fair, and transparent to officials, to all business people and to the public.

6. Payment procedures will be simplified. Incentives will be put in place to encourage regular payments e.g. access to support services, such as business skills training. Access to the facility will be firmly based in regular rental payment.

6.5 Durban Informal Economy Policy (2001): Bylaws and Framework Principles

1. Creating an acceptable policy framework is the first step towards negotiated reform or harmonisation of bylaws.

2. Bylaws should reflect the overall policy move away from sanction and control, towards support and the creation of new economic opportunities in a well-managed environment.

3. Drafts should build on negotiations held in the 1990s. Traders came to easy agreement on many of the proposed bylaws.

4. Special attention should be given to deficiencies in the bylaws with respect to built markets.

5. Detailed consideration needs to be given to the future role and responsibilities of local government with regard to regulating and supporting home based workers. 'Informal trade' has traditionally referred to only workers in public places. Collaborative work will be needed with those in town planning, in spatial development, and in both occupational and environmental health, with regard to local government’s role in regulating home-based and outside work.

6. Guiding principles in the future formulation for bylaws for all workers should be:
   - As far as possible, they should be applicable to the whole local government area, and not just the central city area.
   - They should be translated into Zulu (as the present ones are).
   - They should be written in gender-sensitive language.
   - They should be widely disseminated, in an easy-to-read format.
   - They should be presented in both popular radio and print media.

7. It will not be possible to overcome all of the fragmentation in the bylaws. All of them, however, and a blueprint for a code of conduct, should be consolidated into one document, which should be widely disseminated in both Zulu and English.
6.6 Street Traders March & Memorandum (StreetNet International Archives)

18th November 2009: Memorandum to Mike Mabuyakhulu

Today a protest mass march was held by Street traders’ organisations and committees that do not support a Mall development in Warwick as the City is planning. Below is a copy of a memorandum that was presented to the MEC for Economic Development and Tourism, Mike Mabuyakhulu. This memorandum was accepted and signed by Leonard Mabaso, Speaker from the Office of the Minister. About 3000 traders marched and demonstrated from Curries Fountain to the City Hall.

MEMORANDUM

Presented to Mike Mabuyakhulu, MEC for Economic Development and Tourism, Provincial office, on Wednesday 18th November 2009.

UNIQUE WARWICK PRECINCT INFORMAL TRADERS’ COMMUNITY

With more than 2.1-million working people and turnover exceeding R32-billion, the “second economy” is a force to be reckoned with. The Early Morning Market and Warwick Junction precinct consists of 7000 – 10 000 traders, porters and other informal workers in a unique market community with a 99-year heritage, serving hundreds of thousands of low-income consumers in the eThekwini municipality.

We, as members of the affected community, object to eThekwini Municipality’s plans to destroy this unique community and to replace it with yet another monstrous large retailers’ mall. Recent developments have seen huge shopping complexes mushroom in every corner including townships, accommodating large retailers such as Pick & Pay, Shoprite and Spar, which are all able to purchase products in bulk directly from manufacturers and producers, and whose goods are affordable to higher-income consumers.

We and other members of the disadvantaged communities of eThekwini have sustained our livelihoods in the Warwick Junction precinct and made a significant contribution to the economy during the troubled political past, while our political resistance played a meaningful role for our democratic government. The market vendors and street vendors are a large community of poor people, whose livelihoods will not survive being replaced by this kind of private capitalist venture.
LACK OF CONSULTATION AND FORCED REMOVAL

We object to the manner in which the eThekwini Municipality has treated street and market traders and the organizations that fight for the rights of poor people. The eThekwini Municipality has taken unilateral decisions which affect our lives negatively, without consulting us. Comrades who serve in the eThekwini Municipality are not following the mandate of the people, i.e. “South Africa belongs to all who live in it, black or white, and no government can justly claim authority unless it is based on the will of the people.”

The administration and the approach on this matter constitute the same forced removal for which the Apartheid government was famous.

We are in full agreement with the need to regulate informal trade. However, this must be done in a humane way which respects human rights, including our rights to our livelihoods. We voted for you not only to beautify the City, but also to serve the needs of the people.

We the various Street vendors associations feel that the MEC for Economic Development and Tourism in the provincial office, Mr. Mike Mabuyakhulu, and his team, has been undermined by the eThekwini Municipality to such an extent that Business and Markets Support Unit has arranged marches, talk shows, media conferences and picketing outside the High Court, not respecting the provincial task team recommendations that issues concerning the Warwick precinct development need to be resolved amicably and transparently.

WE THEREFORE DEMAND:

