

# Johannesburg Street Traders Halt Operation Clean Sweep

September 2014



## WIEGO LAW & INFORMALITY PROJECT



## Johannesburg Street Traders Halt Operation Clean Sweep

**Women in Informal Employment: Globalizing and Organizing** is a global network focused on securing livelihoods for the working poor, especially women, in the informal economy. We believe all workers should have equal economic opportunities and rights. WIEGO creates change by building capacity among informal worker organizations, expanding the knowledge base about the informal economy and influencing local, national and international policies.

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

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## Introduction

In October 2013, law enforcement officers of the City of Johannesburg (the City) forcibly evicted over 6,000 street traders from a 24-block area in the City's central business district. Coupled with the evictions was the confiscation of the street traders' goods, thereby depriving these traders of the means to make a living and rendering them and their dependents destitute.

This case study details how over 2,000 street traders and their organizations in inner-city Johannesburg, aided and supported by a public interest law clinic, were able to use the courts to successfully challenge their eviction from their trading sites and the consequential threat to their livelihoods.

These evictions occurred under a programme initiated by the City of Johannesburg (the City), entitled Operation Clean Sweep. It had been introduced by the City to purportedly deal with street traders whom the municipality deemed to be trading illegally.

The first part of the paper examines the constitutional rights of street vendors to trade and how these rights are given expression in national legislation and, more particularly, in the informal trading by-laws of the City of Johannesburg.

The second part of the paper examines the challenges confronting street vendors and their organizations in accessing the courts in seeking to defend and uphold their rights and the support role played by organizations like the Socio-Economic Rights Institute of South Africa (SERI) in addressing these challenges.

The final part of the paper reflects on the level of organization among street traders in the greater Johannesburg area and the role that sustainable organizations can play in achieving a social objective either through direct collective action and/or by resorting to the use of the law.

## Street Trading in Johannesburg

Street traders are the most visible segment of the informal economy<sup>1</sup> and comprise a significant proportion of the total number of informal workers in South Africa. Street traders are primarily engaged in informal trading for lack of formal employment. It is primarily a survival strategy in the face of growing poverty.<sup>2</sup> Johannesburg, as measured by its Gini-co-efficient, is the most unequal city in the world.<sup>3</sup> Unemployment has also remained stubbornly high and has been above 20 per cent for the past 16 years.<sup>4</sup>

In 2000, there were about half a million street traders in South Africa. A South African government survey estimated the number had nearly doubled to 987,000 in 2007. More than 70 per cent of all street traders in the country sell food. More than 70 per cent of the traders are women. A 2006 study noted that total expenditure in the informal economy in 2004 amounted to R51.7billion and, this being so, the contention that informal trading contributes little to economic growth is very inaccurate. Consequently, NEDLAC argues that informal economy activities should not be seen as a separate sector, but as part of the inter-economy which has a formal and informal end.<sup>5</sup>

Johannesburg is the largest city in South Africa, with a population of 4.5 million people. It is the provincial capital of Gauteng, the economic heartland of the country. In Greater Johannesburg, it is estimated that there are between 12,000 and 15,000 street traders. The term street vendor applies to vendors of processed foodstuffs, fruit and vegetables, as well as those offering all kinds of products and services from selling newspapers to shining shoes and cutting hair.

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<sup>1</sup> This paper does not proceed from the idea that there are two economies in South Africa or elsewhere. It accepts the idea (noted below) of a single economy which is unevenly regulated due to shortcomings of a legal regulatory system which, in theory, applies to the economy as a whole.

<sup>2</sup> Kate Tissington. *The business of survival: Informal Trading in Inner City of Johannesburg*. CALS, 2009 at 48

<sup>3</sup> UN HDR 2010 and UN Habitat 2010/2011. Nine of the top ten most unequal cities in the world can be found in South Africa.

<sup>4</sup> OECD Economic Surveys – South Africa at 18.

<sup>5</sup> Generic Informal/Street Trading Policy Framework: (Draft): June 2008 at pg 13

A large percentage of traders in the inner city of Johannesburg come from neighbouring African countries, predominantly Zimbabwe, but also from Mozambique, Malawi, Lesotho, Nigeria and Tanzania. South African street traders are typically drawn from rural areas in the North West: Limpopo, Mpumalanga and KwaZulu-Natal.

