

**Capacity Building Programme for Employment Promotion**

**BACKGROUND RESEARCH PAPER**

**CREATING A SUPPORTIVE REGULATORY ENVIRONMENT FOR THE INFORMAL  
SECTOR: IMPROVING REGULATORY TOOLS AND PRACTISE IN LOCAL  
GOVERNMENT**

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## 1. Introduction

The informal sector is a critical part of the economy and impacts on livelihoods of many (poor) people across the globe. It is a necessary component of the economy that gives access to large numbers of people who would otherwise be completely excluded from the economy (SALGA, 2018). The informal sector plays a crucial role in addressing the triple challenge of poverty, unemployment and inequality across the globe and in South African cities, towns and rural areas (SALGA, 2018). While the informal sector is diverse, public space trading<sup>1</sup> is a dominant yet contested aspect of the economy due to a variety of reasons. One such reason is that its management is often overwhelming for officials requiring a balance between supporting the economic activity while simultaneously ensuring that public spaces are functional and attractive for other users. Authorities often regard street traders as a nuisance and as encroachers of public spaces, as such, adequately regulated and well managed public space trading is required as an essential feature of South African cities.

National frameworks and relevant municipal departments generally focus on Small, Medium and Micro Enterprises (SMMEs) which have shown evidence of contributing directly to economic development, with potential for growth and relatively easier to support than the proliferating public space trading. As a result, SMMEs policies are fairly developed with mechanisms and instruments are in place to support and nurture them. In contrast, public space trading is still neglected by municipal policies and officials' practices as it is predominantly made up of survivalists. While survivalists' direct contribution to economic development is contested, a focus on this segment has the potential of impacting a vast proportion of the populations who depend on this activity to sustain their livelihoods.

### 1.1 Background

This research paper acts as a background document to inform the creation of a supportive regulatory environment for public space trading. It is informed by a collection of key existing work related to the informal sector and local government undertaken in the past few years. These documents include:

- Review of jurisprudence and Constitutional principles to inform regulation of informal trade (SERI & SALGA, 2018);

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<sup>1</sup> This refers to "economic activity undertaken by entrepreneurs who sell legal goods and services within a space deemed to be public property, within the informal sector" (SALGA, 2012:5). This includes all types of informal trading activities that take place in any space deemed public such as pavements, parks etc.

- Position Paper for Local Government relating to the informal sector (SALGA, 2018);
- Sustainable Livelihoods Foundation's ongoing work on township economies (2014-2018);
- Human Sciences Research Council's work on the informal economy (2018);
- Cities Support Programme's research on township economies (2018);
- Revised street trader by-laws (WIEGO, 2019);
- Strengthening urban economies contribution (SACN, 2019);
- Review on legislative impediments to township development (SACN & GPG, 2019);
- Street trading health guidelines (WIEGO, SERI & AeT);
- CRAM survey on COVID-19 and informal economy (2020)

These key documents are referenced extensively to provide background in terms of what has been happening in the informal sector space over the past few years. The above research work was reviewed and synthesized to identify critical factors (with policy relevance) impacting the informal sector that municipalities have to consider to support the informal sector with their (often limited) resources. The document is an up-to-date succinct summary of key issues (prevailing and immediate covid-19 specific) impacting on Local Government and the informal sector in South Africa as well as innovative responses for forward planning. It aims to provide an opportunity for stakeholders in the space to reflect on ways to plan for the immediate environment as well as post-pandemic in ways that are inclusive and developmental. The review of secondary data is complemented by a limited number of key informant interviews with various stakeholders such as informal trader representatives and government officials to consolidate and corroborate key findings and identify gaps that are important for further consideration.

## 1.2 Objectives of the research paper

The research paper acts as a contextual document detailing key issues impacting on Local Government and public space trading in South Africa. It identifies relevant policy issues to inform the development of responsive regulatory guidelines for municipalities to effectively govern public space trading in the pandemic context and beyond. The objectives of the research paper are as follows:

- Collate and synthesize relevant existing work to identify key issues that impact on Local Government and public space trading;
- Conduct key informant interviews to contextualise and corroborate key findings;
- Update existing evidence in Covid-19 context to support the development of policy guidelines at Local Government level; and

- Identify existing practices, knowledge and practice gaps and alternative approaches for Local Government to govern public space trading.

### **1.3 Paper outline**

Section 2 presents key trends in relation to the state of Local Government and the informal sector in South Africa and globally. This section shows that generally, there has been a shift from repression to acceptance and inclusion of the informal sector internationally with South Africa following suit particularly in the post-apartheid context.

Section 3 considers the key issues impacting on Local Government and public space trading in the pre-pandemic context. It considers issues related to the regulatory environment, basic infrastructure and services, funding streams, representation and inclusion. One of the key findings stemming from this section is that national legislation on the informal sector has not changed in years and this in some ways dictates the current responses to the sector and limits options to move forward.

Section 4 engaged on key issues impacting on Local Government and public space trading in the Covid-19 context. It argues that issues in the pre-pandemic context have a bearing on the intensity of impact and responses in the current context.

Section 5 deals with the issue of foreign nationals in the informal sector. It mainly argues that foreign nationals are impacted by the same issues that affect their fellow South African traders but they are also confronted by specific issues as a result of their nationality. The section presents the legal framework regarding foreign nationals, perceptions of foreign nationals by fellow traders, local government and civil society in general and challenges they are confronted with before and during the Covid-19 pandemic. Foreign nationals are still considered a threat rather than economic players in the informal sector and alleged to be 'taking over' the sector.

Section 6 presents some of the key government support mechanisms available to the sector and Local Government in the pre and Covid-19 contexts. It presents initiatives available to support the, requirements to access these initiatives, the successes, gaps and failures.

Section 7 presents innovative responses in the Covid-19 context in South Africa and elsewhere that may be relevant to address immediate and long-term issues regarding public space trading. It draws some lessons, policy relevance and practical solutions to issues arising.

Section 8 offers conclusions and summarises key points made in the previous section which have implications for policy and by-laws.

## **2 Overview: Key trends of the informal sector in South Africa and globally**

Informal sector workers have long been operating in a context of repressive policies and practices (Skinner, 2018). Until the 1980s, informal workers operating in public spaces have been subject to anti-street trader sentiments across the globe. Rogerson and Hart (1989:32) argue that during this time, traders were experiencing “a well-entrenched tradition of repression, persecution and prosecution”. In South African cities, the situation echoed what was happening globally with apartheid solidifying repressive and strict control of any form of informal trading activities (Rogerson, 1988). This repression largely manifested in the limitation of trading licenses in urban areas where the activity was considered a threat to public order. Skinner (2008:14) posits that “...the apartheid state’s complex web of national and local laws effectively banned street trading”.

The late 1980s saw a shift in attitudes towards the informal sector in general and trading in public spaces in particular across the globe (Rogerson, 1988; Skinner, 2018). Many governments were starting to recognise the role and place of trading in municipal landscapes and this was starting to reflect in shifting policy positions. Public space trading was starting to be viewed as an important part of the urban landscape and adequate management was sought to deal with public order issues. Countries such as India are recognising street trading as an integral part of the urban landscape by developing progressive national policies to guide the regulation and management of the activity (MoHUPA, 2009). In South Africa, the policy stance has largely shifted from repression in the apartheid era to deregulation in the post-apartheid context although there is often a significant difference between policy documents and what transpires in practice (Skinner, 2018).

While apartheid laws repressed any form of informality particularly in urban areas, the transition period saw discussions around finding ways to accommodate the informal economy. This was in line with internationally debates on the right to the city which encourage the alignment of government policies at national and local levels. The right to the city approach, driven internationally by the UN-Habitat’s New Urban Agenda, provides a developmental approach to address inequality and exclusionary practices in the urban context. In South Africa, the role of cities and their economies is recognised through the National Development

Plan (NDP) 2030 and the Integrated Urban Development Framework (IUDF). These strategic documents call for socially integrated and economically inclusive spaces.

The NDP emphasises the reduction of poverty and inequality through growing an inclusive economy (NPC, 2012). The document focuses largely on SMMEs as the key drivers of change where it is projected that 90% of job creation will be achieved in this space (Fourie, 2018). Thus NDP proposals to grow the economy focus primarily on formal-sector SMME growth without any specific mention of the informal sector. The IUDF emerged as a national policy framework to 'pave way for municipalities to build integrated, sustainable, long-term growth and development' within urban areas (CoGTA, 2018). The framework is comprehensive and ticks all the boxes for better spatial and sustainable development in urban areas. It is under policy lever 6 'Inclusive Economic Development' where the framework makes reference to the importance of the informal sector in economic development. The IUDF encourages municipalities to adopt inclusive policies that "accommodate informal economic activities, supported by a planning system that does not see the sector as a problem or 'formalisation' as the only solution" (CoGTA, 2018: 85). The policy priorities of the IUDF with regard to the informal sector are as follow:

- Support urban livelihoods and the informal sector- **through progressive adoption of city policy and guidelines that include the sector in economic strategies**. This can be achieved through planning (zoning and bylaws), provision of infrastructure, taxation, licensing and regulation.
- The development of skills through investing in social capital, public services, technological innovation and supporting township and informal economies.

In recent years, there is growing emphasis on pathways to transition the informal economy into the formal economy as is suggested by Recommendation 204 (R204) of the International Labour Organisation (ILO)<sup>2</sup> upheld in 2015. This is a major policy development in the informal economy providing an important framework in the international space. The R204 was made in light of the recognition that the informal economy requires supportive interventions from the state in order to formalise. The emphasis of transitioning to formalisation speaks to reducing the underlying causes that motivate enterprises to operate informally (Kraemer-Mbula and Konte, 2016).

The R204 posits that in the transition process, mechanisms should be put in place to ensure that existing livelihoods are protected and preserved and that workplaces such as public

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<sup>2</sup> South Africa is a signatory to R204.

spaces should be adequately regulated (ILO, 2015). The idea of 'transitioning' the informal economy towards the formal is concerned with changing the operating conditions and environment for informal economy workers. This includes addressing regulatory barriers, access to adequate and affordable infrastructure and service and representation of workers among other things.

Governments across the globe, including South Africa are committed to implementing R204. Among the many provisions of R204, some have implications for public space trading and local authorities. These include "preserving and improving livelihoods of informal workers during the transition to formalization; recognising the need for a friendly legal and policy environment; recognising public spaces as places of work, ensuring freedom of association and collective bargaining for informal workers; including the membership-based organisations of informal workers in all tripartite negotiations and consultations on issues that affect them; providing social protection and occupational health and safety for informal workers etc." The implementation of R204 by the South African government has culminated in a number of processes up to date including national workshop of informal organisations (2016), establishment of a Task Team comprising a variety of stakeholders such as government representatives, organised labour and informal worker organisations etc. (2017) and a national dialogue culminating in the creation of a roadmap of actions to guide the development of the sector (2018). The issue is that formalisation is sometimes conceptualised in terms of registration and punitive sanctions for non-compliance (Fourie, 2018b). Taking such an approach does not factor in avenues towards formalisation and incentives to encourage transition out of the informal sector. Fourie (2018b) argues that formalisation should not be conceptualised as a goal or policy achievement but as a means to enable informal workers and their enterprises.

