Inclusive Cities Project

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Vending in Public Spaces and the Law: A Case Study

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Context

This case study is a review and analysis of the experiences of Asiye eTafuneni (AeT), a non-profit organization that focuses on urban design and planning with informal workers, in Durban, South Africa. Even though urban design and planning is AeT’s area of expertise, contending with legal matters affecting informal workers has become unavoidable. This is because informal workers operate from public urban spaces that are often contested, and it is consequently an inherently conflictual domain. This situation is aggravated by an under-developed policy environment and selective interpretation or disregard of bylaws and essential public processes within developments implemented by urban authorities. In addition, informal workers lack knowledge of their legal rights and responsibilities.

The main focus of this case study is highlighting AeT’s law strategy, which is informed by the recognition that people working in public spaces invariably come into contact with the law and law enforcement agents for a variety of reasons. It will also focus on interventions introduced in the interests of the informal workers working in Warwick Junction.

The case study is based on AeT programme documentation and reports and other secondary data. Interviews were also conducted with Warwick Junction trader leaders located in three markets. These interviews provided reflections and feedback on the impact of the programme on these leaders and the current status of and achievements towards legal education and advocacy.

Even though urban design and planning is AeT’s area of expertise, contending with legal matters affecting informal workers has become unavoidable.

The case study begins with a brief background history of traders in Warwick Junction, which is followed by an introduction to AeT. The second part of the paper provides the chronology of the AeT law programme in Warwick Junction from 2010 on. This section provides information on the programme’s approach, the specific interventions that were introduced, the processes involved, and learnings/achievements. The conclusion attempts to summarize AeT’s law strategy, which is aimed at informing and empowering a critical mass of informal traders with basic “legal know-how” generally and, more specifically, knowledge on the regulation of informal trade in South Africa and in the greater eThekwini metropolitan area.

These learnings and conclusions can contribute towards an understanding as to how legal education can empower informal workers to actively engage in an inclusive process of legislative and policy development.

A worker from Warwick Junction’s Early Morning Market protests the municipality’s failure to consider her livelihood when they approved a mall development plan on the market’s site.

Photo: R. Douglas
Background: Warwick Junction

Warwick Junction is Durban’s largest transportation node and trading hub, located on the outskirts of the inner city. It is estimated that 460,000 people walk through the area daily, and it hosts between 5,000-8,000 informal workers in various trade/sectors, i.e., street vendors, market vendors, waste collection, transportation (barrows), etc. in nine distinct markets that are often collectively referred to as the Markets of Warwick. The products that sold at these markets vary from beadwork, traditional arts and crafts, traditional cuisine, fresh produce, music and entertainment merchandise, clothing, accessories, and traditional medicine. In addition, 300 buses and 1,550 minibus taxis depart from the junction daily, and 38,000 vehicles also pass through daily (Dobson and Skinner).

Like the rest of the country, Durban had imposed repressive apartheid-era legislation on informal traders, restricting their ability to work. However, this changed in the early 1980s, when new and progressive policies were introduced (Dobson and Skinner).

In the mid-1980s, two studies were conducted on informal trade in Durban. These studies suggested a complete reversal from established policy, concluding that the illegal status of the street trader must be re-evaluated (Nesvag). In following the reports’ recommendations, the City formed the Councillors’ Subcommittee with the intention to find ways to implement more practical and favourable policies for street traders. The result of this process was an amended and revised policy on informal trade.

The City’s commitment to traders became evident when Durban Informal Trade bylaws were published in 1995, which generally legalized trading in public spaces. However, this commitment was limited as the bylaws provided authority to trade only in selected designated zones within the inner city. Additionally, national legislation mandated that all municipal by-laws should include a “contriving clause,” which provided that goods be removed and impounded and that traders/offenders be liable to pay a fine or be imprisoned should they be found guilty of contravening the bylaws. This clause allowed for continued criminalization of street trading instead of allowing for a more developmental approach.

To manage the challenges brought on by these bylaws and by an increase in the city’s trade population, various organizations were established to better facilitate interactions between traders and the City. In 1996, the City also launched an Area Based Management (ABM) initiative: the Urban Renewal Project (now known as the iTRUMP Project). Establishing an ABM policy allowed the City to cooperatively tackle urban management challenges and diminish contentious relationships between urban managers and informal traders, leading to more appropriate interventions for the informal traders (Dobson and Skinner).

