

# Street Vendors' Laws and Legal Issues in South Africa

November 2014

## WIEGO LAW & INFORMALITY PROJECT



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**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.

WIEGO's Law & Informality project analyzes how informal workers' demands for rights and protections can be transformed into law.

The **Social Law Project (SLP)**, based at the University of the Western Cape in South Africa, is a dynamic research and training unit staffed by a core of research and training professionals specialising in labour and social security law. It aims to promote sustainable workplace democracy by:

- conducting (applied) research supportive of the development of employment rights and rights-based culture in the workplace.
- providing training services in labour and social security law with a focus on client-specific training need.

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**WIEGO Secretariat**

Harvard Kennedy School,  
79 John F. Kennedy Street  
Cambridge, MA 02138, USA

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

**WIEGO Limited**

521 Royal Exchange  
Manchester, M2 7EN  
United Kingdom

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## Introduction

The fundamental problem to be addressed is that the entire labour law system in South Africa, as in other countries, is based on “standard” employment – that is to say, the relationship between workers in full-time, indefinite employment and their employers, typically in medium to large workplaces. This applies to the content of the law as well as the institutional framework through which the law is applied. The result is that workers in “non-standard” positions (such as part-time, temporary or agency workers) enjoy limited legal protection. This applies even more to those employed “casually” or “informally”, which simply means that the employer disregards some or all legal requirements.

### Individual and collective labour law

In terms of content, “individual labour law” is concerned with the rights that each worker possesses individually – most importantly, the right not to be unfairly dismissed and not to be exposed to “unfair labour practices”<sup>1</sup> or unfair discrimination. These rights are the same for all employees and all workers have the same rights to enforce them, though not all employees have access to the courts.

“Collective labour law” is mainly concerned with workers’ right to organize, to form trade unions and to bargain collectively with their employers. Historically, it developed as a result of the weak position of the individual worker in relation to the employer and the ability of workers to strengthen their position by acting collectively. It thus developed in workplaces and sectors where workers were employed in large enough numbers to form effective unions. Collective labour law evolved as a body of rules to regulate this process and create institutions for collective bargaining to take place, including the regulation of disputes (strike law) and the enforcement of collective agreements.

An unintended consequence was that workers employed individually or in small workplaces did not reap the same benefits of organization and many or most of the advantages of collective labour were not available to them.

### Self-employed workers

A further anomaly is that labour rights (individual as well as collective) are almost entirely limited to “employees” – that is, workers who have entered into a (written or verbal) employment contract with their employer or are deemed to have done so. In practice, most workers are considered to be employees but significant numbers fall outside this definition – for example, “independent contractors” (who render services for their own account) or (“small traders” who sell goods or services to the public) and agency workers (who are employed by agencies to work for the agency’s clients).

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<sup>1</sup> As defined in section 186(2) of the Labour Relations Act 66 of 1995 (“LRA”).

All these workers are excluded from the protection of labour law, though as citizens they will enjoy the same protection as other citizens in terms of other laws. But they may also be subject to special laws applicable to their activities, such as trading, which, in many cases, are geared to the needs and realities of big enterprises.

The distinction between employees and self-employed-workers may be justified in cases where a person runs a business on classic capitalist lines with a view to becoming a medium or large employer. But for millions of workers world-wide performing “survivalist” activities because they are unable to find employment, this is not the case, even though the work they do may be identical to the work done by other workers for employers. The fact that they have no specific employers will render many employment rights inapplicable to their situation. However, the constitutional right to equality implies that all protections enjoyed by employees should be extended to other workers in such forms as may be appropriate.

## **Gender**

Gender discrimination or differentiation is another problem bound up with many aspects of labour law. Because most workers during the formative years of labour law were men earning a living for their families, the stereotype of the male bread-winner and his typical needs became an unspoken part of the standard employment model. This means that various problems experienced mainly by women, such as sexual harassment, presented new challenges to existing rules and institutions.

## **Adaptation of the system has not solved underlying problems**

In recent decades, and in South Africa since 1994 in particular, labour law has to some extent moved beyond its historical limitations. The right of all workers to equal protection is recognized, as well as the need of certain categories of workers for special forms of protection. The need for gender-sensitiveness and certain special forms of protection for women workers have also become part of the law. But the system as a whole, and its institutional framework in particular, remain geared to the standard employment model.