In the South African context, there has been a number of developments regarding the informal sector in the past few years which have shown significant shifts in thinking. A significant shift in the space was when SALGA initiated co-produced guidelines in the form of model policy and by-laws on informal trading in 2012. During engagements as part of this process, there was consensus among stakeholders regarding the informal economy being a crucial component of the local economy in South Africa's cities, towns, townships and rural area. The guidelines gave direction to municipalities with regard to regulating and managing informal trading in their areas of jurisdiction. Municipalities had the discretion to factor in spatial differentiation and accompanying dynamics when translating these guidelines into their respective contexts, whether metros, cities, towns or rural areas. However, there has been

disappointing uptake of these progressive guidelines into account when regulating the informal sector by municipalities.

Since the conclusion of the 2012 SALGA process, there have been a number of further developments in the informal sector space that warrants a revised set of policy considerations and by-law responses. SALGA together with SERI embarked on a review of jurisprudence and Constitutional principles to inform the regulation of informal trade in 2018. This is crucial piece of work with insights on the legal framework governing informal trade, Constitutional rights of informal traders including foreign national traders, law enforcement officials' power to confiscate and impound traders' goods and recommendations which importantly point out how officials can formulate, assess and enforce policies and by-laws governing informal trade. This work is a guide for municipalities to interpret and adapt their existing policies or by-laws in line with Constitutional provisions. The issue of foreign nationals in the informal sector which has been at the centre stage of discussions for decades, is demystified through a review of court cases. Long standing perceptions that foreign nationals should not engage in informal sector work are dismissed using Constitutional provisions which state that they also have a right to work in the sector.

SALGA also conducted work in 2018 evaluating how local government engages with the informal economy. Some of the major highlights of the work include statistics relating to the role and contribution of the South African informal economy; role of the state in the informal economy (why local government struggles to integrate the informal economy, integration of foreign nationals etc.) and policy guidelines for enabling local government approaches to the informal economy. This work was timely as it followed the SALGA/SERI work on the legal principles informing the regulation of informal trade. As part of this process, three dialogues were hosted with local government officials in Mthatha in Eastern Cape, Polokwane in Limpopo; and Gauteng. The dialogues gathered an understanding of the divergent discourses, perspectives, attitudes and practices of local government officials tasked with dealing with the informal economy. The geographical spread of the dialogues was a strategy to investigate and understand the role of the local government in diverse spatial settings, in terms of supporting, managing, and regulating the informal economy.

There has been growing interest and research on township economies from various institutions such as the Sustainable Livelihoods Foundation (SLF), Human Sciences Research Council (HSRC), Cities Support Programme (CSP) and South African Cities Network (SACN) over the years. President Jacob Zuma announced in his 2014 State of the Nation Address

announced government initiatives to support the revitalisation of township economies prioritising small businesses and informal sector enterprises in particular (Fourie, 2018).

The work emphasises the importance of townships as economic spaces with potential to resolve socio-economic issues affecting cities. While the work focuses broadly on economic activities taking place in townships, the informal sector (particular focus on spaza shops, shebeens, street trading etc.) is considered as critical to the development of these spaces. There is growing policy support on township economies met with ambivalence in practice (Charman and Petersen, 2014; Scheba and Booyens, 2018).

The Sustainable Livelihoods Foundation has been engaging in research in township spaces particularly in Cape Town through small area census to understand micro-enterprise dynamics and business practices (Charman and Petersen, 2014; 2016). The informal sector features significantly in these studies to add value to the current understandings of informality in South African township spaces. In one of their studies in Delft conducted between 2010 and 2015, the foundation has identified significant growth in informal enterprises over time and make conclusions pertaining to the economic contribution of the informal economy in the township space.

SACN and Gauteng Provincial Government (Premier's Office) have contributed to the significant development in the township development space during the course of 2019. Foundational work focusing on the review of existing legislation at various spheres of government and implications for strengthening township economies was conducted to inform the creation of a Township Development Act. There has been further ongoing research, policy and advocacy work addressing various dynamics of the sector by different institutions and individuals.

With all these advances in the right direction, the informal sector's role often still comes into question, particularly during crisis. The current COVID-19 pandemic is a case in point where traders operating in public spaces were initially not considered essential workers during the hard lockdown period. The working conditions of traders in public spaces were already problematic long before the pandemic came to our shores. Therefore while taking into account the key issues arising in the COVID-19 context, it is important to address pre-existing ones and find long term solutions to create a supportive environment for the informal sector.

### **3 Key issues impacting trading in public spaces and Local Government (pre-pandemic)**

There are a number of key issues that act as inhibitors to the productivity of the informal sector and its contribution to poverty alleviation and job creation. Kraemer-Mbula and Konte (2016) characterise these issues into key focus areas where local governments can intervene to ensure support of the informal sector. These include: the regulatory environment, infrastructure and services (including land), enterprise support and capacity building, organisation and representation, social protection and inclusion. A focus on challenges related to these key focus areas is useful as it gives some direction towards various policy interventions that support the creation of a supportive regulatory environment for public space trading across South African municipalities.

#### **3.1 Regulatory environment**

Legislation at the national level of government acknowledges the important role played by the informal sector which is a deviation from apartheid where informal sector activities were outlawed. The supreme law of the country emphasises local government's obligation to facilitate economic development in its jurisdiction (SERI, 2018a). Section 22 of the Constitution provides that "[e]ach citizen has the right to choose their work, occupation or profession freely". This right is qualified by a provision that the "practice of a work, occupation or profession may be regulated by the law". The right to choose one's work extends to informal workers and their activity may be regulated by the state through legislation and policy documents. The regulation of the informal sector does not however give municipalities the power to do as they deem fit<sup>3</sup>.

The early 1990s saw a shift in authorities' attitudes towards the informal sector from repression to deregulation (Scheba and Booyens, 2018; Skinner, 2018). This manifested in the enactment of the Business Act of 1991 to reverse harsh apartheid laws impacting informal trading (see annexure 1 for key legislation impacting on local government and the informal sector. The Act restricted local government from enacting regulations that prohibit street trading in their areas of jurisdiction, resulting in considerable increase in the informal activities across the country. Local authorities were struggling to cope with the increase in informal sector activities, particularly trading in public spaces and this led to enactment of the Business Amendment Act 186 of 1993 which gave local government powers to formulate by-laws and demarcate trading and non-trading areas (SERI, 2018a).

Fourie (2018a) and Skinner (2018) argues that since 2012, there have been conflicting sentiments regarding the informal sector despite the explicit focus in legislative directions particularly at the national level. The National Informal Business Upliftment Strategy which

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<sup>3</sup> Other relevant provisions of the Constitution are explored in section 5.1.

was launched in 2014 is one of the crucial documents geared towards the creation of an enabling regulatory environment for informal sector activities. It acknowledges that there are “more than two million South Africans” (NIBUS, 2014) who operate in the informal economy as survivalists and entrepreneurs requiring support to operate flourishing enterprises<sup>4</sup>. This national policy initiative has been hailed as progressive with inclusive guiding principles although uptake by various provinces has been disappointing. Gauteng is the only province that translated this national strategic direction into its flagship Gauteng Informal Business Upliftment Strategy (GIBUS) in 2015.

Although the launch of NIBUS was a crucial gain for the informal sector countrywide<sup>5</sup>, it contributed to the already fragmented legislative landscape that impacts the sector (Skinner, 2018). The South African Cities Network and the Gauteng Provincial Government<sup>6</sup> (2020) posit that the regulatory landscape pertaining to development of township economies<sup>7</sup> in Gauteng is fragmented across sectors and government spheres and agencies. There are multiple laws at national level (but also at provincial and local levels) that push forward various provisions which are sometimes contradictory (refer to annexure 1). This provides loopholes for local government to selectively adopt (repressive) provisions during implementation.

At the local government level, informal trading policies and by-laws act as a crucial form of regulation of informal trade that municipalities can adopt to enable the activity within its boundaries (SERI, 2018a). Ideally, by-laws on informal trade take direction from informal trading policies that municipalities develop to strategically guide regulation of the activity. In some of the more developed municipalities such as metros, policies towards trading in public spaces are often inclusive but sometimes ambivalent and adopt hostile approaches. For instance, City of Tshwane’s policy states that “informal trading contributes to the creation of jobs and alleviation of poverty and has the potential to provide some income to the households as well as providing an alternative to established formal sector retail options” (CoT, 2014: 3). While the policy is inclusive on paper, the situation is different in practice where street traders face harassment, eviction and relocation.

In many South African cities, towns, townships and rural areas, these broad strategic directions do not exist and by-laws are developed haphazardly in ways that protect municipalities rather than empower informal actors (SERI, 2018a). Some municipalities

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<sup>4</sup> It is important to note that the strategy focuses on informal businesses in general and not specifically on trading in public spaces.

<sup>5</sup> There are also some noted shortcomings of this policy initiative such as its anti-migrant sentiments.

<sup>6</sup> These entities conducted a review of current legal and regulatory frameworks related to the enablement and blocking of township economies in Gauteng province during the course of 2019 as part of processes to develop a Township Development Act.

<sup>7</sup> Reference is also made to the informal sector activities that are dominant in townships.

struggle to develop appropriate trading policies due to a number of reasons such as limited capacity and understanding of broad legal issues (SALGA, 2012). In some instances where (inclusive) policies exist, principles do not translate into the development of adequate by-laws and authorities adopt selective and punitive implementation practices (Skinner, 2018). Fourie (2018a) argued that spatial and geographical differentiation matters and there are differences between and within provinces and local municipalities which need to be taken into consideration.

There are contradictions between inclusive policy sentiments and enforcement approaches by officials and often, law enforcement and policy development units are at odds with each other regarding ways to deal with the informal sector. At local government level, there are tensions between various actors (i.e. officials and politicians) and between different departments that might adopt contradictory regulations (Scheba and Booyens, 2018; Skinner, 2018). In some rural municipalities, this is further complicated by the existence of traditional authorities who do not apply the same regulations in place by municipalities (SALGA, 2018). There is therefore disconnect between municipal regulations and traditional authorities' practices. While local governments mainly adopts repressive regulatory mechanisms such as the impoundment of goods, eviction and relocations of traders, there are opportunities to create an enabling regulatory environment<sup>8</sup>. There is a need for inclusive policies that translates public space trading principles from a purely regulatory to a developmental approach by striking a balance between the need to regulate and to support the livelihoods of workers (SALGA, 2012).

### **3.2 Infrastructure and services**

Local government is confronted with competing realities where on the one hand, the informal sector offers economic opportunity while on the other it impacts on local infrastructure and services (Kraemer-Mbula and Konte, 2016). Provision of infrastructure and services as well as adequate access are critical aspects that facilitate economic development. During the 2019 Budget Speech, the Finance Minister Tito Mboweni, reiterated infrastructure development as one of the key drivers for economic growth, focusing on the formal economy. Local level investment in infrastructure “reduces the costs of doing business for firms and makes it easier for people to access jobs and economic opportunities” (SACN, 2016:108). There is massive public sector spending on infrastructure development to spur economic development as well as to support poor households.