The new policy of collaboration meant that the City worked with informal traders, their organizations, and a variety of government departments to establish the necessary management and on-going reform around Warwick Junction and in the markets within the area. Recognizing that different sectors had unique needs, the City designed and created specific infrastructure, including storage spaces, that was tailored to the needs of specific informal trade sectors. Within the span of three years, Warwick Junction became a safer, cleaner, and more vibrant space where informal trade could flourish.

Most importantly, the City attempted to institutionalize its approach and policy towards the informal economy by drafting and adopting the Durban Informal Economy Policy in 2002. But, despite Durban’s progressive post-apartheid policies, the City’s approach in the last decade has begun to shift, and the situation has worsened for informal traders. There is a disjuncture between the intent of the existing legislation and the implementation on the ground. While the policies were intended to be inclusive and protect traders’ rights, in reality the traders are becoming marginalized.

In 2004, the City approved the Public Realm Management Project, intended to stop “illegal unlicensed street trading”. A ZAR 3.7 million budget was assigned to the project for six
months to employ and equip 50 Metro Police Officers. The City justified this decision by citing complaints from formal business owners (Skinner).

Most recently, tensions have been growing between the various Warwick Junction stakeholders over proposed developments in the area. In preparation for the 2010 FIFA World Cup, the City proposed to replace the Early Morning Market (EMM), one of the largest and oldest markets in Warwick Junction, with a mall. Bromley gives a summary of a common state of affairs for street traders as follows:

In many cities and countries, police and municipal inspectors have threatened, chased, arrested and occasionally beaten street vendors, and their goods have often been confiscated. Aggressive policing is particularly notable just before major public and tourist events, on the assumption that orderly streets improve the image of the city to visitors. In some Third World Countries such policies have been carried out to vicious extremes, when police, soldiers or para-military forces have confiscated street vendors’ identity papers, physically expelled vendors from the city, and even tortured or killed a few vendors.

The City’s approach to the redevelopment of the EMM was combative and exclusive. In complete contradiction of its own guidelines, the City failed to follow the appropriate regulations. The City did not consult the traders about the redevelopment, nor did it complete an environmental impact assessment. There was also no evidence to suggest that the interests of informal traders and those of the community of people that purchase goods from the market were ever considered when redevelopment decisions were made.

The fundamental principles found in the South African Constitution (democratic governance, public participation, the advancement and achievement of equality, and human rights and freedoms) were often overlooked when decisions around the EMM were made. Section 33 of the Constitution, which protects the right to lawful, reasonable, and procedurally fair administration, was violated when the City failed to properly engage and consult the majority of informal traders and other people who would be affected by the development. Furthermore, Section 22 of the South African Constitution protects the right to trade.

But, despite Durban’s progressive post-apartheid policies, the City’s approach in the last decade has begun to shift, and the situation has worsened for informal traders.

In the end, although the Early Morning Market case never went to Court for trial, it highlighted the need for informal workers to develop legal literacy in order to protect their rights and advocate for inclusive development.

Organization: Asiye eTafuleni

Asiye eTafuleni (AeT) was founded in 2008 by Richard Dobson and Patrick Ndlovu, two local eThekwini (Durban, South Africa) officials concerned with the widening gap between the city government’s urban agenda and the realities faced by Durban’s inner-city informal workers. Dobson and Ndlovu had both been part of the iTRUMP regeneration project, an experience that informed their belief that informal workers’ should be engaged through consultative processes.

AeT’s founders believed that supporting the provision of viable public spaces with income-producing potential for both street and market informal traders should be integrated into the city’s planning and budgeting priorities with the aim of creating urban environments that are both supportive of informal workers’ livelihoods and that create vibrant and culturally important urban spaces for the entire city. At the heart of this concern was a belief that this work was critical to overcoming the disastrous racial, economic, and spatial divisions created within the city during the apartheid era.

From its founding in 2008, AeT has worked to develop strong relationships with local and international stakeholders and to create new opportunities for research, design, advocacy, and education around informal work and urban environments. Through its work, AeT has been recognized for its local and global achievements and provides an example of an integrated programme for the inclusion of informal workers into urban settlements.

AeT’s advocacy efforts always focus on inclusivity and building capacity among informal workers, empowering them to become their own advocates, and on promoting
Building Capacity of Informal Workers in Warwick Through Legal Education and Advocacy

Street Research on the Legal Issues Traders in Warwick Face

Since June 2004, Metro Police have been removing traders’ goods at various intersections throughout the City, specifically in the central business district and neighbouring middle-class suburbs. The Daily News reported a Metro Police spokesperson saying, “We have seized tons of their goods in our clean-up operation…We won’t let up until we have cleaned them all out” (Skinner).

