

INFORMAL ECONOMY METRO ENGAGEMENT

SALGA House, Cape Town

25 – 26 February 2019



Learning Notes

1. INTRODUCTION AND BACKGROUND

It is not debatable that the informal sector complements Government initiatives in various ways. The informal sector provides employment and income to millions of people who otherwise would have no other means of survival. The sector has become the breeding ground of entrepreneurship with the families passing on the practical skills from one generation to the other. The ability of the sector to play these important roles invokes the question that: *Is the sector garnering enough support from the authorities in the jurisdictions they are operating from?*

Building on the previous engagement held in 2017, SALGA Western Cape in partnership with MILE hosted the Informal Economy Metro Engagement that took place on the 25th to the 26th of February 2018 in Cape Town.

2. AIMS AND OBJECTIVES

The anticipated objectives and outcomes for the Metro Engagement were as follows:

- Share progress in terms of these actions undertaken in the last year;
- Obtain inputs on the draft SALGA Local Government Informal Economy Position paper;
- International Labour Organisation (ILO) Re204 Transition from informal to formal action plan;
- Share lessons from Jurisprudence related to the Informal Sector Impacting on Local Government;
- Discussion on Street Trading, Operations of Spaza Shops, Development of By-Laws
- Sharing toolkit for local authorities on Supporting Informal Livelihoods in Public Space; and
- Share support programmes to informal sector by key national departments.

3. STRUCTURE OF THE DOCUMENT

This document reflects key outcomes that were deliberated during the workshop, and serves as an internal resource to guide further work in positively contributing to the draft Local Government Position Paper on Informal Economy. It does not provide a verbatim of proceedings but however emphasises central themes that emerged from discussions. For detailed presentations, kindly access them on the MILE website (www.mile.org.za).

4. Reflections on the 2016 & 2017 Informal Economy Summits

SALGA in partnership with the City of Cape Town hosted the Annual Informal Economy Summit in 2016 as well as in 2017. The theme of the 2016 summit was *“Leadership as a tool to strengthen support and development of the Informal Economy and to encourage collaboration amongst key stakeholders”*.

2016 Summit

The 2016 Informal Economy Summit was a culmination of a number of activities and initiatives as well as research that has been under taken in the city. Bearing this in mind, it delved deeper into certain aspects of the sector including inclusive management models, stakeholder participation, and approaches to law enforcement and monitoring mechanisms. Moreover, it aimed at facilitating dialogue and strengthen linkages between the informal economy, local government, the private sector and research institutes of higher learning. The participants were also presented with an opportunity to showcase and share innovative approaches and key lessons learnt.

2017 Summit

The theme of the 2017 Informal Economy Metro Engagement was *“Infrastructure supporting the Informal Economy”*. The Summit brought together industry leaders, government and academic institutions to work towards creating a more conducive environment for informal trading and to take advantage of the many opportunities in the sector. Therefore, the purpose of the Metro Engagement held on 28 June 2017 was to provide a platform for metros to share experiences, challenges, lessons and innovative approaches to infrastructure and service provision.

The anticipated outcomes were as follows:

- SALGA establishing a task team to implement the recommendations made;
- SALGA engaging National Departments and key ministries for example the Department of Trade and Industry and Department of Economic Development to be part of the task team;
- Agree on a third workshop to reflect on the changes that have been put in place post-metro engagement.
- SALGA initiating the development of a National position paper on Informal Economy.
- Decentralise the annual Informal Economy Metro Engagement to other municipalities and ensure all relevant officials attend these sessions.
- SALGA using a dedicated website for information and case studies to be shared.

DATA

5. Informal Economy in South Africa: A Statistical Snapshot

With the constantly evolving picture of informal economy in South Africa, data plays a pertinent role in highlighting the importance of this sector. The informal economy's contribution to employment, the GDP, poverty alleviation and food security in the country is overwhelmingly evident. Issues of gender dynamics, race and sex, migration and formal informal linkages play a big role in the existence of the sector.