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<sup>8</sup> See recommendations made by SERI (2018a; 2018b) in section 5.1.

While the link between infrastructure development and (formal) economic growth has been established, this is lagging for the informal sector in many municipalities across South Africa (WIEGO, 2016; SACN, 2019). The provision of infrastructure often targets middle and high income users who are able to pay and this often results in inadequate access for those working in the informal sector (WIEGO, 2016). Local government is responsible for providing adequate infrastructure and services to traders operating in public spaces to support and facilitate their growth. Public and sometimes private sector spending on infrastructure and services for the informal sector is often limited compared to the formal sector. In instances where the state supports the development of infrastructure for the informal sector, this is often inadequate and unaffordable for the users.

The provision of infrastructure for the informal sector is critical this directly impacts the productivity of enterprises. A UN Habitat study conducted in 2016 posits that “where paving and drainage in markets is lacking, or shelter from rain, sun, dust or wind is inadequate, workers’ health is compromised and goods get damaged” (UN Habitat, 2016:18). Indeed, access to adequate and affordable infrastructure and services such as trading spaces, ablution facilities, refuse removal services, storage facilities, water and electricity are important for the operation of traders working in public spaces (Muteta et al, 1998; SoAP, 2014).

Besides the economic impact of infrastructure on business development, there is also a link between access and social benefits such as improving human capacity and a conducive business environment (Muteta et al, 1998). For instance, when traders have access to storage facilities in close proximity to their business site, they can spend less time moving their goods around and focus on improving their customer service. Although such social benefits of adequate infrastructure cannot be directly measured, they contribute to business productivity and development in the long-term. A study by SoAP (2014) argues that the provision of adequate infrastructure to public spaces contributes to attractive streets that are hygienic for traders and other users of these spaces. This in turn creates a conducive business environment thereby attracting customers leading to increased earnings. It is for these reasons that local governments should intervene in the design and provision of infrastructure to facilitate growth (SoAP, 2014).

Lack of deliberate planning and provision of infrastructure to the informal sector leads to access, adequacy and affordability gaps which hinder development (SACN, 2019). Where there is limited access to infrastructure, more time is spent seeking access elsewhere and this is “...wholly unproductive time...and because it is unproductive it is time that is wasted” (Edmonds, 1998:1). In other instances, infrastructure is provided but it is not adequate to cater for the needs of the end users. This is often the result of insufficient budget to cover the costs

or lack of consultation with end users. In many municipalities, especially in rural areas, there is limited or no access to basic infrastructure such as water, storage facilities and sanitation. In cases where there is provision, lack of maintenance has resulted in dilapidation and pressure has been put on municipal infrastructure due to misuse of spaces (SALGA, 2018).

One of the critical aspects of infrastructure provision is making land available to accommodate public space trading. In most instances, the number of legal trading spaces does not reflect the number of existing traders. This is because municipalities often limit the number of legal trading spaces which spurs competition and effectively creates many 'illegal' traders. This in turn leads to conflict and corruption where legal spaces are sold to the highest bidder with implications for management.

While local governments need to make available operating spaces for traders, the economic role of public spaces is unfortunately neglected. While traders use public spaces as physical assets and economic resources, this aspect is often neglected or is influenced by northern aspirations of orderly spaces (Brown, 2006). In municipalities such as Johannesburg, public space traders are pushed into closed markets and these spaces have often been left unoccupied because of lack of business. Shifts in economic activities have also resulted in once vibrant spaces being left vacant in pursuit of conducive business sites (SALGA, 2018). The challenge is striking a balance between accommodating traders and maintaining the image and functionality of public spaces which also cater for other uses and users.

There is an issue of 'holding capacity' of public spaces that local government officials often revoke to limit the number of traders. The argument is that every space has a carrying capacity and accommodating too many traders can lead to congestion and unhygienic spaces. There is as such a need to include trading in government plans (particularly spatial plans such as spatial development frameworks, precinct plans etc.) so as to properly design these spaces and accommodate users effectively. In India, surveys of existing traders are conducted in busy sites to determine the carrying capacity of streets (MoHUPA, 2009:6). A pragmatic alternative to the narrow design and usage of public spaces is emerging where public spaces are being embraced as economic spaces and management principles put in place to maintain order and control (Brown, 2006; Mendelsohn, 2015; Brown and Mackie, 2017).

### **3.3 Enterprise support and capacity building**

The Department of Small Business Development (DSBD) is dedicated to promoting and supporting SMMEs, including the informal sector through financial and non-financial measures. Local government struggles to coordinate support across the various departments

that deal with the informal sector. Some support measures offered (especially funding support) are often concentrated at the national level with stringent requirements which exclude or are inaccessible to informal enterprises (Kraemer-Mbula and Konte, 2016).

In many, if not all municipalities, informal sector development is often conceptualised in terms of skills development where funds are invested to train informal traders. For instance, in 2017 DSBD reported on the success of one of its programmes where “4 436... informal businesses supported through the National Informal Business Upliftment Strategy (NIBUS)/Informal Micro Enterprises Development Programme (IMEDP) [were trained], against a quarterly target of 2 500” (DSBD, 2017). While this illustrates some progress with regard to skills development, training of informal traders has often been criticised for not responding to their needs with no long-term skills gains. Some traders have argued that training is merely offered as a tick box exercise and focuses mainly on how to run the day to day business such as ‘packing apples’ (SALGA, 2018). Traders have argued that this is a skill that they already possess and would rather be learning about the contents of by-laws and what they mean for operating in public spaces for instance. Training needs to focus on issues that matter including waste management, environmental health, financial management and record keeping etc. Skills audits need to be undertaken by authorities to determine the skills-set required by informal traders in order to inform the type of training to be administered. Skinner (2018) argues that the training system needs to be reviewed to ensure that it is both useful for traders and local government officials.

A lot of emphasis and resources have been placed on capacity building for informal traders while officials who deal directly with regulating and managing the activity also require training on crucial aspects. There is a lack of capabilities for officials, particularly those in the Economic Development Departments/Local Economic Development to manage public space trading programmes and projects. For instance, there is no training for officials on policy and by-law contents and how these affect their actions on the ground to enable the sector. In some cases the roles and responsibilities of officials are unclear and training in this aspect could enhance how they perceive and engage with the sector (SALGA, 2018). There is therefore a need to refine the capacity building systems to include officials on critical aspects that have an impact on supporting informal trading in their areas of jurisdiction.

### **3.4 Organisation and representation**

There are numerous organisations representing the interest of traders operating in public spaces across the country. Some of these organisations are nation-wide while others are city or market based but they all claim to represent traders. While organisations of traders exist in

their numbers and act as mouthpieces for the grassroots, there are various issues associated with how they operate and engage with local government. One of the main issues that concern local government is that of representativity. Most of the organisation leaders have simply assumed representation and have not been elected into positions (Benit-Gbaffou, 2015). This creates an issue where some leaders have been in positions for decades or constant change in leadership resulting in local government losing track of who to engage with.

Informal trader organisations are active but their voices are hampered by fragmentation, divisions and competition between and within organisations. This has dire effects for their mobilisation efforts and the extent of their influence on policy processes and practice. They are thus seen as problematic by local government officials because they struggle to speak with one voice or at least push for complementary rather than contradictory interests that benefit the sector. Organisation representatives are often seen by officials as opportunistic, motivated by personal interests (economic liberation and attaining some political status) and lacking long term strategic visions for street trading governance (Matjomane, 2013; Benit-Gbaffou, 2015). Different organisation representatives are suspicious of one another and towards other organisations which further fragment the sector and weaken traders' ability to negotiate with local government.

There is some engagement between informal trader organisations and officials which is often characterised by hostility. In some municipalities, institutionalised platforms of engagement exist to facilitate engagement and collective strategizing between traders and officials. In reality, some of these have become talk shows with no real outcomes that positively impact the sector. Some local government officials convene these engagements to divide and rule, co-opt as well as sedate traders from mobilising against municipal plans (Matjomane, 2013). While some institutionalised forums exist, most municipalities rely on ad hoc engagement with informal traders. This type of engagement acts as an avenue for informal traders to relay their grievances regarding immediate issues that need local government's immediate attention.

### **3.5 Social inclusion and protection**

Many of those working as informal traders are marginalised people such as women, the youth, disabled, and/or foreign nationals<sup>9</sup> (Kraemer- Mbula and Konte, 2016:301). In order to enable productivity in the sector, the marginalised should be targets for inclusion in the sector through dedicated programmes and prioritising their access to resources. NIBUS importantly

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<sup>9</sup> This aspect is explored in detail in section 5.

prioritises women, youth and disabled people operating in the informal sector in some of its training programmes.

Many governments across the globe are aiming to extend social protection to cover informal traders especially in times of crisis. In India, social protection entails “taking care of contingencies such as sickness, maternity and old age” (MoHUPA, 2009:11). Extending social protection to informal workers is in line with the promotion of decent work for all (ILO, 2002).

#### **4 Key issues impacting public space trading and Local Government in the COVID-19 context**

The current context has brought to light the plight of informal workers who make up a significant number of the working population in the global south (Harvey, 2020). For them, the pandemic simultaneously constitutes a health and economic crisis as their livelihoods are being negatively affected due to measures such as stay at home orders and restrictions on usage of public spaces (ILO, 2020; WIEGOa, 2020). While this crisis is negatively affecting the economy and governments are inundated with immediate mitigating measures, this has created an opportunity to transform long standing structural inequalities affecting the economy at large but more specifically the informal sector. The pandemic has laid bare the long-standing issues that confront public space trading detailed above. Many of the issues that confronted public space trading and local government for decades are being exacerbated with devastating effects in the COVID-19 context.

##### **4.1 Regulatory environment**

As shown in the previous section, public space traders have been the subject of onerous regulations for decades including the confiscation of their goods and harassment for contravening punitive by-laws (Scheba and Booyens, 2018; Skinner, 2018). The current COVID-19 context is threatening the livelihoods of traders due to the imposition of national and local level restrictions to curb the spread of the virus (WIEGOa, WIEGOd, 2020). During the strict lockdown at the end of March 2020, informal traders in South Africa, especially those selling food were not considered essential workers. In other countries such as Peru and Honduras, some traders were allowed to sell during lockdowns but were subject to punitive measures such as police harassment, evictions and relocations (Balbuena and Skinner, 2020).

