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YOUR RIGHTS AND DUTIES AS AN INFORMAL TRADER

OCTOBER 2024

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How to read this Guide

This guide is meant for informal traders in Accra, Ghana. It covers market traders who sell in public markets. It also covers hawkers who move around or who sell from a fixed place outside markets. And it covers food vendors, porters and those who use push trucks.

This is a guide to the legal framework, set up by the assembly bye-laws, that shapes:

- Where you can work.
- Under what conditions you can work.
- What your duties under the law are.
- The powers the authorities have if the bye-laws are broken.
- How you can use the law to protect your rights against abuse by public authorities.

Section 1 of this manual gives an overview of what the law says about vending in public spaces.

Section 2 looks at some of the main bye-laws that impact on you as informal traders.

DEFINITION:

Informal traders *are traders who operate in public spaces including streets, pavements, and informal trading markets. They include market traders as well as hawkers who operate on streets, pavements and other public spaces. The Accra Metropolitan Assembly Control of Hawkers Bye-law says that the term hawker includes vendors who operate from a fixed space, and mobile vendors who move from place to place.* https://ama.gov.gh/doc/bye-laws.pdf

Section 3 focuses on the issue of evictions and confiscation of your goods. It will outline the powers the authorities have to evict and confiscate.

Section 4 looks at possible ways you can use the law if you are facing eviction, or have been evicted.

When you see this sign in the margin, it means the box contains a definition of a term that has been used in the text.

When you see this sign it means there is an activity you can do either by yourself or with others. We encourage you to do these activities because they will help you understand your legal position better and think through the remedies you can draw on.

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SECTION 1: OVERVIEW OF REGULATIONS OF INFORMAL TRADING AND ACCESS TO PUBLIC SPACE

Informal traders can operate in public spaces if you have the relevant license or licenses from your district or metropolitan assembly. You can only get these licenses if you meet the requirements that are set out in the bye-laws for your assembly. Each assembly has its own bye-laws, but many assemblies in Accra have similar bye-laws to the Accra Metropolitan Assembly (AMA).

ACTIVITY

Finding out what the bye-laws in your assembly say:

It is important that you know what the bye-laws of your district or metropolitan assembly say. This information is important because it shows you what your rights are, and also what your duties are.

Step one: You can ask at the offices of your district or metropolitan assembly for a copy of the bye-laws that are relevant for informal traders.

DEFINITION:

***A bye-law** is a regulation made by the district or metropolitan assembly.*

It is a good idea to get a copy of the Accra Metropolitan Assembly (AMA) bye-laws online at https://ama.gov.gh/doc/bye-laws.pdf or from your assembly so that you can see exactly what the law says. The activity below will help you to find out what the bye-laws in your assembly say.

Remember, it is your right to have access to these bye-laws.[1]

Step two: Look through the bye-laws. Now work through section 2 of this guide which looks at bye-laws for informal traders from AMA.

Step three: Think through these questions:

- Can you recognize similar provisions in your assembly bye-laws to those in the AMA?
- Are there any differences between your bye-laws and those of the AMA?

There are many bye-laws that apply to informal trade. Different bye-laws will apply to different traders depending on what you sell, where and how you sell and the type of equipment you use. Sometimes all these different bye-laws overlap. It is important that you comply with all bye-laws that relate to your trade.

The bye-laws say what requirements you must meet if you want to keep the license, and also say what will happen if you don't follow the bye-laws. If you do not follow the bye- laws, this is a criminal offence. You can be fined, go to jail or have your license withdrawn depending on the offence. If the bye-laws are confusing, or you still have questions about what you should do, you can seek assistance from a lawyer or partner organisation.

There is no specific bye-law which says that authorities have the power to evict informal traders. But, they do have the power to make sure all the bye-laws are followed and to take action against anyone who is not acting according to the bye-laws. One of the actions that they can take against you is that of eviction.

There are no specific bye-laws setting out procedures for evictions. This means the authorities have a lot of discretion in deciding when and how they will use evictions. At the same time, they must follow general legal principles. These include:

- Eviction must be a reasonable response to the breaking of the bye-laws.[2]
- The authorities must follow the right processes and procedures.[3]
- The dignity of the informal worker must be respected and they must be treated equally.[4]

Remember that you also have the right to use the law to oppose or prevent an eviction, or other actions that are being taken against you, if you feel your rights are being undermined.

1 Section 82 of the Local Government Act of 2016 says that: "A copy of every bye-law made by a District Assembly shall be deposited at the office of the assembly and shall at all reasonable times be open to public inspection without the payment of any fee."

2 *Okudzeto Ablakwa (No 2) & Anor v Attorney-General & Obetsebi-Lamptey* (No 2) (2012) 2 SCGLR 845.

3 *Apaloo v Electoral Commission* (2001-2002) SCGLR1 45

4 *Article 15 of the 1992 Constitution of the Republic of Ghana; AND Ahumah-Ocansey v Electoral Commission* (2010) SCGLR 575

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SECTION 2: WHAT ARE THE RIGHTS AND DUTIES OF INFORMAL TRADERS?

In this section we will look at what the bye-laws say you must do so that you can trade.