According to a study undertaken by the Centre for Applied Legal Studies at the University of the Witwatersrand (CALs)<sup>6</sup>, many street vendors stated that they live with their relatives or families in the inner city, in areas like Bellevue East, Joubert Park, Berea, Hillbrow, Jeppestown, Yeoville or Rosettenville, and walk to their trading sites each day to avoid the hefty transport costs. Average rent in the inner city appears to be about R300 to R800 a month. As a consequence, many traders often choose to live with family members and/or their spouses and children in rooms in the inner city. Some traders CALs interviewed stated they live in townships or informal settlements like Soweto, Tembisa East and Diepsloot and spend between R20 and R40 a day on transport into the inner city, which is a considerable percentage of their monthly income.

### **The Pre-Democracy Dispensation**

Prior to the political changes that gathered momentum in the early eighties, street vending was regulated completely in terms of municipal by-laws. Among others, they were confronted by what had been termed the “Move On Law” under which street vendors were required to move their trading positions every 30 minutes. All of this was part of the apartheid government’s strategy to restrict the movement of African people in the towns and cities unless they worked for white businesses. These restrictions made it difficult for people to build sustainable livelihoods

As more and more African people came into urban areas the government found it could not control this movement like it did before. Slowly, the government started to relax the laws on street trading. In 1991, national government passed the Business Act.<sup>7</sup> This national law recognized that street traders were business

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<sup>6</sup> Tissington (fn 2)

<sup>7</sup> Act 71 of 1991

people. Before the new law, street traders could only trade if they had a licence. The new law said that licences were not necessary, although it did allow for an extensive list of prohibitions on trading.

In 1993, the government made some changes to the Business Act. These changes gave local government more power to limit street trading. Municipalities were not allowed to prevent street trading. They could, however, make bylaws and regulations about where and how street trading could happen.<sup>8</sup>

### **The Post-Democracy Dispensation**

The Bill of Rights in the South African Constitution<sup>9</sup> makes provision for a number of rights and protections that apply to all who live in the country. Street vendors enjoy these same rights and protections, the most important being the right to dignity and equality. Section 9 (1) guarantees everyone equality before the law and the right to the protection and benefit of the law.

In addition to the right to dignity,<sup>10</sup> the Constitution also grants every citizen the right to choose their own occupation, trade or profession. Non-citizens will enjoy this right only if they have the necessary status in terms of the Immigration Act,<sup>11</sup> though in preventing them from trading the state may not violate any of the basic rights (such as the right to dignity or privacy) which apply to all.

The right to a trade occupation or profession is further qualified in the sense that its practice may be subject to legal regulation.<sup>12</sup> The limitation clause in section 36 of the Constitution re-affirms that the right to choose an occupation, trade or profession may be restricted only to a limited extent (see below).

The Constitution further says that local government is responsible for local

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<sup>8</sup> Ibid at S6A.

<sup>9</sup> The Constitution of the Republic of South Africa, 1996

<sup>10</sup> SA Constitution, S10

<sup>11</sup> Act 13 of 2002.

<sup>12</sup> Ibid, S 22

economic development. It says that local government must work together with citizens and groups in communities to find ways to meet their social and economic needs.<sup>13</sup>

Most municipalities have paid more attention to street trading than to other parts of the informal economy. They have paid attention to street trading because it is very visible. For example, it uses streets that are needed by other people for other purposes.

All municipal bylaws are based on the Business Act, so there are many things that are the same in different towns and cities. Most of the bylaws<sup>14</sup> say, among others:

- traders must not get in the way of traffic and pedestrians;
- traders must not get in the way of delivery vehicles;
- traders must not use gas, electricity or other equipment in a way that is dangerous for the public;
- traders must not get in the way of fire hydrants and road signs; and
- traders must keep their sites clean.

The Constitution also requires municipalities to be developmental in their approach and activities in order to give priority to the basic needs of the community.

Municipalities in terms of section 152 of the Constitution must, among others, establish appropriate forms of representative and participatory democracy, address poverty and inequality and promote local economic and social development. They have to ensure that scarce resources are allocated and spent effectively and that all citizens have access to at least a minimum level of basic services. Municipalities must also structure and manage their administration, budget and planning processes to give priority to the basic needs of the

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<sup>13</sup> SA Constitution, S 152-153.