In 2010, AeT began to engage with the Faculty of Law at the University of KwaZulu Natal (UKZN) in order to raise awareness among students about the legal issues informal workers face in Warwick. Students were asked to participate in a volunteer programme aimed at giving traders a legal education on 2010 FIFA World Cup bylaws in preparation for the tournament. Twenty students volunteered and participated through the Faculty’s Street Law Programme, which was coordinated by an AeT legal intern (see Mcquoid-Mason for more on UKZN’s programme). Training sessions on the FIFA bylaws for traders were conducted on site in the markets, and information pamphlets were also distributed (see Appendix 1). Following the training session, “street research” by means of basic surveys was conducted. The research aimed to learn more about the general legal issues informal workers in Warwick experience and, particularly, to get a measure of the extent of merchandise confiscations and the impact confiscations have on livelihoods. Three recommendations rose out of this street research: 1) Traders be given legal education on their rights and responsibilities and also be given a clear understanding of the correct procedures police officers should follow when they confiscate traders’ goods; 2) Traders develop an understanding of the complaints process when police officers do not follow the procedure; and 3) Traders be assisted probono by legal firms to institute delictual claims for loss of income when the correct procedure is not followed and when goods are damaged (Appendix 1).

Legislation Used to Justify Confiscations Discovered During the Research

Bylaw 7 of the eThekwini Municipality’s Street Trading Bylaws (KwaZulu-Natal Provincial Gazette MN 29, 1998 of 23 April 1998), Section 2(A):

o No person shall carry on the business of a street trader

(a) at a place or in an area declared under section 6A (2) (a) of the Act as a place or area in which the carrying on of street trading is prohibited.

Business Act 71 of 1991: Section 6A Powers of Local Authority

o (1)(d) A by-law made under this subsection

(i) may, for any contravention thereof or failure to comply therewith, prescribe a penalty of a fine or imprisonment for a period not exceeding three months;

(ii) may provide for the removal and impoundment by an officer of any goods, receptacle, vehicle or movable structure

(aa) which he reasonably suspects is being used or intended to be used or has been used in or in connection with the carrying on of the business of street vendor, pedlar or hawker; and

(bb) which he finds at a place where in terms of a by-law under subsection (1) (a) (ii) or (iii), the carrying on of such business is restricted or prohibited and which, in his opinion, constitutes an infringement of such by-law, whether or not such goods, receptacle, vehicle or movable structure is in the possession or under the control of any person at the time of such removal or impoundment.

1 The Congress of South African Trade Unions (COSATU) is a trade union federation in South Africa.


3 Delictual claim or a claim based on negligence in South African Law, is a cause for a civil action to be instituted by a person (called “the Plaintiff”) against another (called “the Defendant”), based on the allegation by the Plaintiff that the Defendant committed a delict (in other words a wrongful act) against the Plaintiff.
Criminal Procedure Act 51 of 1977

20. State may seize certain articles. The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence whether within the Republic or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence whether within the Republic or elsewhere; or

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

Developing a Legal Framework for Informal Workers

In 2011, a comprehensive AeT Street Law programme was developed in conjunction with the traders and in partnership with Students for Law and Social Justice (SLSJ), a South African students’ organization dedicated to protecting human rights, preventing discrimination, and promoting social justice and the rule of law. The programme developed street law seminars, which were conducted by the law students. These seminars were used as practical and participatory methods of creating awareness of legal rights, responsibilities, and engagement in democratic processes. Representatives from the Chapter 9 institutions were also invited to these seminars to give traders information on how these institutions work and how traders can access their services. Among other topics, the seminars addressed the following: the Bill of Rights as contained in the South African Constitution of 1996; access to legal representation, including information on free legal assistance/representation bodies; informal traders’ right to trade and right to form trader organizations; and socio-economic rights as contained in section 26 and 27 of Bill of Rights.

Trader leaders from street committee structures and membership-based organizations within Warwick Junction attended these seminars, which became a platform to discuss legal topics prepared by students and other emerging legal issues that required professional legal assistance. Through the seminars, it became clear that unity among traders in Warwick was critical to ensuring traders’ voices were being heard. In support of unity, AeT provided institutional and strategic support through a series of capacity-building workshops, which culminated in the formation of the South African Informal workers Association (SAIWA) in July 2011.

In late 2011, AeT conceived a comprehensive legal framework, which itself identified that developing partnerships between AeT and other legal institutions was critical in managing the legal issues faced by traders requiring legal technical assistance and support.