It is not too much to say that large employers and large trade unions (and extremely highly-paid individual employees) are still the only parties who are fully able to enjoy all the rights and benefits of the system. All other employers and workers experience various limitations in enjoying or enforcing their rights.

Against this background, non-standard workers remain extremely disadvantaged. There are, in fact, very few rights that they can enforce easily or at all within the existing legal framework.

## **Why focus on domestic workers and street vendors?**

Domestic workers and street vendors are two major categories of “non-standard” workers. Domestic workers are, for the most part, employees but are a classic example of non-standard employees. They are almost universally employed as individuals (not collectively) in private households (not in formal workplaces). They are frequently employed on a part-time basis and in many cases “informally” (without regard for legal requirements). Few institutions of labour law are applicable or accessible to them.

Street vendors enjoy even less protection. To the extent that they are not employees, the basic rights of labour law do not apply to them even in a formal sense. It will be seen that the non-labour regulation under which they operate is often inappropriate to their situation and/or ineffectively or improperly applied. Special complications arise in the case of workers employed by street vendors to assist them, thus bringing an employment relationship into existence between them and placing the rights and duties of workers and employers on them.

The vast majority of domestic workers, and many street vendors, are women. Questions of gender and discrimination on the basis of gender are thus interwoven with the problems of legal regulation.

## **Empowerment**

Because of the large numbers of workers involved in these occupations, the effective implementation of their rights is an important objective in its own right. But, over and above this, domestic workers and street vendors offer important case studies for the regulation of non-standard work under extremely challenging conditions. However, the constitutional rights to equality and fair labour practices cannot be said to be satisfied if those who are compelled to work under such conditions enjoy less protection than other workers. The legal system needs to accommodate the basic rights of workers, not vice versa.

It has often been pointed out that the measure of a society is the way in which it treats its most vulnerable members.

But the converse of this is that, in a society divided by class interests, the protection of workers’ rights – and even their existence – depends on the empowerment of workers to articulate and, if needs be, act to ensure the implementation of those rights. This is demonstrated by the fact that domestic workers as well street vendors enjoy numerous rights on paper which are not applied in practice – not because the workers are disinterested but because they lack the means of ensuring their implementation.

The term “empowerment” is used to describe the process of equipping workers with that capacity. This includes the capacity to identify shortcomings in the existing legal

and institutional framework as well as to ensure that rights are applied in practice. The purpose of this project is to promote such empowerment.

## **Organization**

History has made it clear that organization, or collective action, is essential to achieving any social objective or legal change. But organization has to be based on a clear understanding of the nature of the problem being addressed – in this case, shortcomings of the legal framework when measured against the basic rights and legitimate needs of workers – as well as identifying changes in the legal framework that will be needed to overcome those limitations.

This part of the project will focus on the first of these questions: identifying the key legal issues that need to be addressed in each of the two sectors (domestic work and street vending) and the specific legal provisions relating to each sector that are in need of change. These findings will then be tested and developed through interviews with workers in each sector and capacity-building workshops, and published in the final report together with all relevant information and insights that have been acquired through this process of engagement.

# 1. Street Vendors and the Law

## 1.1 Introduction

The continued growth of informal economic activity in South Africa can, in the main, be attributed to the levels of unemployment and poverty which characterize the South African economy. Street vendors form part of the informal economy which has generally been defined as “economic activities that are relatively small scale and elude certain government regulations, such as registration, tax and security obligations.”<sup>2</sup>

This overview, while framed within the overarching Businesses Act, No 71 of 1991 (the Act), focuses primarily on the position in South Africa’s three major municipalities, Johannesburg, Cape Town and eThekweni (Durban).

## 1.2 The National Framework

Street vending is provided for in the Businesses Act, No 71 of 1991 (the Act).<sup>3</sup> The Act formally recognizes street vendors as business people. Government, at the time, was of the view that informal traders were important to the economy and needed to be supported.<sup>4</sup>

Prior to the Act, street vendors were only permitted to trade if they had a license. The Act removed this requirement. In 1993 further amendments were made which gave local authorities greater powers to regulate and restrict street vending. This would be done by way of by-laws and regulations about where and how informal trading would occur. They could not, however, prevent street vending.<sup>5</sup> Municipal by-laws must be in accordance with the provisions of Section 6A of the Act.