<sup>14</sup> See City of Cape Town Informal Trading By-Law, 2009, Provincial Gazette 6677; Ethekewini Municipality Informal Trading By Law 2014; and City of Johannesburg Informal Trading By-Laws, Local Authority Notice 328, Provincial Gazette 14 March 2012



community, which includes street vendors, and to promote the social and economic development of the community.

### **The Limitation of Rights**

Constitutional rights are limited by Section 36 of the Constitution. It provides that:

- (1) The rights in the Bill of Rights may be limited only in terms of law for general application. This is to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including the following:
  - (a) The nature of the right;
  - (b) The importance of the purpose of the limitation;
  - (c) The nature and extent of the limitation;
  - (d) The relation between the limitation and its purpose; and
  - (e) Less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of rights.

It is the qualification found in section 22 that the practice of a trade, occupation or profession may be regulated by law, read with the section 36 limitation clause, which undoubtedly informs the City of Johannesburg's Informal Trading Policy and its subsequent actions in deciding on and implementing Operation Clean Sweep.

## The City of Johannesburg Informal Trading Policy and Operation Clean Sweep

The City of Johannesburg has adopted what it terms “a developmental approach”. Its by-law is intended to enable access to job and entrepreneurial opportunities within the informal trading sector; to harmonize the relationship between the informal trading sector and the formal trading sector; and to facilitate the migration of informal trading into the formal trading sector.<sup>15</sup> The by-law flows from an Informal Trading Policy adopted by the municipality following a broad consultative process.<sup>16</sup>

The by-law broadly:

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

In Johannesburg, any member of the community is permitted to engage in informal trading subject to compliance with the by-law and other “applicable law”. What this other applicable law constitutes is not stated in the by-law,<sup>17</sup> but it will include all legislation to which people in public places are subject.

It is these provisions of the by-law that the City flouted with impunity when it embarked on its Operation Clean Sweep campaign.

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<sup>15</sup> City of Johannesburg Informal Trading By-Laws, Local Authority Notice 328, Provincial Gazette 14 March 2012 at 99

<sup>16</sup> City of Johannesburg Informal Trading Policy, 2009, at 4 available at [http://www.joburg-archive.co.za/2009/pdfs/informal\\_trading\\_policy09.pdf](http://www.joburg-archive.co.za/2009/pdfs/informal_trading_policy09.pdf)

<sup>17</sup> Informal Trading Policy (fn 15) at 105.

## Operation Clean Sweep

The City of Johannesburg, initiated what they termed a Mayoral Campaign (referred to as Operation Clean Sweep) in the second half of 2013. The key objectives of the operation were to determine who was trading lawfully in the City and the reallocation of trading bays, including relocation in certain instances. The City claimed that the operation would remove trader stalls, including those stalls erected on pavements, that operated in the Inner City in violation of municipal by-laws, near auto-teller machines, near places of worship and near government buildings.<sup>18</sup> According to the City, the object of Operation Clean Sweep was to rid the City of unsightly and disorderly trading areas. These, it alleged, gave rise to disorderliness, criminality and obstruction of citizens' rights to the proper use and enjoyment of facilities in and around trading areas.

The City then established a forum to engage street trader organizations and other interested parties regarding the details of the operation. These discussions ended inconclusively, and between 30 September and 31 October 2013 law enforcement officials forcibly removed over 6,000 traders from their trading sites and confiscated their goods. Over 2,000 of these traders were members of the South African Informal Trading Forum (SAITF) and the South African National Retail Alliance (SANRA).

Many of these traders were registered and had been trading in the same place for many years, some as long as twenty years. A startling feature of the mass evictions was that the City did not bother to distinguish between the traders who have always been doing business legally and other informal traders who have not. The City Council, in subsequent court papers, conceded that it was convenient for the city to act in this manner.

Faced with indiscriminate evictions, the street traders embarked on a protest march on 24 October. This march led to a re-opening of discussions with the City to negotiate a return to their lawful trading activities. On 2 November 2013, the

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<sup>18</sup> City of Johannesburg Notice of Intention to Oppose at 220. This contention is based on Section 9 of the City of Johannesburg's Informal Trading By-Laws which had been published in March 2012.