The framework used by AeT in legal advocacy and education for informal traders is rooted in three strategic premises:

- Sticks
- Rules
- Tools.

This framework illustrates how the coordination of various relevant legal avenues may result in an improved trading environment for informal traders and result in meaningful interaction and consultation between government officials, functionaries, and informal traders on development opportunities (figure 1).

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4 Chapter 9 institutions refer to a group of organizations established in terms of Chapter 9 of the South African Constitution to guard democracy. They include, amongst others, The Human Rights Commission, The Public Protector, and The Commission for Gender Equality.


6 See Appendix 4 for background report on SAIWA.
The proactive knowledge and awareness of the “rules” and “tools” results in reduced negative experiences (sticks) for informal traders

**Sticks**

The “sticks” involve the various disputes and conflicts that informal traders encounter on an on-going basis. These vary from punitive police measures in regulating informal trade bylaws, unpredictability in the imposition of fines for “trading illegally”, and wide discretionary powers that become abused by police officials in the regulation process, including harassment of traders, violations of human rights, and, in one case, even the shooting of an informal trader. Sticks also include administrative complications such as authorities issuing trading permits but being inconsistent in the amount they charge for the same trading sites, and the burdensome and time-consuming procedures street vendors must navigate through the Business Support Unit.

Figure 2 demonstrates that the impact of the “stick”, i.e., the height of the triangle is at its maximum when traders are least knowledgeable about “tools” and “rules”. In this case, the base of the triangle is narrow.

The proactive knowledge and awareness of the “rules” and “tools” results in reduced negative experiences (sticks) for informal traders (figure 3). This means less confiscations and impoundments, harassment, violations, etc.

When the traders are equipped with “tools,” i.e., dispute resolution mechanisms, knowledge about the law and regulations, etc., the easier it will be to deal with daily challenges that arise, e.g., they will face less confiscations, less non-renewal of trading permits, and fewer other avoidable negative experiences, including arbitrary enforcement and harassment. Awareness and knowledge of enabling legislation, bylaws, and policies regulating informal trade will minimize non-compliance as well as help traders keep law enforcement authorities in check. Informal traders would be better informed and more willing to participate in policy and law-making decisions. The proper handling of these conceptual strategies particularly by informal traders means that there would be less conflict and violations, all of which would add value to AeT’s concerted effort of reducing the legal burdens faced by informal traders on the streets.

**Rules**

The “rules” denote the laws, bylaws, policies, regulations, and legislation that constitute the legal environment for informal workers. Within “Rules”, AeT and its partners have assisted membership-based organizations to draft their constitutions and have taken steps to improve these rules in favour of informal traders.

In order to get a solid understanding of “rules”, in early 2012, AeT conducted a study on current regulations and policies on informal trade in Durban, including trading permit conditions and non-trading zones. The study found that the following sections of the South African Constitution were relevant to informal trade:

1. For background on the BSU, visit their website at www.durban.gov.za/City_Services/BST_MU/Pages/default.aspx
• Section 22 – Right to Freedom of Trade, Occupation
• Section 25 – Right not to be arbitrarily deprived of property
• Section 33 – Right to administrative justice

The study also found that 1991’s Small Businesses Act provides for the regulation of informal trade in South Africa.

In response to the study, AeT helped challenge the Small Business Act in mid-2012 after the Business Support Unit organized a workshop on Durban Informal Trade bylaws, which was facilitated by the eThekwini Legal Services Unit. Traders from all areas within the eThekwini Municipality attended. Participants in this workshop identified that the bylaws in force at that time were outdated, and there was a need to have them reviewed and aligned with the spirit, purpose, and principles of the new Constitution. So, at AeT’s street law seminar, Warwick Junction Informal Traders and the Human Rights Commissioner discussed the necessity of this review, which put pressure on the City to start the review process immediately. As a result, later in that year, the City announced a bylaw review process.

The Early Morning Market case similarly challenged the KwaZulu Natal provincial government to finalize a provincial informal trade policy, which is used to set up framework for municipal policies and bylaws regulating informal trade in the province. The process for developing this framework started in 2008 when the provincial government carried out information-gathering workshops throughout the province. Warwick trader leaders attended the Durban workshops. As a result of their participation, Warwick leaders were invited to be part of the provincial workshop, which analyzed a draft copy of the municipal policy, which was presented to the KwaZulu-Natal Economic Cluster. During this workshop, the traders raised concerns about the draft not being available in isiZulu, the local language widely spoken in the province, which would have enabled the traders (who are native isiZulu speakers) to make meaningful contributions to the proposed policy.