Weeks into the countrywide lockdown, civil society groups including trader organisations lobbied the government to recognise informal (food) traders as offering an essential service (Rogan and Skinner, 2020). Government heeded the plea and regulations were amended to include the accommodation of traders. The Cooperative Governance and Traditional Affairs (CoGTA)'s provisions generally allow food traders to operate while the Department of Small Business Development (DSBD)'s directive indicates that traders "must possess a business licence or permit to trade issued in accordance with the Business Act, 1991 (Act No. 71 of 1991) or a business licence or trading permit issued by the relevant municipality" (DSBD, 2020: 4). For those traders who are required to trade with a permit or license but are without, they must apply for 'temporary permits' to continue trading (Ibid.). This means that traders who were allowed to operate during this time were required to apply for 'special licenses' from their respective municipalities. A prerequisite to obtaining such licenses is having valid permits or trading licenses (obtained before lockdown) and many traders who have been operating without these prior to the lockdown are thus excluded (Heneck, 2020). The special permit system effected during this time has blocked some of the traders who cannot prove they are traders because they have been selling without licenses or permits. The CoGTA and DSBD directives are contradictory in terms of the requirements for traders to go back to work. This potentially leaves room for officials, particularly law enforcers to use their discretion and abuse their powers.

In Tshwane, informal traders with no licenses or permits prior to lockdown were not allowed to return to their places of work even though the municipality has invited them to apply for special permits (Mahlokwane, 2020). The municipality indicated that "permission would be given to traders who were trading under formal structures as they would normally have certain permissions issued by relevant authorities" (Ibid.). The City's head of strategic communications was quoted saying "Dlamini-Zuma [CoGTA minister] indicated that informal food trade refers to spaza shops and fruit and vegetable stores, but not informal street traders" (Ibid.), which was clearly a misunderstanding of the department's regulations.

The Polokwane Local Municipality made an announcement on radio for existing fruits and vegetable sellers to apply for permits to trade during pandemic<sup>10</sup>. The existing database of informal traders was used as a criteria to allocate licenses and only those who were selling before COVID-19 were granted permits. This permit allows for traders to sell in their existing trading spaces and considerations for pandemic regulations are taken into account. The pandemic has resulted in a collapse of the informal trading database because people who

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<sup>10</sup> Interview with Trade and Business Regulation official, Polokwane Local Municipality.

were not selling prior to lockdown claimed spaces on the streets when restrictions were relaxed to allow for informal trading. In spaces where the database shows 1900 traders for instance, there is now over 3000 traders on the streets. The streets of Polokwane are experiencing an influx of traders and it is difficult to regulate because prior to the pandemic, officials regularly went on site to conduct status quo analysis based on the existing database but this is difficult to carry out in the current context<sup>11</sup>.

With the restrictions in place and in the context of contradictions between department directives, some traders ventured out to work without any municipal permission leaving them prone to police harassment. In Johannesburg, the news of the arrest of a woman selling atchar without a permit (eNCA, 2020) caused public uproar and laid bare the punitive measures put in place to restrict the activity. Some of the traders in possession of these special permits still face police harassment when operating (Heneck, 2020). One trader leader argues that these are “apartheid tactics all over again. An old lady loaded into a police van with her bucket of atchar! You should hang your head in shame Ramaphosa”<sup>12</sup>.

Police harassment, trader evictions and relocations were an everyday occurrence even before the pandemic and officials are using the pandemic and accompanying restrictions to intensify repression of street trading (Balbuena and Skinner, 2020). In many municipalities across the world, there is evidence that authorities are using the pandemic to intensify rather than remedy the existing police abuse towards informal traders (Harvey, 2020).

Harvey (2020) argues that these regulatory issues have placed attention on national governments to guide the development of the sector beyond the pandemic but local governments are critical vessels through which this agenda should be pursued. Municipalities together with informal sector workers are key players in developing appropriate regulatory responses to deal with issues in the current context and the future.

#### **4.2 Infrastructure and services**

Decades of inadequate investment in basic infrastructure and services to support public space trading are haunting local government in the current COVID-19 context. Measures to curb the spread of the virus such as social distancing are proving difficult to achieve in contexts where trading spaces are inadequately serviced. This in turn negatively impacts public space traders

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<sup>11</sup> Refer to annexure 2 for a snapshot of traders and permits access processes in Cape Town, Johannesburg and eThekweni Municipalities captured by Khunou , K. Scher, A., Skinner, C and Heneck, S. 2020. [http://www.seri-sa.org/images/Food\\_WG\\_-\\_workstream\\_2\\_-\\_informal\\_traders\\_in\\_3\\_cities\\_-\\_25\\_May\\_2020.docx.pdf](http://www.seri-sa.org/images/Food_WG_-_workstream_2_-_informal_traders_in_3_cities_-_25_May_2020.docx.pdf)

<sup>12</sup> Interview with Johannesburg based informal trader organisation leader, 30 August 2020.

and their livelihoods. While this is a crisis in the current context, it is an opportunity for municipalities to address long term infrastructure needs in the informal sector such as water, ablution facilities and storage facilities (Balbuena and Skinner, 2020).

In spaces where basic infrastructure and services such as running water is inadequate or inaccessible, temporary measures such as providing water stations in the vicinity of trading sites are being put in place (WIEGOd, 2020). It would be almost impossible for traders to adhere to guidelines such as frequent washing of hands if this is not supported by available infrastructure. “Many have inadequate access to water, sanitation, and hygiene, so telling them to wash their hands is futile unless municipal authorities provide the means to do it” (WIEGOd, 2020).

Some social distancing and health guidelines have been created by various organisations (such as AeT, WIEGO, StreetNet International etc.) for the safe reopening and operation of trading spaces. This is to ensure that traders adhere to the current pandemic requirements and continue to earn an income in their places of work. While some of these measures are working in the short-term, municipalities need to invest in longer-term provision of adequate and conducive infrastructure and services that facilitate productive and hygienic work spaces for traders and their customers.

The spaces which traders operate are often overcrowded and this makes it difficult to implement social distancing measures (WIEGOd, 2020). This is proving problematic because municipalities have to find ways to accommodate the existing number of traders without displacing anyone. It remains a concern that municipalities will use the current social distancing requirements to restrict the number of traders (and blocking new entrants), displace or move them to sites that are not viable for business. The crisis highlights the need for immediate municipal action regarding infrastructure improvement in the current context and beyond. The lack of or limited municipal investment in infrastructure needs to be addressed as a matter of urgency to ensure safe, clean and orderly public spaces.

### **4.3 Organisation and representation**

Notwithstanding the issues associated with informal trader organisations and representation, they continue to play a key role in negotiating with the state. It is in this context that organisations are included as key drivers of change in consultation with different spheres of government. Organisations are making demands on the government to put measures in place

(such as income relief) to help traders cope in the current context and to plan for their future (WIEGOa, 2020).

It is proving now more than ever the critical role that informal trader organisations and their representatives can play in rebuilding the sector. They have suggestions and ideas based on experience regarding how municipalities can support traders in the current context and in the future. The crisis presents an opportunity to reset the playing field for engagement between informal traders through their organisations and the state. Therefore, adequate platforms should be created to effectively involve organisations in solution finding processes to avoid mistakes of the past being repeated. Harvey (2020) argues that "...informal workers' organisations have been trying to convince cities to treat them as knowledgeable and adept partners in the city-making process. Now is the moment for cities to take them up on the offer and create a foundation for collaborative urban governance that will be essential for navigating the crisis and beyond".

#### **4.4 Social inclusion and protection**

The informal economy is made up of a larger share of self-employed women workers (14,5%) compared to men (9,5%) (Rogan and Skinner, 2020). However, the pandemic is changing this dynamic as it is affecting women in the informal economy differently from men. Women in the informal sector are more likely to lose their earnings during the crisis and recover last post-pandemic as opposed to men. For instance, during the hard lockdown, the share of women workers decreased dramatically with only minor changes for men. This is attributed to a number of factors that affect women workers in the informal economy such as childcare. During lockdown, schools and crèches which would ordinarily act as child care centres during the day while women are at work, were closed, further exacerbating the situation.

Balbuena and Skinner (2020) argue that there is a direct relationship between child care and income generation for women workers, which affects the hours women can put into earning a living. In fact, even before the pandemic and lockdown restrictions were put in place, women across the global south have reported that their participation in the economy and productivity is hampered by child care responsibilities (Moussie and Staab, 2020). Rogan and Skinner (2020) show that of those informally employed between February and April, women saw 49% while men saw 25% decrease in typical hours worked in April 2020. School and crèche closures during lockdown have intensified women's child care responsibilities and this has effectively reduced their earnings (Moussie and Staab, 2020; Rogan and Skinner, 2020).

Although it has been proven to be a myth, the informal economy is still seen as a shock absorber for the formal economy in the context of an economic crisis (Rogan and Skinner, 2020). Data analysis has shown that the informal economy, like the formal economy, records job losses during economic crises. For instance, data analysis following the 2008 economic crisis shows that the informal sector contracted by approximately 7% (Rogan and Skinner, 2018). Similarly, the situation is dire in the current context where measures to curb the spread of the virus are negatively affecting informal workers, whose jobs are already precarious (Rogan and Skinner, 2020). Using the National Income Dynamics Study Coronavirus Rapid Mobile Survey (NIDS-CRAM) data collected between February and April 2020, analysis shows that informal economy workers are disproportionately affected by the pandemic in comparison to formal ones (Ibid.). This is because a larger share of informal economy workers were restricted from working during the hard lockdown towards the end of March 2020. Rogan and Skinner (2020) argue that during this time, approximately 30% of informal economy workers were 'locked out' of employment as compared to 26% of formal economy employees. One of the interviewed trader organisation leaders argued that "our president has miscalculated and has been wrongfully advised. Informal traders should not have been locked out of employment because now he has created an absolute and almost irreparable economic disaster. We don't need food parcels nor handouts but we need to work and explore mechanisms to help us deal with the virus effectively"<sup>13</sup>.

While in South Africa, traders were restricted from working during Alert level 5 of the lockdown<sup>14</sup>, in some countries they were regarded as essential workers but the movement restrictions adversely affected their income (Balbuena and Skinner, 2020; WIEGOa, 2020). Street traders that were allowed to work during this time reported a decrease in their income stream due to limited foot traffic. Like in most cities, restrictions on people and public transport operations have resulted in drastic reduction of potential customers (mostly commuters) for Warwick Junction traders (Heneck, 2020). This resulted in an immediate loss of income for informal traders who most rely on daily sales to put food on the table without the luxury of savings or other sources of financial support.

In the current pandemic context, it is even more pertinent to extend social protection for workers in the informal sector while catering for variations that ensure the inclusion of vulnerable groups (ILO, 2020; Rogan and Skinner, 2020). This is so that incomes of the poor can be secured with longer term protection for future shocks and crises such as the current

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<sup>13</sup> Interview with Johannesburg based informal trader organisation leader, 30 August 2020.

<sup>14</sup> This was the strict lockdown between 27 March and 29 April 2020.

pandemic. Social protection in this context would typically include benefits such as unemployment insurance, retirement funds, child care and maternity benefits (WIEGOa, 2020). WIEGOa (2020) argues that this should in fact be a right for all workers including the informal economy because their workers contribute to the overall economy. While short-term (financial) relief measures are useful, they are not sustainable in the long-term to protect workers' income. Social protection is more appropriate because of its ability to mitigate long-term structural problems, income risks and for traders to cope during and after economic shocks. In as much as social protection issues are important in the current context, this is a long term, structural problem – one with especially harsh consequences for the working poor (ILO, 2020; WIEGOb, WIEGOc, 2020). Social protection systems in the informal sector should be able to address (economic) shocks, reach a wide range of workers and supported by various funding streams including both the public and private sectors (Ibid.).