## 1.3 The Purpose of the By-laws

The City of Johannesburg by-laws offer a case study. The City has adopted what it terms “a developmental approach”. Its by-laws are intended to enable access to job and entrepreneurial opportunities within the informal trading sector; to harmonize the relationship between the informal trading sector and the formal trading sector; and to

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<sup>2</sup> Caroline Skinner The struggle for the streets : processes of exclusion and inclusion of street traders in Durban, South Africa *Development Southern Africa* Vol 25 No 2 2008 at 228

<sup>3</sup> Businesses Act, No 71 of 1991 at Section 6A.

<sup>4</sup> Street Traders and their organisations, ILO, 2003 at 5.

<sup>5</sup> Ibid at 5

facilitate the migration of informal trading into the formal trading sector.<sup>6</sup> The by-laws flow from an Informal Trading Policy adopted by the municipality following a broad consultative process.<sup>7</sup>

The by-laws of eThekweni, Johannesburg and Cape Town broadly:

- entrench the right to engage in informal trading;
- provide for the creation and closing down of areas where informal trading may occur and the granting of trading permits;
- regulate the conduct of street vendors and health and safety measures; and
- stipulate the penalties for violations of the by-laws.

Recent incidents in Johannesburg and Durban have illustrated the existence of irregularities in the application of these by-laws, making it difficult for street vendors to run their businesses. This raises the question of whether the problem lies only in the way that the by-laws are applied by municipal authorities or whether the by-laws themselves are flawed in that they permit, or fail to prevent, such irregularities.

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<sup>6</sup> City of Johannesburg Informal Trading By-Laws, Local Authority Notice 328, Provincial Gazette 14 March 2012 at 99

<sup>7</sup> Ibid at 99



## 2. Identifying the Key Legal Issues

The informal part of the economy includes a sizeable percentage of South Africa's working population. According to official labour force statistics since 2000, the number of people employed in the informal part of the economy - defined as employment in unregistered small enterprises - has varied between 16 - 20 per cent of the South African labour force. According to one estimate, 6,374,130 people were "routinely economically active" on an informal basis in 2012, representing 32.9 per cent of the total working population.<sup>8</sup> Up to half of these are estimated to be informally employed while the remainder are self-employed.<sup>9</sup>

A large part of the informal self-employed consists of street traders. Accurate figures prior to the 1990s are scant as street vending was largely banned.<sup>10</sup> Official statistics continue to exclude the large number of undocumented persons and those among the unemployed who trade informally as a means to secure a livelihood.

Available figures from a census conducted in Durban in 1997 revealed that 59 per cent of street traders were women, at least 50 per cent of street traders sell food and the average weekly profit (at the time) was R102 per week with 50 per cent making a profit of less than R60 per week. This confirmed a close correlation between "being poor and working as a street trader."<sup>11</sup>

### 2.1 The Challenges Confronting Street Vendors

A study<sup>12</sup> of the opportunities and constraints facing informal street traders in four South African cities has revealed four key challenges/constraints. These are faced globally by persons trying to enter the informal trading sector and are also present in South Africa.<sup>13</sup>

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<sup>8</sup>Adcorp: Informal sector shows highest growth Employment shows 1 per cent growth at <http://www.adcorp.co.za/NEws/Pages/InformalsectorshowshighestgrowthEmploymentshows1growth.aspx> (accessed 5 February 2014).

<sup>9</sup> Statistics South Africa estimated that 15.56 per cent of the total employed population fell within its definition of "informal" employment in the third quarter of 2013: *Quarterly Labour Force Survey* (Quarter 3, 2013) (hereafter 'LFS') iv Table A while Benjamin in 2007 estimated the level of informal employment at 22.8 per cent of total employment: Paul Benjamin *Informal work and labour rights in South Africa* (2008) 29 *ILJ* 1579 at 1583.

<sup>10</sup> Skinner (fnXXX) at 228.