City and the traders agreed to a process of “verification”. This meant that all the traders would submit to a process in which their right to ply their goods would be verified and they would be “re registered”. It was also agreed that the traders would be allowed to return to their trading stalls once they had been “verified” as lawful traders and had “re registered” themselves.

But the City reneged on this agreement. Even after the street traders had been verified as lawful traders they were not permitted to return to their stalls. Those who attempted to do so were forcibly removed by the Metro Police who also dismantled the stalls previously used by the traders. The traders once again engaged the City in a further attempt to get them to comply with the terms of the agreement. They said it became increasingly clear to them that Operation Clean Sweep was not an attempt to verify and re-register the lawful informal traders in the inner city. Instead, it was an initiative to remove them permanently from their trading stalls and relocate some or all of them to unknown “alternative designated areas”, and prohibit them from trading until such time as this process had been completed.

### **The Street Vendors Approach the Courts**

The street vendors then turned to the courts for relief. Through their organizations, the South African Informal Trading Forum (SAITF), the South African National Retail Alliance (SANRA) and with assistance from SERI, they approached the High Court, on an urgent basis, for an order permitting those traders who had registered to be allowed to trade in accordance with the City by-laws. The High Court dismissed the application on the grounds that it lacked urgency.<sup>19</sup> In arriving at its decision, the court ignored the uncontested fact that the traders were in desperate need of resuming their trading, without which they would be unable, among others, to feed their children, buy medicines and pay school fees.

The street vendors, again aided by SERI, applied to the Constitutional Court, the highest court in the country, to appeal the judgement of the High Court and to

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<sup>19</sup> SAITF Founding Affidavit Constitutional Court at 6

seek an order for the City of Johannesburg. This order would permit the vendors to continue trading in the locations they had traded in prior to their evictions until such time as the manner in which the City had implemented Operation Clean Sweep had been reviewed by a court of law.

The Constitutional Court heard the matter on 5 December 2013. Throughout the proceedings, the attorneys engaged by SERI to represent the traders briefed them and simplified the complex legal arguments that lawyers were presenting. The Court, after a short recess, interdicted the City from interfering with the traders at the locations they had occupied immediately before their removal under the guise of Operation Clean Sweep.

The Court found that the City had not followed the procedures prescribed by the Business Act in designating an area for informal trading and making decisions prohibiting or restricting trading in certain areas. If it did not grant the traders the relief they were seeking, the traders would suffer irreparable harm in that the livelihoods of the traders and their families were dependent on their trading in the inner City. At the time of the court case, they had been rendered destitute and unable to provide for their families for more than a month.<sup>20</sup> The traders had secured a major victory.

### **The Lessons of Operation Clean Sweep**

Operation Clean Sweep, conducted by the City of Johannesburg, is an example of a municipality that exceeded the extensive powers it already had.

The order of the Constitutional Court instructing the City to desist its relocation of traders until an appeal/review has been heard in the High Court has, to some extent, reined in the City from proceeding with this project. The contention of the traders is that if they had been trading in contravention of the by-laws, the City should have dealt with such contravention as provided for in the by-laws is compelling. Johannesburg has a comprehensive list of restrictions and prohibitions incorporated into the by-law.<sup>21</sup> For example, there are penalties of

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<sup>20</sup> Constitutional Court of South Africa Media Summary cases No CCT173/13 and CCT 174/13

<sup>21</sup> City of Johannesburg (fn 15 ) at 110 -114

R500 or a prison sentence not exceeding three months for contravention of the by-law.<sup>22</sup>

The Constitutional Court Judgement was a benchmark achievement for street vendors in South Africa. It compelled the City to respect its own by-laws and consult street vendors on issues that are likely to impact on their livelihoods. Following on the Constitutional Court judgement, the City has commenced discussions with street vendors regarding a long term development strategy to integrate informal trading into broader economic activity. The City states that “informal traders are here to stay and our vision is that street trading is a vital part of the city’s history and a major player in the second economy”.<sup>23</sup>

### **The Struggle Continues**

But the battle continues. Almost immediately after the Constitutional Court had handed down its judgement, members of the Johannesburg Metro Police, who had been a party to the proceedings, in complete disregard for the ruling, attempted to forcibly dismantle the stalls of traders who starting erecting their stalls in response to the Constitutional Court’s judgement. The pleas of the traders fell on deaf ears and they were compelled to contact their SERI appointed attorney, Nomzamo Zondo, to intervene. Her attempt to explain the terms of the court order to the law enforcement officers was unsuccessful. Ms Zondo, five months pregnant at the time, then bravely placed herself in between the law enforcement officers and the traders in a further attempt to defuse the situation. For her troubles, she was arrested and only released hours later. Vague charges of public violence and obstructing the ends of justice were bandied about, although these were never pursued.<sup>24</sup>

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<sup>22</sup> Ibid Clause 115.