## **5 Inclusion of foreign nationals in the informal sector**

The role and impact of foreign nationals operating in the informal sector, in South Africa and globally, have received significant (mostly negative) attention from civil society and the state. Due to scarcity of jobs and barriers of entry into the formal economy, foreign nationals (like locals) have generally resorted to working in the informal sector to sustain their livelihoods. However, their participation in the informal sector is often viewed as a threat rather than an economic contribution (Skinner, 2018).

### **5.1 The legal framework**

As stated in a previous section, Section 22 of the Constitution gives citizens the right to choose one's trade, occupation or profession. This right applies to both locals and foreign nationals in the informal sector who are in the country legally. There are two overarching principles in the Constitution that govern the regulation of the informal sector: the *right to equality (section 9)* and *human dignity (section 10)*. Section 9 of the Constitution provides that everyone is equal before the law and entitled to equal protection and benefit of the law. This provision also includes a right not to be unfairly discriminated against on any ground, including race, gender, sex, ethnic or social origin. Section 10 of the Constitution states that everyone has the right to inherent dignity and to have their dignity respected and protected (SERI, 2018a).

In the context of the informal sector, the South African Courts have found that the right to human dignity is connected to one's ability to participate in and carry out informal work (Somali Association of South Africa v Limpopo Department of Economic Development, Environment

& Tourism in the Supreme Court of Appeal and SAITF v City of Johannesburg in Constitutional Court)<sup>15</sup> (SERI, 2018a). These provisions extend to foreigners who are waiting for their status to be confirmed or denied through the activation of Section 10 of the Constitution dealing with the right to human dignity (Ibid.). Foreign nationals who are in the country illegally are also protected by the same provision of the right to human dignity due to the way in which the courts reasoned their decisions (Ibid.).

Somali nationals challenged the Limpopo government's exclusionary practices in the Supreme Court of Appeal and received judgment in their favour. *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* was a court case against the department implemented 'Operation Hardstick' during the course of 2013 (SERI, 2018a). Operation Hardstick was justified for dealing with illicit activities but this was a smoke screen to target and shut down foreign (Somali and Ethiopian) run businesses who were legal in the country. This saw the closure of over 600 businesses with some of their stock confiscated, owners fined and arrested by SAPS officers who were deployed by the department. The department argued that "foreigners had no constitutional or legal right to self-employment in South Africa" (Ibid: 2). The Court "declared that the closure of the Somalian and Ethiopian traders' businesses in terms of "Operation Hardstick" unlawful and issued an order declaring that asylum seekers and refugees were entitled to apply for or renew business or trading licenses in terms of the Business Act or the relevant municipal by-laws..." (Ibid: 20). This case and others documented by SERI (2018a) show how foreign nationals operating in the informal sector are equally protected by the Constitution as their South African counterparts.

Another important component governing the informal sector is the right to just administrative action contained in Section 33 of the Constitution. Administrative law governs the exercise of public power or and actions of government bodies, officials and any entity performing public functions on behalf of the government (SERI, 2018a). Section 33(1) of the Constitution provides that everyone has the right to administrative action which is lawful, reasonable and procedurally fair. This means that officials must ensure that they act lawfully, reasonably and in a procedurally fair manner when making administrative decisions. Some of the decisions that constitute administrative decisions in the informal sector include:

- decisions to grant, suspend, revoke or withhold a trading license or permit,
- decisions to impose any conditions or restrictions on a trading license or permit,

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<sup>15</sup> For further details on court cases, refer to *SERI. 2018. Informal Trade in South Africa: Legislation, Case Law and Recommendations for Local Government.*

- decisions to impound or confiscate informal workers' goods, or
- decisions to relocate or evict informal workers from their stalls.

While local government's responsibility in the informal sector is articulated in law, there are still contradictions between the rights enshrined in the Constitution and policies and practices adopted by officials toward foreign nationals. This has seen foreign migrants resorting to litigation to protect their rights to trade in the informal sector, a strategy that has proved effective. SERI (2018a; 2018b) make a number of recommendations for local government officials to regulate informal trade, which also apply to foreign nationals. These include:

- Municipal by-laws governing informal trade and all action of local government officials should be in line with the Constitution;
- Municipalities should ensure that the rights of traders are promoted by providing adequate training to local government officials;
- Municipal by-laws governing informal trade and local government officials should ensure that informal traders' right to trade is respected;
- Municipal by-laws governing informal trade should ensure that informal traders are treated equally (especially foreign nationals) and discourage discrimination by officials;
- Municipal by-laws governing informal trade should ensure that the conduct of the local government officials responsible for the implementation of the by-laws complies with the standards of administrative law;
- Municipal by-laws governing informal trade should distinguish between more and less serious contraventions of the by-law, and should provide for a variety of measures to encourage informal traders to comply with the by-laws;
- Municipal by-laws governing informal trade should ensure that the use of impoundment as a measure to ensure compliance with by-laws is only permitted in exceptional circumstances and used sparingly;
- Any relocation or eviction of informal traders from their trading spaces must comply with the legal provisions governing informal trade (in particular section 6A(2) of the Businesses Act);
- Where municipal by-laws grant local government officials discretionary powers, the by-laws should provide clear guidelines on how those powers should be exercised by the officials;
- Municipal by-laws governing informal trade should provide dispute resolution mechanisms through which informal traders can appeal and challenge the decisions of officials;

- Municipal by-laws governing informal trade should include mechanisms to hold local government officials responsible for the implementation of the by-laws accountable for any unlawful actions.

The above recommendations illustrate what needs to be taken into consideration by local government during the pandemic and beyond. Local government has to use the legal framework to integrate foreign nationals in the informal sector instead of discriminating against them (SALGA, 2018; SERI, 2018a).

## **5.2 Perceptions of foreign nationals in the informal sector**

There are various negative perceptions of foreign nationals by local traders, local government and civil society. It is important to briefly outline some of these negative perceptions as they affect officials' attitudes and practices towards foreign nationals. One of the concerning perceptions is that foreign nationals dominate the informal sector at the expense of locals. While there is no comprehensive data capturing the extent of foreign nationals' participation in South Africa's informal sector, there is consensus that the sector consists of a substantial number of foreign nationals which evokes sentiments of reserving the space for locals (SALGA, 2018). There are however context specific surveys such as the GCRO's Quality of Life Survey (a representative survey conducted in the Gauteng Province every two years) which gives insights on the extent of participation of foreign nationals in the informal sector, specifically in the Gauteng Province. The recent 2017/18 survey reveals that of those who reported owning an informal business in Gauteng, only 20% are foreign migrants while the rest are South Africans (GCRO, 2019). These findings contradict the notion that foreign nationals dominate or have taken over the informal economy at the expense of South Africans. There are similar studies that corroborate this finding in other parts of the country such as Cape Town and internationally<sup>16</sup>.

Another negative perception by local traders, government and civil society is that foreign nationals flout regulations and operate without the required documents. For instance, local traders argue that foreign nationals have been allocated stalls even though they do not have trading licenses and this is facilitated by corrupt dealings with officials<sup>17</sup>. Some officials also argue that foreign nationals do not adhere to the municipal by-laws in place that govern

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<sup>16</sup> For more information see Citigroup-Oxford Martin School research on foreign nationals and economic contribution in USA and UK.

<sup>17</sup> Interview with a Johannesburg based informal trader organisation leader, 2 September 2020.

informal trading. They are seen to be doing as they please without any regard for the regulations and officials are also not doing anything<sup>18</sup>.

These negative perceptions have often fuelled tensions and conflict between South Africans and foreign nationals who are competing for the same resources. Foreign owned businesses are servicing cities, towns, townships and rural areas and their owners are often targets of violent attacks (Crush et al, 2015). The past few years have seen widespread episodes of attacks, looting and violent crimes waged against foreign nationals who are accused of taking opportunities from locals. However, officials argue that some locals are complicit in giving the very same opportunities to foreign nationals for financial benefit. Some locals rent out their own stalls to foreign nationals and some even go to the extent of applying for permits on behalf of foreign nationals so that they can get rent from them<sup>19</sup>.

In fact, some evidence has shown that local business competitors have been at the centre of inciting violence against foreign migrants in order to eliminate perceived competition (Crush et al, 2015: 9). While there have been various documented cases of foreign nationals being attacked since 1994, this has intensified in the late 2000s. Foreign nationals have faced waves of attacks and looting by locals especially in cities such as Johannesburg and Cape Town where competition for economic opportunities is rife (Crush et al, 2015). While locals are often at the centre of these attacks and lootings, law enforcement officers have also been accused of coordinating attacks on foreign owned businesses.

Foreign nationals' businesses are often criminalised and accused of selling counterfeit goods and acting as fronts for illicit activities. This is why law enforcers often conduct raids on foreign owned business to catch them in the act. In August 2019, the inner city of Johannesburg saw police officers targeting foreign owned businesses with the mission to confiscate counterfeit goods (Bhengu, 2019). This police ambush was met by retaliation from foreign nationals who threw stones and objects at the police in an attempt to discourage them for continuing with the mission. This was the subject of much debate among locals with many condemning the foreigners' attack on police and seeing it as a sign of lawlessness. The then Mayor of Johannesburg, Mr Mashaba and the Gauteng Premier, David Makhura, condemned the attacks on police officers and called for the arrest of perpetrators. Much attention was placed on foreign nationals' retaliation while not questioning the legality of the mission.

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<sup>18</sup> Insights from SALGA 2018 dialogues in Mthatha, Polokwane and Gauteng.

<sup>19</sup> Insights from SALGA 2018 dialogues in Mthatha, Polokwane and Gauteng.

### **5.3 Challenges confronting foreign nationals in the informal sector in the pre-pandemic context**

Foreign nationals operating in the informal sector, like South Africans face a number of challenges that negatively impact the ability to earn a living such as unresponsive regulatory environment. They are also subject to even harsher conditions linked to their status in the country (Crush et al, 2015). The challenges include (but are not limited to) harassment from police and locals, limited protection from officials, navigating contradictory regulatory requirements and limited negotiating power with officials.

There are practical issues for local government officials when dealing with foreign nationals in the informal sector. There are inconsistent documentation requirements by the Department of Home Affairs (DHA) as well as municipalities. The documentation requirements put foreign nationals in limbo where they might adhere to DHA requirements while falling short on municipal ones (SALGA, 2018). Officials are also not sure how to navigate the space with regard to foreign nationals. One of the things adding to the confusion for municipal officials is that there are different statuses of foreign nationals such as asylum seekers, refugees or permanent residents and officials argue that it is unclear which ones should be accommodated in the informal economy as well as the documents required to satisfy and comply with registration requirements<sup>20</sup>. For instance, when issuing permits, officials have to distinguish between the various foreign nationals' status and what documents are required to apply for trading spaces (SALGA, 2018). It emerged in some municipalities that officials are unsure of how to deal with foreign nationals applying for trading spaces because the concerned foreign national was allowed to be in the country for three months<sup>21</sup>. In such instances, the municipality preferred to restrict such foreign nationals from applying for trading spaces.