<sup>11</sup> Skinner (fn 2) at 229

<sup>12</sup>Lodene Willemse Opportunities and constraints facing informal street traders: Evidence from four South African cities *SSB/TRP/MDM* 2011 (59) 7- 15

<sup>13</sup> *Ibid* at 8

## **Economic pressures**

Many people are forced into venturing into street trading because they cannot find employment and/or their present levels of income are insufficient to sustain their livelihoods.

Accessing funds to start up a business (either through savings or loans) is a major challenge. The absence of collateral to be able to obtain bank loans means that people have to find other ways to access the finances necessary to start a business. Money obtained in this manner - through family loans and from money-lenders - often carries very high interest rates.<sup>14</sup>

The inability of street vendors to work collaboratively, often due to jealousy and competitiveness, diminishes their financial and bargaining strength. Other factors impacting on income levels are limited product differentiation and competition from new traders.

## **Socio-cultural challenges**

Women are confronted by socio-cultural challenges in a disproportionate way. They are often excluded from the labour market, resources, income, decision making, education, social services and networks.

A lack of skills often deters street traders from conveying the opportunities presented by their business to financiers and from developing/growing the business on an ongoing basis. Improved skills permit street vendors to take greater advantage of the employment opportunities offered by tourism. This has increased income for the traders in Quito, Ecuador.<sup>15</sup>

## **Adverse political conditions and policies**

Street traders are often confronted by political conditions and policies that pose a challenge to street traders.

The political situation in South Africa, pre-1994, had adversely affected street trading operations. The situation has not improved significantly since 1994 despite the fact that the government has given more attention to informal activity within the context of economic development.<sup>16</sup>

Policies and accompanying municipal by-laws serve to increase income vulnerability and limit trading participation. The absence of vital infrastructure such as access roads, efficient public transport, accommodation, schools, health facilities, postal services,

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<sup>14</sup> Ibid at 8

<sup>15</sup> Ibid at 9

<sup>16</sup> Ibid at 9

electricity, water, telephones and ablution facilities all serve to constrain street vending.<sup>17</sup>

Migrants face additional barriers arising from immigration policies which are “designed” to first protect the interests of the local population. This often manifests itself in the form the absence of work permits and identification documents, lack of trading sites and threats of deportation.<sup>18</sup>

### **Operational challenges**

These include the disproportionate power relations between suppliers of goods and the traders; threats of criminal and xenophobic attacks; harassment by police; confiscation and theft of goods; lack of storage space; permit fees to trade in certain areas<sup>19</sup>.

## **2.2 The National Situation**

The comparative study of the opportunities and challenges confronting street vendors in Cape Town, Johannesburg, eThekweni and Tshwane has broadly confirmed what is recorded in the literature.

While women constitute the largest number of street vendors, the majority of respondents in the study were men. With the exception of Johannesburg, a majority of traders provided sustenance to four or more dependents. In Johannesburg, it was two.<sup>20</sup>

The challenges identified were as follows:

- poor cash-flow;
- maintaining stock levels;
- competition from other informal businesses;
- unavailability of transport;
- unavailability of funding sources to support start-up and expansion of business;
- Insufficient services and infrastructure (e.g. water and waste bins)
- insufficient service from suppliers;
- unavailability of equipment; and
- location of business.<sup>21</sup>

The study also revealed other obstructions faced by street vendors relating to problems experienced in legally formalizing informal street trading businesses. These ranged

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<sup>17</sup> Ibid at 9

<sup>18</sup> Ibid at 9

<sup>19</sup> Ibid at 9

<sup>20</sup> Ibid at 10

<sup>21</sup> Ibid at 13

from the costs of permits to the absence of material and other support from the authorities to improve informal businesses.

It may be argued that some of these challenges and constraints can be traced back to an absence of organized collective strength of street vendors. A large majority of traders do not belong to any trade organization. This situation seriously restricts the possibility of traders engaging in “collective action to achieve legal protection, formalise and enhance their businesses and secure better operating environments.”<sup>22</sup>

Some of the specific challenges listed above do not, in the main, arise from the absence or inappropriateness of legal regulation but could be deemed of an economic nature best addressed through building strong organization. However, other challenges relating to permits and trading locations can be traced back to the existing regulatory framework.