Overall, the data reflected in the presentation demonstrated the vital role the informal sector and economy play in South Africa in generating much needed employment, reducing poverty levels and injecting incomes into the poorer parts of South African cities and provinces. It also highlighted the huge diversity of work within the informal economy and sector.

The detailed presentation is available on www.mile.org.za.





KEY CONSIDERATIONS: Data



1. What activities predominate in your municipality, beyond trading?
2. What might the barriers to greater livelihood security be?
3. What might the barriers to entry into informal sector employment be?
4. Any observations regarding the gender dynamics in the sector.
5. What formal informal linkages do you observe and how could these inform policy / be levers in policy making?



Gender dynamics in the Informal Trading space

It is a general observation that it is women that predominantly participate in the informal trading space. The data presented did not necessarily reflect this aspect as it was reflected from a national perspective. Data that is more specific to industries in the informal sector is available.

Migration

The South African informal economy landscape consists of a substantial amount of migrants. As a result, the issue of space and territory features predominantly in the discourse as a huge concern. Similarly, this brings about the notion of the need to protect this space fro South Africans. Data on migrants is not widely captured and reported, as there might be some reluctance to do so. However, Census data does reflect data on migrants in a more comprehensive manner.

Formal and Informal sector linkages

The strong linkages between the formal and informal sectors exist and managing separately is a challenge, and something to re-consider. The retail continuum that exists in informal trading is the same function fulfilled by formal businesses, but manifested in a different way. Bearing this in mind, it is suggested to consider the entire manifestation and develop a Retail Strategy, as opposed to an Informal Sector Policy. Data also reveals the significant impact made by the informal sector to the formal establishments such as massmarts (suppliers to spaza shops), who are often silent in the policy space.

There are many examples that can be used to illustrate the linkages. A number of corporates are known to work with informal traders for “ambush marketing” purposes, when holidays are approaching. Some corporates consider the use of informal traders as their last distribution point and the process is tantamount to a CSI. This view is widely criticized as the informal sector plays a crucial role in South Africa. Through regulation, Local Government has the power to deter the big players from taking advantage of the informal sector (ie ambush marketing).

Food security

While the presented data is informative and reliable, perhaps the focus in undertaking the research should shift to food security and consider the entire value chain. The focus should shift from the end-product to the beginning of the value chain ie. at the production/agricultural phase. Going forward, it is crucial to have data on this aspect as it would simplify planned intervention and support.

Diversity of the Informal Sector

While there is good work being done in support of the informal economy, it is vital to appreciate the diversity of the sector, noting that it extends beyond informal trading. Generally, the focus tends to be on women, however, looking closer, men and the youth also play an important and active role.

Legislative Restrictions

The needs for people operating in the informal sector vary. An observation is that they no longer require infrastructure as they did in the past, and their needs currently extend to equipment to assist them. The challenge for Local Government in terms of providing assistance in this regard are legislative limitations such as the Municipal Finance Management Act (MFMA) which restricts the transfer of assets to the public. The predicament is engaging in an appropriate legal process to procure equipment for the informal sector as is done by certain national departments.

JURISPRUDENCE & THE CONSTITUTION

6. Informal Trade in South Africa: Recommendations on the Regulation of Informal Trade at Local Government Level

Informal trade plays an important role in addressing challenges arising from unemployment, poverty and rural-urban migration. Thus, national government acknowledges the importance of ensuring the informal trade sector is given room to develop and flourish. It is also important to note that the development of regulations unfolded in the context of informal traders fighting to cease back rights that were taken away through By-Law enforcement.

The key principles from jurisprudence that ought to govern the interaction between Local Government and Informal Traders are as follows:

- I. Respect for the Rule of Law
- II. Respect and Promotion of the Constitutional right to ***Dignity*** (Section 10 of the Constitution)
- III. Right to adherence to ***Administrative Justice*** (Section 33 of the Constitution)
- IV. Respect for ***Property Rights*** of the Informal Traders (Section 25 (1) of the Constitution)

The detailed presentation is available on www.mile.org.za.



KEY CONSIDERATIONS: Jurisprudence & the Constitution

1. Are the existing municipal bylaws consistent with legislation, particularly the Business Act?
2. Are municipal officials trained in a manner that is in line with administrative justice?
3. What are municipalities doing to protect, respect, promote and fulfil rights of people in the informal economy?