Tools
Tools are ways of building the capacity of informal traders so that they may respond to sticks they face through street law seminars, campaigns, Dispute Resolution Measures, and litigation.

Street Law Seminars
Street Law is a practical and participatory method of teaching law, democracy, and human rights to citizens who would otherwise not be well-informed about the law and its role in society. It uses a combination of content and techniques that promote cooperative learning, critical thinking, and the ability to participate in a democratic society. Street Law promotes awareness of legal rights and responsibilities, engagement in the democratic process, and belief in the rule of law among participants of all ages and backgrounds. Through the partnership with SLSJ, AeT has been able to work with UKZN law students to facilitate Street Law seminars with Warwick Junction traders. The students are identified at the beginning of each semester, and they participate in exposure visits to Warwick Junction, which raises their awareness and understanding of informal trading’s nature and the challenges faced by the area’s workers. The students then develop a series of street law seminars in collaboration with the traders, who provide input on the issues they would like to know more about.

Between 2010 and 2013, six Street Law seminars were conducted with a total of over 120 informal workers participants. As one of market committee leader reflected, “Street Law seminars provided an invaluable platform for us to learn more about our rights as traders and that the law protects everyone”.8

Trader Know Your Rights Campaign
In 2011, AeT, in partnership with the LRC, SLSJ, and various trader organizations active in the Warwick Junction area developed a “Trader Know Your Rights” campaign. The purpose of this programme was to provide Warwick Junction traders with information about the rights of trad-
The written document was conceived to be a wallet-sized information card that could be easily carried by traders at all times. It laid out the list of primary rights provided by the Constitution and other applicable legislation. Since the design, development, and production of the card is dependant on availability of resources, this has been postponed until funds become available.

The information sessions included delivery of learnings through an “Informal Trading Manual,” which was designed and developed by the Legal Resources Centre (LRC) in collaboration with SLSJ students and in consultation with Warwick traders, Metro police, and the City’s Business Support Unit. AeT facilitated this process under a budget made available by the LRC. The manual defines the responsibilities of informal traders on an everyday basis: ensuring the renewal of application for permits; trading as per the rules established; and other key areas identified by the Metro police. This is to ensure minimal confiscation/impounding of traders goods. Fifty manuals were produced in both English and isiZulu.

Over two sessions, the LRC also trained eight SLSJ students, including two AeT staff members and two AeT legal interns, to teach the manual’s contents to traders. Before the end of 2012, 15 Warwick Junction trader leaders had participated in training sessions. As one participating MBO leader reflected in an interview:

“...The training gave us useful information and I am happy to train other traders in the market where I work and other members of my organization. The manual that we received is important because it reminded us of the importance of paying permit fees on time to avoid being in violation of the trading by-laws and suffer confiscations by the police”.

Dispute Resolution Measures

As part of the Street Law seminars, AeT held training sessions on negotiations, mediation, and dispute resolution for market leaders and MBOs representatives. To assist traders in these dispute resolution processes, strategic partnerships were developed with the following institutions:

- Legal Resources Centre
- Probono.org
- Students for Law and Social Justice
- The Office of the Public Protector
- Human Rights Commission of South Africa
- KwaZulu Natal Consumer Services

Small Claims Court Initiative

AeT also explored the process behind accessing the Small Claims Court to resolve minor civil claims for damages. In 2013, LRC conducted a short study of the kind of trader claims that could be heard at this Court. LRC and AeT staff visited the Courts to observe how claims were heard and administered. Staff then recommended that training be given to traders on how they could bring cases to this Court.

Cases Undertaken/Litigation

Between 2010 and 2013, AeT initiated a significant number of cases on behalf of traders, cases that were in turn supported by various legal institutions. Even though some of these cases are pending judgements and conclusions, others resulted in good outcomes for the traders.

Cases Undertaken with LRC Support

- Early Morning Market/Mall Development
- Barrow Operators

9 See Appendix 3 for details of interviews.
New policies and city bylaws have been reviewed and, in some instances, Warwick traders influenced changes to policy and regulations.

Learnings and Achievements

During the four year period of the law programme’s implementation, AeT has been instrumental in achieving outcomes that have made a lasting impact on the work and lives of workers in Warwick Junction. Good relationships have been established with the traders and partners, particularly the LRC and the SLSJ. New policies and city bylaws have been reviewed and, in some instances, Warwick traders influenced changes to policy and regulations.

