Vending in Public Spaces and the Law: Summary

Background

Warwick Junction is Durban’s largest transportation node and trading hub, located on the outskirts of the inner city. It hosts between 5,000-8,000 informal workers in various trade/sectors in nine distinct markets that are often collectively referred to as the Markets of Warwick. The products 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).

Since the mid-1980s, the eThekwini municipality has sought to find ways to implement practical and favourable policies for street traders in an attempt to reverse the negative policies of the apartheid era. Results have been mixed. For example, the City’s commitment to traders, evidenced by the 1995 Durban Informal Trade bylaws, which generally legalized trading in public spaces was limited as the bylaws also allowed for continued criminalization of street trading instead of allowing for a more developmental approach. In 1996, in an attempt to manage these challenges, the City also launched an Area Based Management (ABM) initiative: the Urban Renewal Project (now known as the iTRUMP Project), which 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).

But despite these progressive post-apartheid policies, the City’s approach in the last decade has begun to shift. 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. 2004’s Public Realm Management Project, for example, is intended to stop “illegal unlicensed street trading” (Skinner). Tensions have also been growing between the various Warwick Junction stakeholders over proposed developments in the area for “urban renewal” projects that have threatened traders with eviction and the loss of livelihood. In particular, 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.

The City’s approach to the redevelopment of the EMM was combative, exclusive, and in complete contradiction of its own guideline. 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.

What Changed?

In 2008, the non-profit organization Asiye Etafuleni was formed, guided by the conviction 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.

Policy and Legal Environment

Bylaw 7 of the eThekwini Municipality’s Street Trading Bylaws (Kwa-Zulu-Natal Provincial Gazette MN 29, 1998 of 23 April 1998), Section 2(A), which stipulates that no person shall carry on the business of a street trader 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, which says the authority could prescribe a penalty of a fine or imprisonment for a period not exceeding three months should a street vendor trades where trading is restricted or prohibited and stipulates the authority may remove goods, receptacles, vehicles, or other moveable structures that the authority suspects is being used or intended to be used in or in connection with the carrying on of the business of street vendor, pedlar or hawker.

Criminal Procedure Act 51 of 1977, which allows for search warrants, entering of premises, sei-zure, forfeiture and disposal of property connected with offences.
From its founding, 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. AeT’s advocacy efforts always focus on inclusivity and building capacity among informal workers, empowering them to become their own advocates, and on promoting environments and processes that embrace workers’ voices and engagement.

While supporting market traders in the Early Market Traders case, AeT realized that legal education and advocacy were crucial components of building informal workers’ capacity. In 2011, AeT developed a comprehensive legal framework that was rooted in three strategic premises: sticks, rules, and tools (figure 1).

As part of growing the “tools,” AeT developed a Street Law programme 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 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. As part of these seminars, AeT held training sessions on negotiations, mediation, and dispute resolution for market leaders and MBOs representatives. By 2013, six seminars were conducted with a total of over 120 informal worker participants.

In partnership with the Legal Resource Centre (LRC), SLSJ, and various trader organizations, AeT also developed a “Trader Know Your Rights” campaign, which provided Warwick Junction traders with information about traders’ rights through information sessions.

In addition to exploring the process behind accessing the Small Claims Court to resolve minor civil claims for damages, and with support from the LRC and the SLSJ, AeT initiated a significant number of cases on behalf of traders, cases that were in turn supported by various legal institutions.

**Suggestions for Future Efforts: What Made It Work?**

AeT has been instrumental in achieving outcomes that have made a lasting impact on the work and lives of workers in Warwick Junction. New policies and city bylaws have been reviewed and, in some instances, Warwick traders influenced changes to policy and regulations. 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 for other trader and trader-support organizations, particularly in developing countries:

- Legal education is important for informal workers as it gives them the confidence to fight for the implementation of enabling policies and legislation.
- Workers who undergo legal education are more able to influence policy and are able to monitor and challenge a lack of implementation.
- It is important for community legal support institutions and organizations to partner with grassroots trader organizations in order to build their capacity to organize and recruit more members.
- 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.

**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](http://www.wiego.org).