

## Capacity Building Programme for Employment Promotion

### COMPLETION REPORT

#### Creating a Supportive Regulatory Environment for the Informal Sector: Improving Regulatory Tools and Practise in Local Government

##### Project details

Reference Number: Act. 31/DT Global IDev Europe  
Title:  
Activity Type: Short Term Expert  
Consultant Name: Charles Parkerson  
Max No of Days: 200  
Actual days:  
Month (s) Work: 8 months

##### 1. Completion report objective

The objective of this completion report is to:

- report on objective, scope, and deliverables of the project;
- report findings and observations; and
- sign off on deliverables.

##### 2. Project objective

Primarily, this project sought to develop a set of interrelated regulatory tools in support of local government's developmental mandate and regulatory function relating to the informal sector. These tools included a Policy Guideline, a Framework By-law Guideline and a Health, Safety and Infrastructure Guideline.

While the primary outputs remained the same, the project expert developing the Safety Guidelines saw the need to include infrastructure considerations due to the demands that the pandemic has made on the safety requirements but also the future oriented ideals that responding to the pandemic could usher in.

Testing the tools via civic tech methods would have been ideal as was initially planned. However, given the short term nature of the project, the complexity of developing the content

and testing it, proved difficult, not to mention the challenge of finding a suitably qualified technical team. In the end, it was decided to jettison the civic-tech approach for a more standard method of online engagement in light of the pandemic. Fortunately, the project was able to secure an experienced facilitator who was able to deliver a remarkable result despite the odds.

### 3. Scope of work

The project focused on delivering three products for local government as the primary end user, 1) The Policy Guideline, 2) the Framework By-law, and the 3) Health, Safety and Infrastructure guideline. For the use and guidance of the project team, it was necessary to develop a Background Research Report to identify and gather the necessary reference resources as well as summarise the key policy recommendations. As mentioned an altered engagement process was adopted to provide a means to gauge the usability of the products.

#### Target Audience

As far as the end user goes, and in addition to local government as the targeted end user, it was also determined through the policy development process that a focus on the Provincial and National spheres of government (as part of the intergovernmental system) would be necessary to address the governance shortcomings that contribute to the incoherent responses at local level. While it was considered at the outset of the project, that provincial and national spheres of government would use the tools, through the process it became unequivocally clear that a significant part of the problem was a 'balkanised governance' system at national level. Therefore, the policy took direct aim at the role that the National sphere which would need to play to achieve greater policy and programme coherence across the system for the benefit of sector at the local level.

#### Content Scope

Firstly, the policy guideline synthesised the most influential research outputs relevant to public space trading, including the background research report for this project, yielding a diverse range of issues and problems. The author, applying a systems approach, identified weak governance structures and practices as one of the crucial problems, that if addressed, would resolve many of the 'downstream' difficulties. Secondly, the *framework by-law* took its initiative from recent jurisprudence and Constitutional and legal principle; in addition, it responds to issues raised via the policy and safety guidelines, effectively utilising all three sources and providing actionable legal material for local government. Lastly, the Covid-19 pandemic has warranted *safety guidelines* for the informal sector and a rethink of municipal spatial planning approaches as it applies to the informal sector.

Generally speaking, all three guidelines, each in their own way went beyond the initial scope of the project (breadth) but also in various aspects addressed issues with greater granularity than initially planned (depth). In terms of the Policy Guideline this can be seen in the level of detail in the policy recommendations and the policy uptake and application recommendations that were made, as well as taking a rather broad encompassing systems view of the weaknesses in governance. The By-Law on the other hand, achieved greater breadth by addressing many more issues than anticipated that emerged from the spatial and policy guidelines. As far as depth goes, the Constitutional and legal principle was interwoven throughout each section and can be traced throughout the Framework By-Law. As far as the Health, Safety and Infrastructure Guidelines are concerned, the infrastructure guidelines in its entirety was an additional section deemed necessary by the authors. Furthermore, the elements of spatial governance through use of planning tools such as overlay zones as well as the collaborative governance approaches between organized informal workers and local government in so far as it relates to local area management and municipal wide public space worker governance is a strong feature

in the entire document borne out of the author's history of activism and on the ground work with public space traders in eThekweni municipality.

#### 4. Project deliverables

The following deliverables were achieved:

- a) **Research Report.** The research report, a 40 page document, focused on a number of key references and synthesised the material along the following logic: It provided insight in issues from a global context, then proceeded to identify thematic issues that were prevalent both pre and during-pandemic. The report shifted to comment on the inclusion of foreign nationals in the informal sector and obstacles to this Constitutional ideal. And before providing key policy considerations the report looked at national government's support mechanisms provided both pre-pandemic and in response to the Covid-19 pandemic.
- b) **Policy Guidelines:** The policy guidelines, in excess of seventy pages, were divided into three parts. Part I the policy framing, concentrated on providing the contextually relevant information, such as the problem, objectives, principles and roleplayers. Part II offered the policy proposals, the meat of the guideline. This section dedicated recommendations in a phased approach - urgent pandemic related guidance and medium term proposals which were thematic and covered the widest range of policy issues related to the sector. Lastly the long term proposals centred on addressing governance paucities in the national and local government arenas as well as the intergovernmental shortcomings that prevent a government wide coherent response to the informal sector. Lastly, Part III dealt with implementation and uptake by all three spheres of governance and the change agenda necessary to enact and enable the policy recommendations.
- c) **Framework By-Law**  
The Framework By-Law, approximately thirty pages in length, provided for all the major findings of the courts (jurisprudence) in the last eight years as it relates to local government and regulation of the informal sector. As a framework by-law, however, it was not intended to be a model or standard by-law. Instead, the most important issues that the courts have identified as shortcomings either in practice or regulation were addressed. Moreover, various innovative sections were added, these were in response to issues emerging from the policy guideline and the health, safety and infrastructure guideline.