Although the relationship between the City and traders remains confrontational, the traders have a great desire to engage and negotiate with the City, especially since access to legal assistance and support has given traders confidence in demanding protection of their rights as workers. These achievements have also provided learning opportunities that should be of interest to other trader and trader-support organizations, particularly in developing countries. The summary of these learnings are as follows:

1. Legal education is important for informal workers as it gives them the confidence to fight for the implementation of enabling policies and legislation.
2. Workers who undergo legal education are more able to influence policy and are able to monitor and challenge a lack of implementation.
3. It is important for community legal support institutions and organizations like LRC and Pro-bono to partner with grassroots trader organizations in order to build their capacity to organize and recruit more members.
4. Engaging with authorities and city and government officials is generally a complicated issue. Informal workers require constant guidance to build their skills and knowledge on how to engage with these authorities.

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10 Homeless dumping is the practice in which police officials take homeless people from the streets of the inner city to places [mostly rural] far away from the city instead of placing them in police custody [if there were wrong doings] or with family, a warming centre, or a homeless shelter. This happens frequently when the City embarks on clean up campaigns in preparation for the big sporting and other events.
• Litigation processes are often costly. It is therefore necessary to encourage informal workers to avoid unnecessary conflict situations with authorities by understanding the responsibilities that come with rights conferred to them by legislation.

• Section 22 of the South African Constitution provides for the freedom of trade, occupation, and profession in that every citizen has the right to choose their trade, occupation or profession freely. Any law or conduct that infringes this right without offering alternatives is an unjustifiable limitation to dignity.

• AeT's experience on the ground and its relationship with the traders has made possible the traders' cooperation and participation in this programme, resulting in a successful intervention.

Conclusion
The feedback received from Warwick leaders through interviews provide evidence that legal education and advocacy have a role in capacity building; informal workers need these things to understand their rights and the responsibilities attached to those rights. The programme highlights the importance of adopting an integrated approach when dealing with challenges informal workers face on a daily basis when they are at variance with the law.

AeT's experience has shown that positive changes in the lives of informal workers can not only be achieved by the presence of enabling policies and legislation—awareness of these policies and legislation by informal workers is also important. Through legal education, this awareness can be achieved.

This experience has also shown that strategic partnerships are important in the success of such a programme. This ensures that skills and expertise are shared across a spectrum of organizations and institutions, thereby expanding access to supporting agencies for informal workers.

Capacity building initiatives, like this programme, have been influential in forming organizations of informal workers such as SAIWA and of helping strengthen their collective voice in matters that concern them.

Street research conducted by the UKZN law students provided in-depth data on the legal issues faced by Warwick informal traders, including the full extent of the confiscation of goods taking place. This discovery trigged the intervention. However, the development of the intervention is dependent on the natural progression of the project and on satisfying needs as they arise. Litigation is just one conflict resolution measure.

Traders feel they cannot necessarily rely on the government to give unbiased legal education to informal workers, especially given its suspicion that informal workers might then react negatively towards its plans and initiatives, but traders do have more trust in the education provided by AeT. As John Khomo, a leader and trader for 30 years, put it during an interview:

I have enjoyed the training given to us by Asiye eTafeleni. We trust this training because we know that Asiye cares for us. We always mistrust training given to us the City because we feel that it will only show their side and force us to agree with them. It is true expression; you cannot teach a dog how to bite you!

Finally, during the process of developing the programme and forming partnerships, social facilitation, which garnered the full cooperation and participation from stakeholders, was undoubtedly the key element in efficiently delivering the goal and purpose of the programme.
Appendix 1: Report on Confiscation of Informal Traders’ Goods: Study Conducted in August 2010

Confiscation of Informal Trader’s Goods

1) Introduction

A common issue arising in the informal economy is the confiscation of street trader goods by metro police for contravention of eThekwini Municipal by-laws, legitimately and arbitrarily.

This memo aims to address the problem and start the process of ascertaining a way forward.

2) Scenario

Typically, a trader will be charged with ‘illegal trading’ in terms of section 2(a) of the eThekwini Municipal by-laws. Usually, this will be because they don’t have a permit, they are exceeding the permit, or they are trading in illegal goods. Exceeding one’s permit can include things like exceeding the size of one’s demarcated area (even though these are usually arbitrarily marked in different sizes) and trading in illegal goods.

The procedure followed by the police is to take the goods and record them very generally. Thereafter, a fine is issued for the offence and receipt issued for the goods. The goods will then be placed in police custody at the storage facility until the fine is paid and they can collect their goods. They are recorded in a register and the receipt is usually attached. Eg: 1 x casual bag of clothes, 1 x crate of oranges or 1 x bag of pinafores.