1. Business and Markets Support Unit should be dissolved because it is only supporting major businesses and not small, medium or micro enterprises. It is the duty of the Business and Markets Support Unit to upgrade and develop Informal Traders and small markets;
2. eThekwini Municipality must preserve, promote and support the sustainability of our unique informal trading community in the Warwick Junction precinct, and find somewhere else to build their mall;
3. eThekwini Municipality must upgrade and extend the market in order to accommodate all informal traders under shelter;
4. If eThekwini Municipality genuinely wishes to upgrade the economic activities of informal traders, this should be done by means of cooperative wholesale and bulk purchase initiatives owned and controlled collectively by informal traders, enabling them to eliminate “middlemen” and increase their earned income;
5. Street trading bylaws need to be revisited – there should be no impounding of goods;
6. Police harassment must stop – there should be intimidation by police for contact show of permits;
7. eThekwini Municipality must reform the informal traders’ permit system in agreement with informal traders and their elected representatives, temporary permits must be scrapped and permanent permits should be given to informal traders;
8. Mr Phillip Sithole should be removed from his position as the Head of the Business and Markets Support Unit as he has no vision for the poor informal traders, he supports only the rich capitalists;
9. Full access to the I-Trump Hall must be allowed as this is a community hall, no informal traders should be denied access to this facility;
10. eThekwini Municipality must get its act together and stop bussing in traders from other areas who have no direct interest in the Warwick development and using them as pawns to agree with their plans. This is a clear misuse of public funds and resources.
11. A fully fledged Police station must be deployed with a large number of permanent police to the Warwick precinct who are visible to ensure reduced crime in the area. Metro Police must wear full uniforms when they are on duty and street traders can no longer be expected to do the duties of the police in this area.
12. The eThekwini Municipality must enter into serious formal consultation in good faith with all organizations of informal traders;
13. The eThekwini Municipality must guarantee either a traders’ permit or a job for every adult earning a livelihood from informal trade;
14. eThekwini Municipality must commit to the demands of the World Class Cities for All
(WCCA) campaign, to ensure that informal traders have equal access to opportunities to benefit from the 2010 FIFA World Cup.

PRESENTED BY
- Masibambisane Traders Organization (MATO)
- Traders Against Crime (TAC)
- Early Morning Market Association (EMMA)
- South African Self-Employed Female’s Association (SASEWA)
- Siyagunda Association Warwick Informal traders’ interim committee
- Warwick residence committee
- Stanger Informal traders committee
- Verulam Informal traders committee
- Tongaat Informal traders committee
- Bester Informal traders committee
- Pinetown Informal traders committee
- Isipingo Informal traders committee
- Umhlanga Emaweleni Informal traders committee
- Umhlanga Megacity Mall Informal traders committee
- Durban station Informal traders committee
- Bovine Head traders committee
- Herb market traders committee
- World Class City for All (WCCA) campaign task team – Durban

Phumzile Xulu WCCA Co-ordinator
Durban Mobile: +27 82 422 9487
Email: kwakwaxi@yahoo.com

18 November, 2009: Durban – Protest march by WCCA and partners to City Hall

Time: 09:00 am

Venue: The protest march will start from Curries Fountain Stadium to City Hall

Street vendors’ organisations and committees are marching to demonstrate support for the livelihoods of informal traders and defend all the markets in the Warwick precinct against the proposed Warwick development that is planned to make way for another capitalist retail mall. This march will start from the Curries Fountain, proceeding south upon Winterton Walk, then to Steve Biko Road, Centenary Road, Market Road, Leopold Road, Dr Pixley kaSeme Street, Joseph Nduli Street, Dr Yusuf Dadoo Street, Field Street, Dorothy Nyembe Street and to finish at Church Walk outside the City Hall, where a memorandum will be handed over to Mike Mabuyakhulu, MEC for the Provincial Economic Development and Tourism department.

FOR MORE INFORMATION:
- Themba Duma on 083 721 2261
- Themba Speelman on 082 643 2931
- Phumzile Xulu
  WCCA campaign co-ordinator – Durban
- StreetNet International
  Tel. 031 307 4038 (StreetNet)  082 422 9487 (cell)
### Appendix B

**Written Notice to Appear in the Magistrates Court under Section 56, Criminal Procedure Act, Act 51 of 1977**

**Offence:**

- **Date of Offence:** 15.05.2023
- **Time:** 1:50
- **Court:** DURBAN COURT
- **Address:** WEST STREET

**Details of Offence**

- **Description:** STBL 2 (M) failed to pay.
- **Amount:** R200.00

**Sentence**

- **Amount Imposed:** R600.00
- **Date of Payment:** 01.06.2023

**Note:** Payment must be made on or before the date mentioned.

**Warning:** If you fail to comply with this notice, a warrant of arrest may be authorised and you may be sentenced to a fine of R5000.00 or three months imprisonment.
Appendices

## Appendix D

![Police Notice]

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**Police Notice Details**

- **Accused Name:** [Redacted]
- **ID Number:** 02-1012-1970
- **Date of Birth:** 1970
- **Sex:** Male
- **Age:** 30
- **Address:** Prince Gate, Newham
- **Occupation:** [Redacted]
- **Date of Offence:** 14/03/2019
- **Court of Appearance:** Durban Court
- **Date of Appearance:** 20/03/2019
- **Offence:** Obstruction of a sidewalk
- **Fine Amount:** Rand 300.00
- **Signature:** [Redacted]

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**Warning:** Failure to comply with these notices and pay the fine stipulated in this notice will result in the matter being referred to the court for further action.
Appendix E

Complaint Receipt from the City Ombudsman in a Corruption Case, copied from the original at StreetNet, 15 October, 2010
In this report, the focus is on migrant rights and livelihoods in the City of Durban. An earlier report by Kate Tissington – “The Business of Survival: Informal Trading in Inner City Johannesburg” (http://web.wits.ac.za/NR/rdonlyres/4376D73D-E127-4C14-A579-1C61F681AF70/0/CALS_BusinessofSurvival_Dec09.pdf) – painted the broad picture of the survival tactics of informal traders in the city of Johannesburg. This report examines the impact of attempts to formalise street trading in eThekwini Metropolitan Municipality (City of Durban, or CoD) since 2000 on the livelihood of traders, particularly female and migrant traders. Durban has been at the forefront of developing policies to manage and control informal economy activities; however, as the report notes, the effect of the push for formalisation is exclusionary and mimics the influx control regimes of the apartheid administration, which prevented black communities from pursuing business opportunities in central business districts. Such regulation has a particularly adverse effect on migrants and poor women, since they struggle to meet the requirements for registration, permits and rentals.