<sup>23</sup> City of Johannesburg Press Statement 24 July 2014 , available at [http://www.joburg.org.za/index.php?option=com\\_content&view=article&id=9108:24072014-joburg-to-consult-on-future-of-informal-trading&catid=217:press-releases-2013&Itemid=114](http://www.joburg.org.za/index.php?option=com_content&view=article&id=9108:24072014-joburg-to-consult-on-future-of-informal-trading&catid=217:press-releases-2013&Itemid=114)

<sup>24</sup> SERI Press Statement 5 December 2013 available at [http://www.serisa.org/images/SAITF\\_Press\\_release\\_5Dec2013\\_final.pdf](http://www.serisa.org/images/SAITF_Press_release_5Dec2013_final.pdf) and telephonic interview with Michael Clark, Legal Researcher, SERI on 8 October 2014.

The City of Johannesburg did pursue Operation Clean Sweep, conscious of the fact that the Constitutional Court had clearly stated that its actions were unlawful. The traders, however, face a new threat. The City has now stated restricting and/or prohibiting informal trade in certain areas by invoking section 6A(2) of the Business Act.<sup>25</sup> SERI, SAITF and SANTRA have once again collaborated and produced a pamphlet which sets out the rights of traders in this process. The message to traders is very clear – participate in the process to make your voices heard; monitor the process to make sure the law is complied with in the fullest; and, most importantly, mobilize with other informal traders for the purposes of collective action.<sup>26</sup>

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<sup>25</sup> Clark (fn 24)

<sup>26</sup> Protecting the Rights of Informal Traders, SERI (in collaboration with SAITF and SANTRA) available at [www.seri-sa.org/images/informal\\_traders\\_pamphlet\\_FINAL.pdf](http://www.seri-sa.org/images/informal_traders_pamphlet_FINAL.pdf)

## Street Vendor Organization

While independent street vendors are excluded from the existing labour legislation, like the Labour Relations Act, which applies only to “employees” and, among others, provides for workers to form and join trade unions, the Constitution, at section 18, guarantees the right to freedom of association. On this basis, street vendors are able to form and join organizations representing their interests.

The history of street vendor organization in Johannesburg, and indeed the rest of the country, has been fraught with difficulties and tension. The ability of SAITF and SANRA to collaborate on this issue illustrates the benefits of building strong organizations. There are, however, still thousands of street vendors who are not members of an organization.

Clearly, to negotiate with/campaign against local government when necessary contributes towards organization building, but once-off campaigns are not a basis for sustainable organization.

It was only in May 2013 that a national umbrella organization, drawing together a huge number of local and provincial street vendor organizations, was established. This organization is now setting about building a unified organization that is able to speak on behalf of all street vendors on a national scale.<sup>27</sup> This process must be consolidated and supported.

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<sup>27</sup> South African Informal Traders Alliance officially launches in Kimberley, Streetnet available at <http://www.streetnet.org.za/show.php?id=512>



## Conclusion

Key lessons that can be drawn from the experiences of the street traders in Johannesburg are the need for organization and maintaining unity, building networks and alliances with organizations like SERI and remaining vigilant to attempts by the authorities to ignore or undermine court rulings – the incident involving Ms Zondo being a case in point. The further steps planned by the City of Johannesburg will test whether or not these lessons have taken root among the informal traders of Johannesburg.

The provisions of the South African Constitution, notwithstanding the limitation clause, provides a useful legal platform from which well-organized street vendors, in alliance with the relevant support organizations, can use their collective strength. Backed up by the law, street traders can pursue and advance their rights. However, these are not adequately provided for in the Business Act and the various municipal by-laws or, as in the case of Johannesburg, they are simply flouted by the authorities.

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## **Interviews**

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