It is suggested that a clear distinction should be drawn between political and legal problems. These can be addressed via (a) analysis to identify solutions and (b) organization to campaign/negotiate for implementation of solutions. Economic problems cannot be resolved at a political level (at least not within the confines of this study).

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<sup>22</sup>Ibid at 13.

### 3. Problem areas in the law

#### 3.1 Freedom of Trade, Occupation and Profession - A Case of Too Many Regulations?

In addition to the right to dignity<sup>23</sup>, the Constitution also grants everyone the right to choose their own occupation, trade or profession. The latter right is qualified in the sense that the practice of the trade, occupation or profession may be subject to legal regulation.<sup>24</sup> The limitation clause at section 36 of the Constitution re-affirms that the right to choose an occupation, trade or profession may be limited to the extent that competing rights and obligations need to be considered.

As indicated above, the choice of being a street vendor or informal trader is often not one of free-choice but enforced through economic hardship. Street vending regulations should acknowledge this and not impose an onerous legal dispensation which undermines the exercise of a constitutional right.

While the Businesses Act permits local authorities to issue by-laws to regulate informal trading, these regulations are not contained in a single set of by-laws. For example, while the City of Cape Town has an Informal Trading By-Law, trading is also regulated by the Health Department in regards to health standards in situations where food is prepared and sold. Furthermore, there are the Zoning Scheme Regulations specifying where informal trading is permitted<sup>25</sup> and a by-law relating to streets, public places and the prevention of nuisances.<sup>26</sup>

This clearly affects the ability of street traders to freely and easily decide the location of their business and requires them to be conversant with all the rules and regulations which govern informal trading. This is problematic. The low literacy and numeracy skills of many informal traders, who have to wade through a number of documents, the contents of which directly impact on their livelihoods, prevent them from being able to grapple with the legalistic language used in the various by-laws.

#### Registration and Permits

The Informal Trading By-Law of the City of Cape Town prohibits informal trading unless the trader has a valid permit from the City.<sup>27</sup> The City may charge a trading fee, a fee for the application and fees for any services provided.<sup>28</sup> At the same time it may exempt a trader from these fees on application.<sup>29</sup> Criteria for obtaining a permit include that the applicant must:<sup>30</sup>

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<sup>23</sup> SA Constitution, S10

<sup>24</sup> Ibid, S 22

<sup>25</sup> City of Cape Town, Zoning Scheme Regulations, November 2012 at Clause 5.2.5

<sup>26</sup> By-law No. C30/05/07 dated 24 May 2007

<sup>27</sup> City of Cape Town, Informal Trading By-Law, Provincial Gazette 6677, November 2009 at Clause 8.1

<sup>28</sup> Ibid Clauses 8.2.1 - 8.2.3

<sup>29</sup> Ibid Clause 8.3

<sup>30</sup> Ibid Clause 8.4

- be an informal trader;
- be a South African citizen or must hold a valid work permit or refugee permit;
- not employ more than 20 persons.

The Zoning Scheme Regulations, however, stipulate that informal trading is permitted on land which has been set aside as a road reserve, or identified by Council as a future road reserve, provided that no permanent structures are erected on the land; that there is no interference with pedestrian or vehicular movement, or with any municipal utility services; and that there is no threat to public health or safety.<sup>31</sup>

It is a distinct possibility that traders may find themselves in contravention of the informal trading by-laws if they simply follow what the zoning regulations state.

The proposed eThekweni by-law<sup>32</sup> speaks of the freedom to engage in informal trading subject to compliance with the by-law, any other applicable law and any applicable trading permit.<sup>33</sup> It also allows for the adoption by the municipality of an informal trading policy.<sup>34</sup> Conditions attached to permits<sup>35</sup> include that the applicant must be a South African or must be in possession of a valid work or refugee permit, must not employ more than 10 persons, must not have an interest in more than one entity or partnership and is currently unemployed. On becoming gainfully employed, the permit holder is required to surrender the permit. Applications have to be on the prescribed form. This appears to be in contradiction to clause 12(4) of the proposed by-law which talks of “giving preference to black persons, unemployed persons, those entering the informal part of the economy for the first time, does not share a household with an existing permit holder unless the applicant is not dependent on the existing permit holder, are registered tax payers with the SARS.”