Some of officials' practices regarding foreign nationals are made possible by policies that are mum or ambivalent on foreign nationals and at worst adopt anti-foreigner sentiments (Skinner, 2018). This gives leeway for officials to interpret policies in ways that suit their agendas. For instance, NIBUS has implicit anti-foreign national sentiments which might be attributed to its reference of the Ghana Investment Promotion Centre Act (Skinner, 2018). This Act "...has reserved the sale of any goods in a market, petty trading and hawking, and the operation of metered taxis, car hire services, beauty salons and barber shops to nationals only" (DTI 2014: 22–23). There is also reference to India and Malaysian restrictions pertaining to foreign nationals and their participation in the economy. NIBUS talks about promoting local

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<sup>20</sup> Insights from SALGA 2018 dialogues in Mthatha, Polokwane and Gauteng.

<sup>21</sup> This was raised by the Tshwane LED official at the SALGA 2018 dialogue in Gauteng.

entrepreneurs in the informal sector and that legal and documented foreigners can be integrated by way of partnerships with locals. Rogerson (2016: 184) argues that 'NIBUS is a pro-development approach for South African informal entrepreneurs which is allied to an anti-developmental agenda towards migrant entrepreneurs'.

#### **5.4 Challenges confronting foreign nationals in the COVID-19 context**

The pandemic has brought into focus some of the vulnerabilities of foreign nationals in the informal sector (Balbuena and Skinner, 2020). Like their South African counterparts, foreign nationals have reduced or lost their earnings due to being 'locked out' of the economy. Adding onto the burden of foreign nationals is their increased exclusion through various mechanisms throughout the COVID-19 context. In order for foreign nationals to go back to work (like locals), they require operating permits from their municipalities. The application processes for these permits require food traders who are foreign nationals to have valid asylum seeker visas issued under the 2002 Immigration Act or business permits issued by municipalities (DSBD, 2020). The issue with this is that asylum seekers are required to renew their permits every three months and offices offering these services were closed during the strict lockdown. Failure to get an asylum seeker permit means that one cannot apply for an operating permit from the municipality because that is a key document required to approve the application. In fact "permission to operate the business will be linked to the period covered by the asylum seekers permit" (DSBD, 2020:6).

The DSBD (2020) provisions state in details that "in the case of non -South African citizens, the business owner must- (a) have been lawfully admitted into the Republic and must hold a valid passport with a visa issued by the Department of Home Affairs in terms of section 10 of the Immigration Act, 2002 (Act No.13 of 2002), authorising him or her to operate a business; or alternatively, hold an asylum seekers permit issued in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998), which allows him or her to work". Rogan and Skinner (2020) argue that government appears to be using the current context to achieve longer term ambitions to deal with (unregistered) foreign nationals. The requirement of a stream of documents during the current context is a measure to systematically exclude foreign nationals to access work in the informal sector. These sentiments and practices contradict Constitutional provisions protecting the rights of foreign nationals to participate in the informal sector.

Foreign nationals have limited negotiating power with government as compared to their local counterparts. Sometimes foreign nationals do not participate in or are deliberately excluded from informal worker organisations formed by locals as well as engagement platforms with the state. Some have resorted to constituting their own organisations which have limited access

to the state resulting in their issues not being understood and taken into account during planning phases. This is an issue that government has to assist with so that the voices of all those operating in the informal sector are accounted for and heard.

While foreign nationals are not often included to benefit from support measures such as financial support, the pandemic has accentuated their plight. Economic support measures put in place to support the informal sector have largely excluded foreign nationals (WIEGOB, 2020). Relief funds to rescue the livelihoods of traders have largely focused on locals and requirements for inclusion are often cumbersome and systematically exclusionary, particularly foreign nationals whose bargaining power is weak. There are demands across the world for government to consider establishing direct funds to support workers in the informal sector regardless of their nationality that would sustain their livelihoods in the current context and to rebuild their future.

Skinner (2018) argues that the informal economy has been repressed by the government over time and the environment is not supportive for both South Africans and foreign nationals operating in the sector. Local government needs to adopt an inclusive approach where regulations are enforced in a uniform manner regardless of nationality of informal traders. Some municipalities such as Ekurhuleni argue that they do not focus on foreign nationals as a separate group but deal with informal workers as a whole. This means that by-laws are enforced broadly and contraventions are dealt with accordingly without discrimination between foreign nationals and locals<sup>22</sup>.

## **6 Government support mechanisms available to the sector**

Government support for the informal sector can be classified into the following categories: through policy development and regulation (i.e. easing barriers); financial support (i.e. tax breaks or access to finance); skills development (i.e. investment in education and capacity building); infrastructure support (i.e. facilitating access to land. These support mechanisms differ across government spheres and per government or departmental function. International organisations such as ILO are pushing the narrative that the informal sector has economic value and a space to nurture entrepreneurship. These changes at international platforms led to a trickle down in countries such as South Africa where the state began to progressively recognise the informal sector as an important source of job creation and economic growth, thus needing development.

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<sup>22</sup> Insights from SALGA 2018 Gauteng dialogue.

## 6.1 Pre-pandemic government support mechanisms

In the first decade of democracy, there were a number of economic initiatives (e.g. National Small Business Act No. 102 of 1996 or Department of Trade, Industry and Competition (DTIC) formerly Department of Trade Industry's Ntsika Enterprise Promotion Agency). However, these initiatives did not benefit micro-enterprises nor the informal sector (Rogerson, 2004). Sectoral Education and Training Authorities (SETAs) had a skills development system but that too failed to make any impact due to the inability to understand the needs of the informal sector. DTIC's Integrated Strategy on the Promotion of Entrepreneurship and Small Enterprises in 2006 aimed to provide financial and non-financial support for SMMEs. The programme was unable to include the informal sector. A year later, the Small Enterprise Finance Agency (SEFA) - a subsidiary of the Industrial Development Corporation Limited (IDC) and an amalgamation of Khula Enterprise Finance and the South African Micro Apex Fund was established. A report by Budlender, Skinner and Valodia (2004) showed that of the R25 million allocated to the Khula Enterprise, allocations were made mainly to larger enterprises in the SMME sector. The South African Micro Apex Fund (Samaf) was aimed to finance directly small-scale entrepreneurs in rural and outlying parts of urban areas in the tune of between R50 000 and R5 million. Samaf used intermediaries to fund qualifying entrepreneurs seeking less than R50 000. Unfortunately the fund's intermediaries exploited this agreement by charging exorbitant interest rates thus not effectively reaching survivalist and micro enterprises.

The introduction of NIBUS contributed to the financial support available to the sector. The policy initiative targets the prioritisation of five key economic sectors: retail; manufacturing; services; agriculture; construction and maintenance. While this sets the tone at the national level, provinces and municipalities are encouraged to identify their own priority areas for economic development. The policy support is implemented through the Informal Business Upliftment Programme and funding under Shared Economic Infrastructure Facility (SEIF). SEIF provided funding of up to R5 million to qualifying municipalities for the development of new, upgraded, maintained or shared infrastructure for informal businesses, SMMEs and co-operatives. The fund is available for approved applicants (municipalities) or infrastructure project/s to access on a 50:50 cost-sharing basis as per agreed milestones and is administered by DSBD's Critical Infrastructure Programme (CIP). SEIF has funded infrastructure projects such as storage facilities for traders; the installation of services; the construction or maintenance of shelter for informal traders and even child-care facilities for informal traders (DSBD, 2020). Qualifying projects under SEIF include structural foundations, upgrading and maintenance of a multi-purpose facility to be shared by the number of

enterprises- storage facilities; lighting, water and ablution, parking, paving and fencing, shelter etc. (DSBD, 2017). In the 2017 report to parliament by DSBD, it emerged that the fund had little uptake from provincial and local government authorities with under expenditure of R29.6 million. In the 2017/18 performance indicator report to Treasury, there were only six (6) informal business infrastructure programmes funded across the country. About 8 million was directed towards the SEIF and R21.6 million was transferred to the Small Enterprise Development Agency (SEDA). The reason for the under spending was contributed to cumbersome supply chain processes, the lack of capacity and unregistered businesses (which is one the criteria for approval) coupled with the fact that local authorities must contribute 50% of the costs.

Under the Informal and Micro Enterprise Support Programme (IMESP), a pilot project 'Informal Traders Upliftment Project (ITUP)' was launched targeting informal businesses. The project aims to target skills development, support organisational management and governance training with funding accessed through a grant of up to R60 000. This partnership is in collaboration with Wholesale and Retail Sector Education and Training Authority (W&RSETA).

The Gauteng Township Revitalisation Strategy is another meaningful initiative that targets township economies by assisting financially and through skills development. The Gauteng Enterprise Propeller (GEP) provides for financial and non-financial support. It has provided non-financial support to township-based informal businesses "through business development support interventions aimed at formalising their businesses. The support provided to township businesses would ensure that GEP continues to broaden its reach to previously underserved regions, thus increasing their economic output and job creation potential" (DED; 2019:81). In line with the GTER Strategy, GEP provides financial support to enterprises based in townships, with non-financial support directed at assisting informal businesses transition to the mainstream economy.

The support mechanisms described thus far, illustrate that although the informal sector is seen as important in policy frameworks, when it comes to funding allocation the sector is not adequately supported. For instance, the Informal and Micro Enterprise Support Programme targeted the informal sector but funding was only limited to skills development and training. This shows disregard from government in understanding the hierarchical needs of workers, and therefore collaboratively coming with solutions through meaningful partnerships.

An analysis of municipal revenue and expenditure trend and performance is thus necessary in order to consider how much attention is given to the informal sector. These can only be analysed through the current Infrastructure grants to local government. Some of the most

notable infrastructure grants to local government are: municipal infrastructure grant; integrated urban development grant; urban settlements development grant; integrated city development grant; public transport network grant; and the neighbourhood development partnership grant. However these do not detail impact on the informal sector as they are mainly used to upgrade and/or maintain existing infrastructure. These grants are mainly large capital investments with far too little attention towards improving the informal sector. The integrated urban development grant is aimed at investment in economic infrastructure and to ensure that municipalities prioritises spatial transformation, however impact for the informal sector is negligible. There is a need for the development of policy relevant indicators that measure the impact of large scale investment projects on the informal sector.

Annexure 3 summarises pre-pandemic support mechanisms and highlights how the support for the sector is somewhat haphazard, coupled with the fact that the support at national government does not translate into local impact of the sector. All the funds listed at national, although aimed at targeting SMMEs and the informal sector, when it comes to measuring how funds were distributed we find that the informal sector received no actual support. For instance the Informal Traders Upliftment Project only targets informal traders in the form of skills development, and support organisational management and there is no evidence of a participative process to determine needs. Most of the resources to support the informal sector are located at the national level of government while the responsibility to regulate, manage and support the sector at the local level.