Intellectual Property

The right to Property also covers intellectual property. Although it may be rare for informal traders to institute legal action to protect intellectual property against formal traders, it is usually the opposite that happens. It occurs in the manner of confiscation of goods that are counterfeit brands.

Overall impact of By-Law enforcement

The indirect effects of regulatory implementation is often overlooked. Traders resort to purchase stock of less value due to the actual threat of confiscation. Purchasing stock of lesser value affects their trade.

Case Law

Reference is made to the *Makwickana v eThekweni 2015* and *Somali Association v L DED 2015* cases respectively. These landmark cases significantly contributed to the current landscape of informal trading. Administrators have a duty to issue trading permits, which are not limited to South Africans only. However, there are assertions that the informal trade space in other countries is protected from outsiders.

Department dedicated to the Informal Sector

One of the recommendations that was raised in the presentation was an appeal to municipalities to formulate departments that would only focus on the informal sector (where this is required such as in Metros and cities). Reference can be made to the City of

Johannesburg as an example, as it established an administrative unit to facilitate informal trade in a developmental manner. Furthermore, reference can be similarly made to the City of Cape Town as it formulated an Informal Trade Policy which promoted the “*three strikes rule*”. It guides Law Enforcement guidance at how to better approach the informal traders i.e. by laying out restrictions on confiscating goods “*at first strike*”. It was successful in that it gave law enforcers direction and Economic Development played a facilitative role. It was exemplary in that it aimed at addressing excessive policing. However, on the other hand, the “three strikes” might be perceived as authoritarian as proportionality in those circumstances has to be exercised.

Overall, the success of a department of this nature squarely lies on the collaboration of the Economic Department and Enforcement. All efforts and approaches should be aligned.

Administrative Justice and foreign national informal traders

Nelson Mandela Metropolitan Municipality’s Informal Economy Policy consists of a Licencing Clause. The policy is underpinned by the principles of “*Identify, Educate and Enforce.*” One of the conditions of granting foreign nationals permits to trade in the informal sector is by proving legal residency in South Africa. However, this creates significant backlogs as the municipality is not capacitated to authenticate paperwork and the Department of Home Affairs does not respond in time. As a stop-gap measure, these parties are registered, but not granted permits. This leaves the municipality in a predicament.

From the legal perspective, asylum seekers entering the county without proper documentation is eligible to receive permits, as they would be trading for survival. It is legally acceptable in cases whereby the licensing rate scheme is lawful in itself, and the municipality is set on ensuring the proper documentation of licences.

On the other hand, if a municipality’s interest lies in excluding undocumented foreigners from informal trading opportunities, therein lies the challenge, as it would amount to discrimination and therefore deemed unconstitutional. The Policy or By-Law can be more narrowly tailored to make it about documenting people who have licenses regardless of their background, rather than drawing an explicit distinction between South Africans and foreigners.

Therefore, under these circumstances the following considerations must be made:

- a. *What is the purpose of the licencing system? or*
- b. *What is the purpose of the distinction drawn between nationals and foreigners for the purposes of documentation?*

Beyond informal trading

It is an observation that informal trade is the one component of the informal economy that receives the most attention. Conducting research and analysis on the other components of the informal sector is just as crucial. Waste pickers are interesting example. SERI is involved in cases that extend beyond informal trading.

Regulatory Assessments

Generally, policies and By-Laws that regulate informal economic activity are not subjected to regulatory testing to determine the impact on the users. Municipalities are thus presented with an opportunity of undertaking regulatory assessments.

DRAFT LOCAL GOVERNMENT POSITION PAPER

7. Draft Local Government Position on the Informal Economy

The presentation focussed on the following areas:

- Purpose of the Position
- Process in developing Position
- Size and contribution of the informal economy
- An evolving legislative and policy framework
- Acknowledging the challenges
- The role of the informal sector in the economy: A local government imperative

To access the detailed presentation please click on the link www.mile.org.za





KEY CONSIDERATIONS: Draft Local Government Position Paper

1. What are the shortcomings, what is missing? What needs emphasis in the position paper?
2. What would be the challenges in 'adopting' a position paper of this nature in your municipality?
3. What are the next steps: what are the 3 priorities, in the spirit of the position paper, that you would need to implement in your municipality?
4. What should we be focusing on as Local Government in the next 3-5 years to take the informal sector through local government forward?