The municipality may charge an application fee and an annual rental fee.<sup>36</sup>

In Johannesburg, any member of the community is permitted to engage in informal trading, subject to compliance with the by-law and other “applicable law”. What this other applicable law constitutes, as applies equally to eThekweni and Cape Town, is not clearly reflected in the by-law.<sup>37</sup>

Unlike the other two cities, the major way in which informal trading is regulated in Johannesburg is the designation of trading areas<sup>38</sup> and the allocation and leasing of designated stands to traders. This arrangement is formalized through an agreement between the trader and the City which the trader must have available to present to an

<sup>31</sup> Zoning Scheme Regulations (fn 25) Clause 5.2.5.

<sup>32</sup> eThekweni Municipality: Informal Trading By-Law, 2013, at Section 5. This is currently in draft form with a public participation process to have taken place at the end of 2013. At the time of writing, it is unknown whether the by-laws have been adopted and promulgated.

<sup>33</sup> Ibid at Section 5.

<sup>34</sup> Ibid Clause 6.

<sup>35</sup> Ibid Clause 12

<sup>36</sup> Ibid Clause 13

<sup>37</sup> City of Johannesburg Metropolitan Municipality, Informal Trading By-Laws, Local Authority Notice 328, Provincial Gazette 66, March 2012 at clause 4.

<sup>38</sup> Ibid clause 5

authorized official if requested to do so.<sup>39</sup> The trader or persons employed by the trader would, however, receive tokens from the City as proof that they were entitled to occupy the stand on which they were trading. Persons unable to produce an agreement or a token would be deemed to be guilty of an offence.<sup>40</sup>

## **Location**

The City of Johannesburg may extend, reduce or disestablish, by way of a council resolution, any demarcated area.<sup>41</sup> Clause 8 also permits it to restrict trading in areas where stands have been let or allocated by way of a council resolution. When passing the resolution, the council is meant to consider the impact the decision will have on existing traders. Once the resolution has been adopted, it becomes effective by simply putting up a notice at the sight. This notice is deemed sufficient notice to the affected trader.<sup>42</sup>

## **Impounding/confiscation of goods**

Municipalities are granted extensive powers in terms of the by-laws to impound and confiscate the goods of traders if, in the opinion of the municipalities' law enforcement officers, a trader has contravened the by-laws and/or any other applicable law.

The proposed Ethekewini by-laws contain a wide-ranging set of restrictions and prohibitions.<sup>43</sup> These cover location of the trading site, the erection of structures, the prohibition on occupying the site overnight, the storage and placement of goods, etc.

Clause 35 empowers an authorized official to remove and impound any goods if the official suspects that the trader is operating in violation of the by-law. The official is, however, required to issue a receipt reflecting all the goods that have been received. Goods may only be released on payment of an impoundment fine.

Penalties for contravening the by-law, effective after failing to heed a notice to desist from committing the alleged offence or after the trader has been convicted of an offence, include a fine up to a maximum of R5,000 and/or imprisonment up to a year. Similar provisions can be found in the Johannesburg<sup>44</sup> and Cape Town by-laws<sup>45</sup>, save that the Cape Town by-law specifically requires the law enforcement officer to firstly issue a written warning prior to impounding or confiscating goods.

The Operation Clean Sweep, conducted by the City of Johannesburg, is an example of where a municipality has exceeded the extensive powers it already has by unilaterally moving traders from designated areas where trading had been taking place in accordance with the relevant by-laws. An order of the Constitutional Court that the City desist from relocating traders until an appeal/review has been heard in the High Court has, to some extent, reigned in the City from proceeding with this project. The

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<sup>39</sup> Ibid Clause 6

<sup>40</sup> Ibid Clause 6(4)

<sup>41</sup> City of Johannesburg (fn 37) Clause 5.