## **6.2 Government support mechanisms in the COVID-19 context**

COVID-19 has heightened the need for government support mechanisms in the informal sector. The South African government can be commended on its decisiveness regarding easing transmission of the virus. The choices presented to government were incomprehensibly difficult amidst a pandemic vis-à-vis the crisis of unemployment, poverty and inequality. Various relief programmes were announced by the President, with some targeting the informal sector and workers (refer to annexure 4).

DSBD has introduced relief mechanisms such as the SMME Debt Relief Finance Scheme which is targeted at SMMEs that experienced a reduction in demand and revenues (e.g. the Spaza Support Scheme). The spaza shop fund aims to “strengthen spaza shops as locals’ convenient access to basic goods and facilitate bulk buying opportunities and realize the potential for spaza shops to serve as market for locally manufactured goods”. The fund identifies these type of support approaches: Networking / Purchasing Power; Working Capital and Credit Facility; Business Management Skills Support; Environmental Health and Food

Safety Standards; and Legal compliance (DSBD; 2020). The fund will provide soft-loan funding for a period of 6 months (starting 1 April 2020). The fund can only be accessed by companies registered with the Companies and Intellectual Property Commission (CIPC) and has various supporting documents that need to accompany the application such as tax clearance.

The South African Future Trust (SAFT) is another fund companies can access through their respective banks. Sukuma Relief Programme offers a non-refundable, interest-free loan survival grant of R25, 000 for 12 months, however to comply for the loan, businesses must provide evidence of financial activity prior to COVID-19 (Jooste, 2020). Other customised informal business interventions include schemes for auto spares, auto fitment centres; tradesmen and artisan businesses; informal clothing and textile businesses; general hawkers and street vendors but details of these have not yet been shared (DSBD; 2020).

The North West COVID-19 Relief Fund was established in May 2020 by the Department of Economic Development; and Environment, Conservation and Tourism (DEDECT), administered by the North West Development Corporation (NWDC) and targets SMMEs, co-operatives, informal traders and hawkers for business relief funding. The fund aims to provide funding ranging from R1000 to R100 000. The required documents for informal businesses to access funding is an identity document and proof of trading for 12 months in the North West Province. Proof of trading can be obtained in the form of an affidavit or letter from the Tribal Authority (NWDC, 2020). The type of relief provided is: stock relief intervention; rental and municipal bills relief intervention; and income relief intervention. Some of the documents required are SARS compliance documents and stock purchase receipts for SMMEs and cooperatives.

The South African government, particularly national and provincial, has in part responded innovatively to the challenges of the informal sector in the past and in the current context. Pre COVID-19, there were a number of suggestions on how government can better engage and collaborate with the informal sector. For many informal businesses their first point of entry and engagement is with local government, and it is important that this relationship is nurtured to be conducive for collaboration. Further, planning at this level must be driven by real engagement led by bottom-up approaches to respond to real needs (such as engaging with city platforms in IDP and budgeting processes) (CSP, 2020).

The funding mechanisms described above have focused mainly on SMMEs at the expense of informal sector enterprises. There are a number of funding schemes to support the informal sector, such as the Spaza Support Scheme. The issue with the scheme is that their requirement for eligibility of the funds are stringent and require formal documents which

informal operators do not possess. The informal sector is mainly made up of jobs that are survivalist rather than growth-oriented and many do not meet the legal compliance (such as business financial records and tax clearance). However, the North West Development Corporation has so far responded to the pandemic by recognising that not all informal businesses are necessarily registered. Access to the fund can be attained through having a South African identity document and proving that your business has been established and operational for more than 12 months (NWDC; 2020). Philip (2020) proposes extending existing grants to directly putting money in the hands of workers. The proposal will bring together multi-stakeholders to target in-time, crisis-linked initiatives such as is the case in the pandemic context. Philip (2020) further describes this grant structured as follow: monthly payments over a five-month period- which would give immediate relief. The grant will be designed for those unable to “access social grants, with no access to UIF entitlements or the many other benefits and relief schemes currently in play”. The informal sector and poorer households would be directly targeted “to provide income support, to pre-empt a push-back into poverty. They are also being targeted indirectly, through the wider consumption effects”. Philip (2020) adds that technology can also be used to screen applicants, and register them. “Use of mobile money includes the ability to track mobile transactions, giving a wealth of spatial economic data. This would help limit the need for consumers to travel to malls and CBDs, assisting in the COVID-19 containment effort, while simultaneously boosting small and informal entrepreneurs in ways that could have longer-term systemic effects in enabling local economic multipliers” (Philip, 2020).

DSBD has also launched support mechanisms to specifically benefit informal sector workers. Some of the newly launched schemes to support informal sector include informal and micro restaurants and tshisanyamas and fruit and vegetable traders (Ntshavheni, 2020). As of September 2020, a total of R135 million has been allocated to benefit fruit and vegetable sellers (as well as butcheries) nationwide. The total number of fruits and vegetable traders targeted is 40594 for the entire country with variations between provinces, for instance the target for Eastern Cape is 5120; 2368 for and 8592 for Gauteng. At the time of writing, details regarding requirements for application and qualifying criteria were not available.

While COVID-19 support mechanisms have largely focused on financial relief, government has also invested in non-financial support to informal workers through DSBD and Small Enterprise Development Agency (SEDA). Some of these measures include: business and financial management training and mentorship (i.e. inventory tracking), customer service management training, occupational and environmental health and safety training and compliance, standards and COVID-19 operating protocols and industry specific technical

training (Ntshavheni, 2020). Polokwane municipality supports traders by hosting workshops on health and safety to ensure workers abide by the COVID-19 regulations. Flyers are also issued to informal traders explaining how to comply with regulations with constant monitoring of number of permitted traders by law enforcement officers including South African Police officers. The law enforcers check how many people are trading at any given time, their names, times of operation, place of business against a municipal database of informal traders<sup>23</sup>.

## **7 Addressing immediate and long term challenges: Learning from innovative responses in South Africa and elsewhere**

WIEGO; StreetNet International; Asiye eTafuleni; SERI and African Centre for Cities (2020) developed COVID-19 Guidelines for Informal Traders in South Africa to provide health, rights and financial support information to informal workers. The pamphlet was written in English and *isiZulu* to be distributed across various platforms such as WhatsApp. The initiative was in collaboration with public health experts and informal economy workers. The pamphlet displays important information for workers on how to keep on trading and adhering to COVID-19 safety regulations (i.e. wearing a mask, washing hands etc.) as well as information on how to make their own disinfectant using basic household substances. The information provided is detailed and highlights informal workers' rights under lockdown and what they can do to protect themselves from enforcement laws (i.e. carrying permits at all times). There is also information on how workers can access financial support such as the COVID-19 Social Relief of Distress Grant of R350 per month which is accessible to South African citizens or permanent residents (refugees, asylum seekers and people with special dispensation permits).

Asiye eTafuleni, was part of a task team established by CoGTA and the Department of Economic Development to develop COVID-19 post-lockdown economic recovery strategies for KZN including strategies for the informal economy. This initiative was welcomed by the organisation as it can be used to actually develop “new” standards for informal workers by reconfiguring public spaces in a way that not only accommodates informal workers but also develop health and safety guidelines in the longer term. COVID-19 has seen the shutting down of the economy and subsequently many will likely turn to informality to put food on the table (Heneck, 2020). This exacerbates the tension between people's need to work and protecting their health. In order to address long term concerns for the sector, it is important that an integrated strategy is developed that incorporates all

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<sup>23</sup> Interview with Trade and Business Regulation official, Polokwane Local Municipality, 10 September 2020.

the concerned departments. In many instances, officials need only to deal with issues regarding “provision of sanitizer, adequate paving, using markings to encourage customers to distance, or fixing of ablution blocks” while in other situations infrastructure design needs to be revisited (e.g. widening of pavements) (Ibid.). Saha (2020) in the review of a Commonwealth report identified five areas the government can intervene to safeguard the informal sector: health and safety guidelines and support schemes for informal workers; adequate short-term welfare support with coverage from public works programs; maintaining liquidity for firms and re-thinking operating models; adjusting to supply chain disruptions plus private sector development interventions and structural policies for resilience.

In the City of Delhi in India, with the lockdown restrictions in place, an empty street meant that street traders immediately lost their source of income and were subject to hunger. The Finance Minister of India announced a relief package worth 1.7 trillion Indian rupees (equivalent to approximately USD 23 billion), which includes cash transfers, insurance coverage and food security measures. The state introduced a stimulus package of INR 5000 (equivalent to approximately R 1 144, 00) for nearly 5 million street traders (Majithia, 2020). The relief was in the form of a credit loan for working capital, however the amount was not enough. The proposal was to rather convert the loan into direct income benefit or a cash grant to support income of traders. The trader organisations have put the following as an advocacy agenda: livelihood promotion for all traders; reopening of markets keeping in mind social distancing and hygiene; provide direct support which is de-linked from existing registration requirements; ensuring hygiene and social distancing at trading sites and taking steps to survey and register more for access to government benefits (Majithia, 2020).

## **8 Conclusion: Key policy considerations**

The research paper presents a balance between pre-pandemic and COVID-19 context. It has identified a number of key issues related to public space trading and local government in the pre-pandemic and crisis context. It is clear that the informal sector and public space traders are negatively impacted by the pandemic in the current context and devastating consequences will still be experienced in long term. A number of issues have surfaced as a result of the pandemic which are likely the result of pre-pandemic shortcomings.

While the research tends to present issues in a general manner, it is imperative to consider that there are spatial differences in the South African context that dictate how issues get channelled and resolved at the local level. Trends and dynamic are different from one city to

another, between various types of areas such as metros, intermediate cities, towns, townships, rural municipalities etc. These spatial differences have implications for a number of things such as organisational structures of public space traders to engage with local government. For instance, a municipality with a limited number of informal trading activities in a rural area might adopt a fairly simple institutional structure while a large municipality with proliferation of informal trading might have a complex one i.e. such a large forum including external stakeholders (SALGA, 2012).

Local government remains an important avenue to create a conducive environment for the informal sector through various mechanisms such as planning, regulating and investing in adequate infrastructure and services. While this is the case, the issue is that resources for development are concentrated at national and provincial levels of government whereas the responsibility to regulate and manage public space trading lies with local government. For adequate programmes geared towards the development of the sector to be implemented at the local level, this requires coordination and aligning of responses between all the levels of government.

The research has pointed to the need for enablement and development of the informal sector as an integral part of the economy as opposed to stifling it. Policy has to enable and support informal sector enterprises in the informal sector to ensure that they prosper and contribute meaningfully to the economy. The overall goal is to retain existing opportunities while securing livelihoods and income of those operating in the sector and create space for expansion. The inclusion of the informal sector can be enabled through translating public space trading principles, including policies and by-laws, from purely regulatory to developmental while striking a balance between the need to regulate and support livelihoods of workers.