In a situation where there are large amounts of goods and/or a structure, there are reports about the metro police employing lay persons to bring a truck and pack the goods to be transported to the police storage facility.

The fine in itself is an arbitrary amount as well and needs to be investigated. It is usually R300 for trading without a permit and exceeding one’s demarcated area is R100.

Perishable goods are kept in the same storage facility. If they are not collected, an environmental health officer is called in, checks the goods and issues a certificate to condemn the goods. After this they are taken to the dump.

Results of interviews:

Typically, the scenario plays out like this,

- One, two or a group of metro police will arrive, rarely identifying themselves.
- They will then identify a reason why the trader is contravening the by-laws and without a warning they will be fined and told that their goods are being confiscated.
- They will take some or all of the goods (possibly including the tent/structure).
- They will be placed in unmarked plastic bags or trolleys and loaded into a police van.
- On no occasion has each item been counted or recorded.
- They are taken to the police station and kept in a storage facility.
- In most instances the traders were given their fine and receipt.
- In most cases, the goods are damaged (the unwritten rule is, if you wait more than a day, your goods are likely to be damaged.)
- There is no formal complaints procedure that the traders can access.

The reasons for confiscations range:

- No permit
- Trader not present at stall (at toilet/buying stock)
- Permit expired
- Exceeding demarcated area
- Table deemed too big
- Causing an obstruction
- Not in possession of permit

3) Issue at hand

Essentially the first issue is the arbitrary discretion the metro police have as to whether they should confiscate a trader’s goods afforded to them by the Business Act.

The second and possibly main issue at this stage is the procedure in which the police confiscate the goods.

The third issue is the procedure after the goods have been confiscated and how to get them back.

The fourth issue is the lack of a complaints procedure.

4) Problems arising

The problem with this scenario is that the affected persons are from the lowest income group. Therefore the only way they can pay such a fine, is to sell the goods
they have. If they are confiscated, then they cannot be sold and the fine not paid. In many instances, the fine exceeds the value of the goods. So once the police confiscate the goods, they are essentially forfeited to the state, if they get that far.

The entire process is open to corruption. For example, the police will confiscate some fruit and packets of chips worth R50 and give a fine of R100 knowing that the trader is not going to pay the fine. Therefore they can take the goods home and not bother placing them in custody. Other instances are where a large amount of goods is confiscated, each individual item is not recorded so the police may take as much as they wish and there is no proof that anything is missing.

The perishable goods end up rotting because the storage facility is not suitable and there is no recourse where goods are damaged.

The greatest issue here is that most of the trader’s live day by day, and once their goods are taken they have no choice but to borrow money in order to pay and this simply leads to more issues. Alternatively they will have to spend awhile collecting cardboard or other similar jobs in order to raise the capital to start all over again.

Obviously this will affect their livelihoods as most of the traders are looking after four or more dependents, depending on their age.

5) Legislation used to justify confiscations

Bylaw 7 of the eThekwini Municipality’s Street Trading Bylaws (KwaZulu-Natal Provincial Gazette MN 29, 1998 of 23 April 1998)

(s2A) No person shall carry on the business of a street trader -

(a) at a place or in an area declared under section 6A(2)(a) of the Act as a place or area in which the carrying on of street trading is prohibited.

Business Act 71 of 1991

S6A Powers of Local Authority

(i) may, for any contravention thereof or failure to comply therewith, prescribe a penalty of a fine or imprisonment for a period not exceeding three months;

(ii) may provide for the removal and impoundment by an officer of any goods, receptacle, vehicle or movable structure-

(aa) which he reasonably suspects is being used or intended to be used or has been used in or in connection with the carrying on of the business of street vendor, peddler or hawker; and

(bb) which he finds at a place where in terms of a by-law under subsection (1) (a) (ii) or (iii), the carrying on of such business is restricted or prohibited and which, in his opinion, constitutes an infringement of such by-law, whether or not such goods, receptacle, vehicle or movable structure is in the possession or under the control of any person at the time of such removal or impoundment.

Criminal Procedure Act 51 of 1977

Chapter 2: Search warrants, entering of premises, seizure, forfeiture and disposal of property connected with offences.

20. State may seize certain articles.—The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)—

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence whether within the Republic or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence whether within the Republic or elsewhere; or

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

6) Possible solutions

- Educate the traders on what their rights are, what the procedure should be and what they must demand from the police.
- A strategy revolving around attacking the process (request for further particulars, complaints, etc.)
- Look at the possibility of delictual claims for loss of income when the correct procedure is not followed and when goods are damaged.
Tips for Street Trading during the 2010 FIFA World Cup

Areas of Trading

Street traders may continue to do their business in areas allowed by their permits, excluding the official FIFA controlled areas. These areas are called exclusion zones and are situated immediately outside the outer perimeter of these following areas.