Developmental Outcomes

This section does not appear to allow for survivalism as a desired development outcome, that is, not every actor in the informal sector wishes to grow or formalise their economic activities. Therefore, the position paper should also recognise that survivalism or maintaining the status quo in the level of economic activity might be desirable for certain actors in the informal sector.

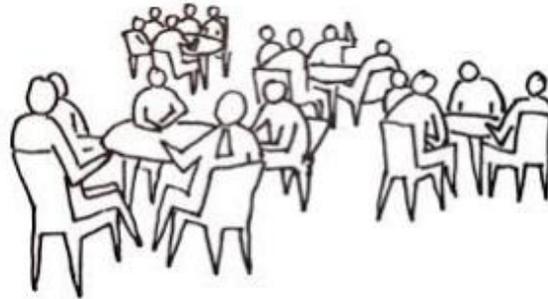
"Fronting" in the Informal Sector

It is an observation that some informal traders choose to remain in the sector due to the advantages of staying i.e. tax avoidance. Although it is not a dominant factor, but it is a reality nonetheless. There is an opportunity for the draft Position Paper to address this matter by exploring ways of avoiding this. However, options must be weighed carefully, as the income data is conclusive that the vast amount people are not earning enough to warrant SARS' concern.

Revenue Ring-fencing

Typically all proceeds from licencing are directed to a centralised revenue base for municipalities. It is proposed that better methods of ring-fencing revenue are developed in order to improve the informal sector i.e. allocation of funds to cleaning. However, it should be understood that proceeds from licencing are not substantial and that this is a developmental rather than a transactional process.

8. FACILITATED PLENARY DISCUSSION



Various issues regarding the informal economy were discussed at length. These discussions were undertaken through various guiding questions. Discussion was as follows:

	GUIDING QUESTIONS	RESPONSE
1	What activities predominate in your municipality, beyond street trading?	<p><u>Informal Activities</u></p> <ol style="list-style-type: none"> 1. Motor mechanics 2. Waste pickers 3. Backyard landlords 4. Tourism sector eg Guides 5. Environmental sector eg protection-water stewards, Traditional Healers, Initiation Schools 6. Township economy (selling township lifestyle) 7. Selling alcohol, particularly at car washes 8. Micro manufacturing 9. Recycling 10. Take-away food 11. Producing and Selling vegetables 12. Use of social media to sell products

		<p><u>Municipal Response</u></p> <ol style="list-style-type: none"> 1. Establish structures 2. Building support infrastructure 3. Partnered with SEDA <p><u>So what-policy certifications?</u></p> <ol style="list-style-type: none"> 1. Sectors requires a differentiated approach 2. Food hygiene-not included in the position paper
2	<p>What might the barriers to greater livelihood security be?</p> <p style="text-align: center;">&</p> <p>What might the barriers to entry into informal sector employment be?</p>	<ol style="list-style-type: none"> 1. Land use policy inhibits the informal economy-Recognising that economic activity starts informally. Therefore ,as government it's important to provide necessary support to entrepreneurs 2. Municipalities often use their respective bylaws to limit or promote the sector 3. Economic opportunities (often relying on passing feet) are often designated no-go areas By-Laws 4. Often informal economy bylaws to not facilitate informal opportunities 5. <i>"An opportunity of a lifetime must be taken in the lifetime of the opportunity, where the opportunity represents itself"</i> 6. Strategic use of bylaws for different purposes, as different line functions within the municipality often have different views of the informal economy