<sup>42</sup> Ibid Clause 8

<sup>43</sup> Ibid Clauses 21 -29

<sup>44</sup> City of Johannesburg (fn37) Clause 11

<sup>45</sup> City of Cape Town (fn 27) Clause12

contention of the traders is that, if they had been trading in contravention of the by-laws, the City should have dealt with such contravention as provided for in the by-laws. As with the other two cities, Johannesburg has a comprehensive list of restrictions and prohibitions incorporated into the by-law.<sup>46</sup> The penalties are, however, much smaller than those in Durban and Cape Town: R500 or a prison sentence not exceeding 3 months.<sup>47</sup>

### **1. Drawing up a balance sheet?**

While many of the regulations, such as those relating to the prevention of fire and traffic hazards, appear justifiable, others, like those permitting the confiscation of goods, are clearly problematic. The economic pressures experienced by informal traders make confiscation of goods a serious threat to their livelihoods.

A major problem is that the existing provisions do not, in any specific way, grant the trader an opportunity to formally oppose and/or defend any allegations of being in breach of the by-laws. This places inordinate power in the hands of officials and the municipality as a whole, particularly when it comes to the issue of impoundment/confiscation. For example, the Appeals procedure included in the Cape Town by-law entails a lengthy process as contemplated in section 62 of the Municipal Systems Act.

### **2. Developing an appropriate regulatory framework**

Street Net International, on behalf of its local affiliate in Ethekewini, has submitted comments on the proposed amendments to the by-laws which could apply equally to the by-laws in Cape Town and Johannesburg.

Firstly, they submit that the by-laws do not spell out the obligations and duties of the municipality in relation to the regulation of informal trading. Emphasis is almost entirely on the rights and obligations of the traders, thus making the by-laws particularly one sided.

Secondly, the by-laws are not aligned to the constitutional rights and obligations of all informal traders, whether South African citizens or not. The existing provisions could in fact be deemed unconstitutional.

Lastly, the by-laws have a potential to be regarded by municipal law enforcement officers as a substitute for adhering to the requirements of the Criminal Procedures Act when dealing with alleged criminal acts committed by street traders. Put another way, it comes to any activity which is thought or found to be in contravention of that Act. In other words, the provisions in the Criminal Procedures Act dealing with any contraventions need to be explicitly indicated in any by-law.

A new regulatory framework, it is argued, would need to address these concerns.

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<sup>46</sup> City of Johannesburg (fn XXX) Clauses 9-10.

<sup>47</sup> Ibid Clause 13.



## 4. Further issues

There are at least two other issues that will need to be addressed if the plight of informal traders is to change substantively for the better.

### 4.1 Immigration

As referred to in the paper dealing with domestic workers, poverty and human disasters in countries to the north will continue to drive migrants to South Africa. A large number of these immigrants are drawn into street vending as a means of survival. This issue will have to be addressed in new labour market policies (appropriate to regional and continental circumstances) alongside a review of existing immigration laws.

### 4.2 Street Vendor Organization

As with domestic workers, the lack of organization is a major cause of the overall poor “political conditions” experienced by street vendors. Unlike domestic workers, the negotiating partner of street vendors is not the employer but rather local authorities. The absence of organization diminishes the collective ability of street vendors to challenge restrictive and discriminatory regulations and policies and arbitrary actions of local authority and policing officials.

The recent formation of the South Africa Informal Traders’ Association (SAITA) will hopefully go some way in providing an organized voice for street vendors. The extent to which existing legislation does not accommodate or anticipate engagement between authorities and organizations representing street vendors means that appropriate changes to the law might need to be introduced.

There appears to be nothing in the Business Act, 1991,<sup>48</sup> or in existing municipal by-laws which recognizes or seeks to promote the formation of street vendor organizations. This restricts the traders’ ability to engage in public hearings, which is problematic for the purpose of negotiation and consultation on issues affecting street vendors, such as designation of trading areas, registration procedures and permit costs, etc.

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<sup>48</sup> This Act is under review and stood to be repealed by a new Business Licensing of Businesses Act until the Bill was withdrawn due to a stream of objections.

## **5. Conclusion**

The general conclusions arrived at in respect of the domestic work sector apply equally to the street vending sector. It is particularly a lack of awareness of rights, and the lack of access to financial resources to start and sustain their business, coupled with the absence of effective organization, which present major challenges in the sector.