- Moses Mabhida Stadium
- Official Teams Training Sites
- Teams and FIFA Delegation hotels
- FIFA Fan Parks
- Other FIFA and LOCOG designated areas

Remember street trading in and around these areas are still prohibited unless a permit is given through being demarcated.

- Public parks and gardens
- Around ATMs
- Heritage buildings
- Municipal buildings
- Vendors of street traders
- Building entrances/ exits
- Fire hydrants
- In front of shop windows

Traders’ responsibilities

Street traders are to ensure that they have their valid permit with them at all times.

- Street traders must ensure that all goods that they sell are legal and avoid contamination.
- Street traders are to ensure that they keep their place of work clean, tidy, and within the demarcated space/ areas. It is important to make sure that it does not create a nuisance, damage property or create a danger to the public.
- Street traders can only trade when they are over 16 years of age.
- Street traders must ensure that they use their area of trade for trading only and avoid sleeping there overnight.
- Street traders are to ensure they do not use the words “2010 FIFA world cup South Africa” on all products that they create.

Know your rights

In terms of Constitution of Republic of South Africa and the Business Act 72 of 1991 all South African citizens have the following rights:
- The right to Human Dignity
- The right to the Freedom of trade, occupation and profession
- The right to Property
- The right to bodily integrity

Important: A trader who is allocated a demarcated area legally can only be relocated to another area provided a full consultation process has taken place.

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Appendix 3: Summary of Interviews Conducted

Three interviews were conducted with trader leaders from three markets in Warwick Junction on the 23 September 2014. Each leader has been trading in the area for over 20 years and each has been involved in the formation of street vendor organizations and street committee structures in the area. All three leaders have participated fully in the law programme, attending all seminars and training.

The questions that were asked during the interview were to reflect on the intervention, what challenges they faced, and the achievements. Traders were all very positive about the intervention and were grateful for the opportunity and support from AeT and other organizations and institutions. They find information very useful in developing their leadership skills and confidence in their interactions with the City.

Appendix 4: Background Information on SAIWA

BACKGROUND INFORMATION

The South African Informal Workers Association (SAIWA) has its roots in the nine markets of Warwick Junction in Durban. Prior to South Africa hosting the 2010 Soccer World Cup traders in the Warwick Junction in the inner city of Durban decided they wanted to showcase their market area to local and international tourists. With the support of Asiye eTafeleni tours of the area were initiated. A market committee, comprised of at least two representatives from each market was established. Asiye eTafeleni arranged a series of capacity building workshops. Through this process, the trader committee identified a need for a collective voice in order to enable them to address the myriad of challenges they experience on a daily basis. This culminated in the formation of the South African Informal Workers Association in July 2011. This organic worker-centred process is currently led by an interim structure made up of workers from diverse sectors and is registered with the Directorate of the Non Profit Sector as a non-profit association.

SAIWA has its headquarters in Durban and its membership is open to all individual South African informal workers under several categories/sectors, who subscribe to SAIWA mission, vision and values. SAIWA has successfully recruited 620 paid members. Ninety five percent of these members are women. The largest represented sector is the arts and craft, which has 85% of members, out of these members 97%, are women. Others sectors represented are textile, fruit-and-vegetables, catering-and-cooked food, tourism, communication, traditional medicine and herbs, support services (taxi washers) and fashion-and-accessories. Members pay an annual membership fee of R20.

SAIWA has multiple strategies and interventions and aims to lobby and advocate for the promotion and protection of the rights of informal workers and elevate their status as significant contributors to job creation, social cohesion and economic development. This implies inclusion of informal workers into urban policies, planning, development and management processes. SAIWA also aims to develop economically viable and socially empowering sector specific formations such as cooperatives but also to forge unity and cooperation amongst informal workers. SAIWA facilitates access to resources and raw materials for members in order to purchase in bulk.

Information is accurate as of 30 September 2014.
References


About WIEGO: Women in Informal Employment: Globalizing and Organizing is a global network focused on securing livelihoods for the working poor, especially women, in the informal economy. We believe all workers should have equal economic opportunities and rights. WIEGO creates change by building capacity among informal worker organizations, expanding the knowledge base about the informal economy and influencing local, national and international policies. Visit www.wiego.org.