		<ol style="list-style-type: none">7. A multidisciplinary approach is necessary in catalytic projects throughout different line functions through ensuring principles that enable the informal economy are adopted8. Economic Development Line function must comment on large infrastructure projects or on policy issues (SALT approval committee for development projects, route form approvals, SOP)9. Informal Economy Champion is necessary10. How do we strike a balance between the formal and informal? It is a zero-sum game as there is always a winner and a corresponding loser in the implementation of informal economy By-Laws. Real Public participation is necessary (not a box ticking exercise) as the process is important11. City of Cape Town: Anybody can ask for the development of a trading plan that promote or inhibit informal trading but its takes 117 days to get Council approval for a Trading Plan that often means that opportunities are lost for entrepreneurs12. Municipalities are responding to the informal economy differently13. Very few By-Laws exist that proactively enables the informal economy. Therefore maybe a review of the Business Act, 1991 is necessary
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		<p>14. Establish of municipal Directorates that are better able to proactively respond to the informal economy is necessary instead of law enforcement</p> <p>15. A collective review of municipal bylaws maybe necessary to proactively respond to the informal economy, as municipal bylaws are influenced by other municipalities bylaws</p> <p>16. Request for SALGA to review (comment) metro By-Laws and policy</p> <p>17. Informal economy Infrastructure Guideline to consider how infrastructure may impact on the whole economy</p> <p>18. Lack of security in tenure of infrastructure and designated trading bays. These can also potentially be leveraged for other opportunities such as loans</p>
<p>4</p>	<p>Any observations regarding the gender dynamics in the sector?</p>	<p>1. Partner with research institutions – to research the gender dynamics in the city (Nelson Mandela Bay)</p> <p>2. Not safe (urban safety, inclusivity) – might this be a barrier to entry for women?</p> <p>3. City of Cape Town will develop Informal Economy Strategy. It had engaged the sector and the By-Law will be reviewed – what should the strategy actually cover</p>

		<p>4. Look at the concept of social entrepreneurship versus the R204 which advocates for formalization. EThekweni has community based contracts)</p>
<p>5</p>	<p>What formal informal linkages do you observe and how could these inform policy / be levers in policy making?</p>	<p>1. Lack of regulation of big corporates ie using informal traders for marketing</p> <p>2. How best can formal businesses work closer together with informal businesses in terms of CSI</p> <p>3. Urban Management: (formal and informal partnerships) All are able to pay but the issue is the amount. The majority of the money is paid by formal businesses. Informal business they serve as eyes on the street</p> <p>4. Equity ownership for informal businesses for new developments (malls). Financial institutions must also come on board. In which areas is this done? <i>Township vs affluent areas</i>. Trust ownership (<i>personnel development vs proceeds being used for community development</i>)</p> <p>5. Long-term plan is necessary</p>
<p>7</p>	<p>Are municipal officials trained in a manner that is in line with administrative justice?</p>	<p>1. Do officials get trained in administrative justice? Are there ways to improve this? What is happening in practice at the moment?</p> <p>Suggestion: Fulfil academic component; professionalization of the sector; understanding of the developmental state agenda and processes around PAJA; Take stock of City Practice ; facilitate justice</p> <p>2. City of Cape Town: Why are people taken to court where decisions have not been taken?</p>

		<ol style="list-style-type: none"> 3. Dispute resolution mechanisms in metros – what is best practice? City of Cape Town COCT has an Ombudsman (to deal with any administrative issue) 4. ILO R204 collective bargaining: ILO explore the idea with SALGA. Which law allows this? Can we get collective bargaining mechanism to negotiating the big things?
<p>8</p>	<p>What are municipalities doing to protect, respect, promote and fulfil rights of people in the informal economy?</p>	<ol style="list-style-type: none"> 1. Discuss the terms clearly within the position paper 2. Nelson Mandela Bay: Moratorium for law enforcement to evict (identify, educate and enforce) 3. Database to know exactly who is trading in the metro and what are they doing and determine their needs (educate them on municipal policies and By-Laws); protector and enforcer 4. City of Tshwane: The taxi associations managing the informal sector – good or bad? This comes with pro’s and con’s because municipalities still manage public spaces. The Informal sector is highly organised, even if some of them may not be registered 5. Formalization has its benefits (holistic view) – permit, employee and employer relationships, social protection, etc.