Investment in infrastructure is critical to the development of public space trading. Municipalities must address long term infrastructure needs in the informal sector and invest in provision of key needs such as water, ablution facilities and storage facilities for instance. There is a need for regulation developed for the sector to guard against using the current COVID-19 requirements such as physical distancing to restrict the number of traders, block new entrants, displace or move traders to sites that are not economically viable for business, as has been the case in some contexts.

Key government support mechanisms for the sector are lacking to respond to the current challenges and beyond. For instance, relief measures do not adequately cater for public space trading but rather focus on SMMEs. The existing measures tend to bypass and sometimes exclude informal sector activities. South Africa could draw some lessons from other parts of

the country such as in eThekweni where civil society organisations are working together with traders to resolve immediate issues as well as crafting pathways for beyond the pandemic. South African local governments could also learn from other countries in terms of innovative ways of averting the negative impact on public space trading and the current burden on government.

While a lot of emphasis with regard to informal sector enterprise support and capacity building is focused on skills development for the workers but this is often not useful. Capacity building for traders should be directed at equipping workers with the relevant skills to help them operate efficiently and adhere to municipal regulations. Training must also be afforded to informal trader organisations so that they are able to represent the sector effectively. Currently, training only focuses on individual traders but including leadership training for organisations can prove useful in the long term to avert some of the challenges associated with representation in the sector. Capacity building systems have to be refined for public space traders need to be refined to ensure they are not just box ticking exercises. Local officials together with relevant stakeholders including trader organisations can conduct skills audits to determine the required skills set in order to inform capacity building interventions.

An important aspect of this is to also train and capacitate officials who deal directly with regulating and managing public space traders on crucial aspects such as Constitutional provisions related to the informal sector and how to develop adequate policies and by-laws and enforce these regulations effectively. While the pandemic is a crisis, it is also an opportunity to develop a new pathway for the informal sector in general and public space trading in particular.

Adequate platforms need to be created for genuine engagement between representatives of the sector and local government officials to reset the playing field. Organisations should be considered as key players in solution finding processes in engagement with other stakeholders to ensure that the sector is adequately represented and their needs properly understood and addressed. Representatives have proven to be crucial in identifying issues and providing ways to address issues. This creates an opportunity to create a foundation for collaborative urban governance in order to move the sector forward.

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## 10 Annexures

### Annexure 1: Key national legislation impacting on Local Government and the informal sector

National Legislation	Description & Focus
The Constitution	<p>Local governments have the power to regulate and govern the informal economy</p> <p>Section 22 stating principle that “each citizen has the right to choose their trade, occupation or profession freely. However...the practice of a trade, occupation or profession may be regulated by law”</p>
The Business Act 72 of 1991	<p>Primary piece of legislation attempting to reverse apartheid approach regarding governance of informal trade</p> <p>Local government has the mandate to regulate the informal sector: formulate policies, bylaws, craft licensing procedures</p>
The Business Amendment Act 186 of 1993	<p>Local municipalities struggling to cope with proliferating trading in public spaces. Municipalities given powers to formulate by-laws (trade and trade-free zones)</p> <p>Result: No uniform approaches to informal trade across different municipalities in the country</p>
The Business Bill, 2013	<p>Emphasis of regulatory control on the informal sector</p> <p>If passed, every business will have to register and obtain license from local government</p>
NDP 2030 (2012)	<p>Eliminate poverty and reduce inequality by growing an inclusive economy</p>

	Proposals on the economy generally focus on SMMEs and are formal-sector oriented. Assumption that SMMEs category is meant to capture informal sector even though this is not explicit
NIBUS, 2014	Support to businesses operating in the informal sector through creation of enabling regulatory framework.
IUDF (2016)	<p>Municipalities to build integrated, sustainable, long-term growth and development' within urban areas</p> <p>Inclusive Economic Development section makes reference to the importance of the informal sector in economic development</p> <p>Support urban livelihoods and the informal sector through adoption of progressive policies &amp; guidelines that include the sector in economic strategies</p>

Annexure 2: A snapshot of informal traders' access to special COVID-19 permits

Municipality	Permit access	Criteria	Law enforcement
City of Cape Town	<p>Mayoral committee instructed all traders applying for permits must be granted</p> <p>Process very demanding &amp; requiring travel to city centre</p> <p>4000 traders in prohibited areas and 11000 in townships prior to lockdown</p> <p>As of May 2020, over 9000 COVID-19 permits granted to informal food traders</p>	<p>Registered traders appearing on database prior to lockdown</p> <p>Refugees &amp; asylum seekers also qualify</p>	<p>Heavy presence in certain areas targeting those trading without permits</p>
City of Johannesburg	<p>1<sup>st</sup> round: Permits available to those registered with municipality including refugees and asylum seekers prior to lockdown</p> <p>2<sup>nd</sup> round: Mayoral Office instructed DED to issue permits to anyone with SA ID and refugee/asylum seeker permit</p>	<p>Registered traders appearing on database prior to lockdown</p> <p>Refugees &amp; asylum seekers also qualify</p>	<p>JMPD harassing and confiscating goods especially those selling winter clothes</p> <p>Food traders not experiencing issues with JMPD</p>
eThekweni Metropolitan Municipality	<p>Traders selling fresh produce must go to the Business Support Unit offices to obtain permits</p> <p>Operation of 6 municipal offices with reduced staff numbers (May 2020)</p> <p>2934 COVID-19 permits issued as of May 2020</p>	<p>Only traders on municipal database prior to lockdown allowed to apply</p> <p>Trader's account must be up to date &amp; need to produce proof that they are the site holder</p>	<p>Metro Police and private security shutting down traders</p> <p>Metro Police confused about what constitutes essential products &amp; which traders are allowed to operate. They also seem unclear about COVID-19 permit process.</p>

Annexure 3: Key government support measures in the pre-pandemic context

Pre- COVID-19 related support measures							
Sphere of government	Department/ Organisation	Relief measure	Target group	Requirements	Amount/s	Duration	Implications for informal sector
National	Industrial Development Corporation	The South African Micro Apex Fund: (1) Micro-Credit Fund (gives loans to entrepreneurs), (2) the Capacity Building Fund (gives funds to be used for equipping the institutions with skills, system and equipment) and (3) the Savings Mobilisation Fund (encourages savings).	small-scale entrepreneurs living in rural and outer urban areas	uses existing institutions within communities to handle the funds and lend to qualifying entrepreneurs	between R50 000 and R5 million		The fund's intermediaries charge exorbitant interest rates thus not effectively reaching survivalist and micro enterprises.

National	DSBD	Shared Economic Infrastructure Facility (SEIF)		SEIF is a 50:50 cost-sharing infrastructure grant made available on a reimbursable basis, DTI contributes 50% towards qualifying infrastructure projects upon the completion of agreed project milestones and municipalities contribute the remaining 50%	Capped at a maximum grant of R5 million per beneficiary		Difficult to measure impact of the grant on the informal sector, however some municipalities have accessed the grant for shelter/trading stalls
National	DTI, then DSBD facilitated by the wholesale and retail	Informal and Micro Enterprise Support Programme (IMESP): Informal Traders Upliftment Project	targeting 1 000 informal traders in all nine provinces, skills development, support organisational		a grant of up to R60 000	18 months	Informal traders are also beneficiaries of the programme

	sector SETA		management and governance training				
Provinci al	Gauteng Department of Economic Developme nt (GDED)	Gauteng Township Revitalisation Strategy & GIBUS	(township) informal business		R1.5 million		Township informal businesses included in the funding but cumbersome application processes

Annexure 4: Key COVID-19 related support mechanisms

**COVID-19 related support measures**

Sphere of government	Department/ Organisation	Relief measure	Target group	Requirements	Amount	Duration	Implications for informal sector
National	Department of Social Development (DSD): South African Social Security Agency (SASSA)	COVID-19 Social Relief of Distress grant	South African Citizens, Permanent Residents or Refugees registered with Home Affairs; Unemployed	Identity Number; Name and Surname as captured in the identity document; Gender and Disability; Banking details – Bank Name and Account Number; Contact details – Cell phone number; Proof of Residential Address;	R350 per month	6 Months	Not explicitly targeted at informal sector operators but could apply if they can prove they are unemployed
National	Department of Social Development (DSD): South African Social Security Agency (SASSA)	COVID-19 Social Relief of Distress grant: Additional measures	Child support grant beneficiaries: R500 each month Other social grants-increased by R250 per month	Existing grant beneficiaries	Child support grant beneficiaries: R500 each month Other social grants-increased by R250 per month	7 Months	No support for informal sector operators except those who benefitted from getting social grants prior to the pandemic
National	DSD has partnered with the Solidarity Fund, NGOs and community-based organisations	distribute 250,000 food parcels	vulnerable households, including Unemployed South Africans, refugees, asylum seekers and people with special dispensation permits			Over two weeks	Includes some of those in the informal economy with no support

National	Department of Employment and Labour	Temporary Employers/Employee Relief Scheme	UIF registered employers to claim funds to cover salaries Employers that are unable to pay the full salaries of the workers		R6 700 and the minimum R3 500.		Excludes those in the informal sector, as majority do not get a pay slip nor are they registered for UIF
National	DSBD	Spaza shop relief fund (R30 million)	Spaza shops, general dealers/ traditional grocery stores in townships and villages with applicable licenses that are 100% owned by South Africans	<ul style="list-style-type: none"> <li>a) A valid South African ID document</li> <li>b) A valid and original municipal trading license/ permit to trade or business license in case of a general dealer ( must be willing to accept assistance to register with CIPC, SARS and UIF)</li> <li>c) To buy products on the department approved basket of goods</li> <li>d) To operate a business banking account and will accept to participate in the SEDA supported business management support programme</li> <li>e) To uphold Environmental Health and Food Safety Standards and</li> </ul>			Many might not access the fund due to the stringent requirements, especially since many are not registered with CIPC, SARS and UIF

				the Guidelines of the Department of Health			
National	DSBD	SMME Debt Relief Scheme (R5 million in total & maximum of R500 000 per SMME)	Businesses which are negatively affected, directly or indirectly by the pandemic	Registered with CIPC, SARS and UIF 100% owned by South African Citizens- Employees must be 70% South Africans Registration on the National SMME Database Proof that the business is negatively affected by COVID-19	Maximum R500k per SMME	The term of the funding will be determined by the business cash flow with a maximum of 6 months moratorium	By design and requirements of the scheme automatically excludes informal sector businesses
Private	The Black Business Council and Ubank	Township and Rural Entrepreneurship Programme (TREP)	black-owned businesses based in townships and rural areas - enterprises based in the information technology (IT) and	criteria on the loan size and funding instruments has yet to be set	R250-million each year for the next five years	Started lending by 1 June 2020.	

			digitalisation, manufacturing, agriculture and agri- processing, retail, infrastructure, and tourism sectors				
National	DSBD	Informal and small- scale clothing and textile support scheme	entrepreneurs in the clothing, textile and leather industry	Must register on the National SMME Database Be informal/ micro or cooperative business Registered as a legal entity			