#### 5. Findings and observations

In summary, the most notable findings divided according to each of the individual guidelines were as follows:

##### **Policy Guideline**

The policy guideline put forward a three-phased set of recommendations, these are:

##### Short term

- An emergency response is required to respond to the effects of the pandemic, and a systemic provision is necessary at local level to ensure that trade can continue safely in the face of an emergency of any sort.

##### Medium term

- Seven medium term intervention areas were put forward; these covered areas such as 1) conducive regulatory environment both at local and national level; 2) infrastructure development, space planning and utilisation which responds to the need for an improved

business environment for the informal economy; 3) economic development and enterprise support acknowledging the nascent entrepreneurial initiatives taken by many actors in the sector; 4) supporting formation of local, regional and national organisation and representation of the sector is crucial to the coordinated service delivery; 5) social inclusion & protection refers to the need to be inclusive to all members of society, including foreign nationals; 6) skills development and training recognizes that both local government and the informal sector could benefit from a better understanding of the law, its implementation, development, and business and technical skills; lastly, 7) institutional coordination, or governance, in the medium term was identified as a critical aspect of the entire intergovernmental system that required restructuring but also recommendations for reform for the governance of the informal sector itself.

These seven interventions were cross-linked to four outcome areas that were identified as crucial in the medium term, which relate to the key problem areas identified. These outcome areas specified for strengthening the governance of public space trading at local level are:

- 1) Ensuring Economic Participation and Mobility – all people in South Africa have the right to participate in the economy, and municipalities should enable paths for economic mobility through economic support measures and options for economic diversification for economic units.
- 2) Providing for Social Protection and Inclusion – non-discriminatory public-space trading, and instituting social protection and public safety measures, especially for vulnerable populations.
- 3) Strengthening Governance – Local government exercises accountable, coherent, developmentally-oriented governance in respect of the informal sector, within an enabling inter-governmental framework.
- 4) Covid-19 Pandemic Response – make provision for relaxation of by-laws and necessary essential service provision to allow for trading continuity while ensuring occupational health and safety measures.

### **Long Term**

The pandemic has exposed many structural and systemic issues that compromise the livelihood of the informal economy. Some of these are the result of poor governance in the sector. To deal with these long-term issues, proper governance is required at all levels and the capacity of the structures must be built up over time. These governance structures will ensure that the following are attended to:

- Coordinating structures
- Coordination practices
- Enabling behaviours

### **Uptake and Implementation**

In order to ensure change is effected across the intergovernmental system, the following actions were recommended to promote implementation and uptake of the Guidelines.

- Decision to act / Launching the Policy
- Initiating local adoption and action
- Change management
- A framework for assessing progress and learning

### **Framework By-Law**

The framework by-law was constructed around the jurisprudence related to local government and the informal sector. The manner in which the courts interpreted the Constitution and other

laws were infused through each of the thematic areas addressed below. Furthermore, additional thematic areas were selected based on the priorities identified in the Policy Guideline and the Health, Safety and Infrastructure Guideline. These themes are:

- 1) Guiding principles for informal trading in public space
- 2) Increasing public space for informal trading
- 3) Equal protection and benefit of the law
- 4) Rights and duties of informal traders
- 5) Cancellation of trading permits
- 6) Restricting or prohibiting informal trading
- 7) Institutional co-ordination and alignment
- 8) Capacity building and public awareness
- 9) Dispute resolution mechanisms
- 10) Meaningful engagement and public participation
- 11) Distinguishing between more and less serious contraventions
- 12) Accountability of municipal officials
- 13) Flexible regulatory instruments
- 14) Crisis intervention mechanisms

The Framework By-law was not developed as a standard by-law, but focused on the most important issues facing local government and its interface with the informal sector today. Each municipality may take and adapt the by-law material to their context.

### **Health, Safety and Infrastructure Guidelines**

The Health, Safety and Infrastructure Guidelines were developed to focus squarely on the pandemic, or as the authors referred to the opportunity, the Covid Moment! Space was necessarily a major focus of the guideline due to the safety protocols and requirements of Covid-19. However it was also the authors' view that space represented an additional dimension out of the policy, regulation & enforcement cul de sac over the last twenty years.

The guideline comprised two parts, the first focused on health and safety with its objective being to get people back to work safely. To do this effectively, three domains of responsibility were proposed:

- Individual - Personal health protocols
- Community – community led implementation and governance
- Government – policy, regulation, Wash Infrastructure

The second guideline, focused on space, planning and infrastructure, it provided spatial principles, promoted methods to 'create' additional space, proposed design typologies as a tool and lastly emphasised sustainable urban management and spatial governance.

### **Concluding Remarks**

In conclusion, it is the view of this author that an effective guideline was developed to respond to both the Covid-19 emergency but also to the systemic challenges which predated the crisis. While not an exhaustive guideline, it is certainly a prioritised or focused guideline addressing the most pressing issues from a policy, by-law and health, safety perspective.

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SHORT TERM EXPERT:



Date: March 31, 2021

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Report Quality Assurance Review Completed by:

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CBPEP DT GLOBAL TAT



Date: 15 April 2021

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Recommended

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SALGA

Date:

Approved/Not approved

Comments