Kindly see attached Annexure A for additional discussion points made by the participants.

9. Promotion of Legal Street and Township Trading and to protect South African Traders

Purpose:

- Craft a discussion to deal with the issues around regulating the informal space
- National policy – guide on street trading and promote township economies
- Emanated from Inter-governmental committee on migration



Key Considerations



1. What are the problems?
2. What are the issues?
3. What are the current practices and experiences?
4. Where are the good cases that could be replicated?
5. Why do we need a policy guide/framework?
6. What will the policy address?
7. Is there a need for a policy?
8. Who should take the lead?
9. Identify the key pillars of the policy?



- Immigration laws are a challenge** and an amendment should be done
- South Africa is **too relaxed in enforcing laws**. It is not easy to operate in the sector in other African countries
- SALGA position paper aims at **providing guidance** (STATSSA, Competition Commission)
- Key challenges are that South Africans are **not entrepreneurial** in nature, which elevates the problem for them not occupying the space

- ❑ Foreign nationals come where there is no social welfare and they are ***experienced in the sector***
- ❑ What is needed? Space does not need to be overly regulated. There must be a ***Preferential Policy*** for South Africans
- ❑ The introduction of Precinct Management, identifying space for informal trading, and develop Preferential Policy – ***who gets in and why?***
- ❑ Current practices imply that it is ***“free for all.”***
- ❑ An ***entrepreneurship culture*** should be promoted and people must be educated more about it.
- ❑ In terms of promotion of ***illegal street and township trading***, for South Africa to respond to those opportunities are we doing enough in promoting?
- ❑ ***Constitution protects*** economic rights and empowers citizens and locals to identify and take up opportunities
- ❑ SA is a ***consumerist society*** and that must be transformed
- ❑ The Constitution is ***supreme law*** and grants specific human rights ie. Right to dignity
- ❑ How do we ***regulate foreign SMME’s*** what are the lessons in this space?
- ❑ ***Access to opportunities*** creates the tension as there is a strong perception of creating social ills. City of Cape Town studies are to be shared on these tensions
- ❑ Studies on ***business models of foreigners*** (profit driven) versus SA (survivalist)
- ❑ The case of the ***City of Barcelona***; it protects informal markets
- ❑ We need to understand issues of ***common customs union*** and free movement of people and goods
- ❑ There is ***no need for a new policy***. An understanding of the root causes of the issues needs to be attained and the amendment of existing policies should follow. Clarity should be sought through the Constitution and national departments should take the lead.
- ❑ Good cases are not suitable for all municipalities. It is important to ***look at dynamics*** and see how they can be replicated
- ❑ There is a ***need to test the impact*** of these policies since 1994 as there is opportunity for experimentation in the sector

10. KEY ACTIONS

Year 1-5 - Municipalities	Year 1-5 – SALGA & its Stakeholders
<p>Reviewing their by-laws & policies – share with each other</p>	<ul style="list-style-type: none"> <input type="checkbox"/> What are the outcomes we want to achieve in what we do? Timeframe – 5 years? <input type="checkbox"/> Link to Municipal IDP – SALGA Strategy etc <input type="checkbox"/> Circulate the draft position paper for a round of inputs (including research mentioned by COGTA, Assessment toolkit WCEDP), Metro presentations (SERI & WEIGO) <input type="checkbox"/> Lobby for the Businesses Act review <input type="checkbox"/> SALGA to compare two metros informal trading by-law & policy in line with constitutional imperatives <input type="checkbox"/> SALGA to explore the possibility of rolling out training sessions on PAIA (administrative justice) in the context of the implementing the informal sector by-laws <input type="checkbox"/> SALGA- Benchmarking tool - Index with information/cases on what municipalities are doing in the space – best practice <input type="checkbox"/> Come up with targets for improving/developing the sector eg. how fast are permits provided - Agree on indicators and dimensions

11. Strategic Way Forward

All of the views expressed by the participants will be considered for the draft Local Government Position Paper on the Informal Sector. Action Plans are to be populated by municipalities and will be returned to SALGA in 7 days.