Here is the list of questions we will answer.

1. What must I do if I want to operate as an informal trader?
2. What rules must I follow to trade in a public market?
3. What must I do if I want to be a hawker?
4. If I am self-employed or a hawker, and work in specific premises, do I need a license for those premises?
5. What rules must I follow to maintain the place where I am selling?
6. What rules must I follow if I have a temporary structure?
7. What rules must I follow if I sell food in a chop bar or similar place?
8. What are the rules if I use a push truck?
9. What are the rules if I am a porter?

Some of the information might be repeated under different questions. This is because there is a lot of overlap in what is covered by each bye-law. We have left the repetition in so that you can just focus on the questions that most affect you, and still get all the relevant information.

2.1 WHAT MUST I DO IF I WANT TO OPERATE AS AN INFORMAL TRADER?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Business Operating Permit) Bye-laws, 2017.** It covers the requirements for anyone who wants to trade or run any business in the assembly, including informal traders, food vendors, porters, and so on.

What must I do?

- You must apply for a **business operating permit (BOP)** from the assembly.
- You must **pay a fee** for this permit. The assembly sets the amount that informal traders must pay.
- You must **display the BOP,** where it can easily be seen. Even if you move around as you trade, your BOP must still be easy to see.
- If you are selling food, drinks or providing entertainment, you must also have a **Suitability Health Certificate. You can get this Certificate from the Public Health Department of the assembly.**
- If you own or operate temporary structures, you might also have to pay **property rates** to the assembly.
- You have **a right to ask to see proper identification** if officials of the assembly enter any area where you are trading to carry out inspections.

What must I not do?

- You cannot trade in an area **where trading is not allowed**.

THESE ARE SOME EXAMPLES OF HOW YOUR BOP CAN BE SHOWN:

- It can be displayed on a part of a stall where it will be easy to see.
- Head porters can paste a copy onto their head pans.
- Hawkers who move around can put the permit in a badge holder and wear it around their necks.

2.2 WHAT RULES MUST I FOLLOW TO TRADE IN A PUBLIC MARKET?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Public Markets) Bye-laws, 2017.** It covers informal traders who want to trade in public markets.

What must I do?

- ☐ You must **apply to the Chief Superintendent of Markets to be assigned a stall** in a public market.
- ☐ You must **pay rent in advance.**
- ☐ You **must be able to show the receipt of payment**.
- ☐ You must **insure your store**.
- ☐ The **food you sell must be kept clean and hygienic.** It must be:
  - Placed on a table or stand at least half a metre from the ground.
  - Covered to avoid flies or dust.

What must I not do?

- ☐ You must **not set up a stall** in an area that **you have not been assigned to.**
- ☐ You are **not allowed to share or sublet your store** unless you have written permission from the assembly.
- ☐ You **must not sell goods** that are **not allowed to be traded in that area.**
- ☐ You must **not sell goods outside of your store.**
- ☐ You must **not block any pathways** in the market.
- ☐ Food traders **must not sell food on the ground**.

2.3 WHAT MUST I DO IF I WANT TO BE A HAWKER?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Control of Hawkers) Bye-laws, 2017.** It covers all the requirements for trading as a hawker.

DEFINITION:

***A hawker** is someone who trades outside of a public market or their own home or shop. An assistant to a hawker is also a hawker.*

What must I do?

- ☐ You **must have a Hawker's License** to operate as a hawker. This is in addition to the Business Operating Permit (BOP) that we spoke about in number 2.1 above.
- ☐ You must **make a written application to the assembly** to get the license.
- ☐ Your application **must say what you want to sell.**
- ☐ You must **pay a fee** for the license, and you have to **renew it every year.**
- ☐ You must **keep the license on you** when you are trading and be able to show it to an official when they ask.
- ☐ Food vendors must keep the **area you trade in clean and free of rubbish.**
- ☐ Food vendors **must wear a uniform** which must include:
  - A white hair cap.
  - A white apron.
  - White latex hand gloves.
- ☐ The **food you sell must be kept clean and hygienic.** It must be:
  - Placed on a table or stand at least 45cm from the ground.
  - Served in a hygienic container.
  - Not exposed to flies or dust.

What must I not do?

- ☐ You must not put up **a stall unless you have the permission** of the assembly.
- ☐ While you are trading **you must not block vehicles or people**.
- ☐ You **must not trade in the following places:**
  - on pavements of the principal streets in the assembly
  - in front of stores
  - on paths where people normally walk.
- ☐ Food vendors **must not sell food on the ground**.

2.4 IF I AM SELF-EMPLOYED OR A HAWKER, AND WORK IN SPECIFIC PREMISES, DO I NEED A LICENSE FOR THOSE PREMISES?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Profession, Business and Trade (Self-Employed)) Bye-laws, 2017.** It covers self-employed people, including hawkers, who operate from premises.

DEFINITION:

***A self-employed person** is someone who works in an industry or trade and does not have an employer. It includes hawkers.*

What must I do?

- If you are self-employed, you must make sure the building or land where you trade is **licensed for trading**.
- You must **pay a fee** for the license and must **display the license** so that it can be seen clearly.
- Food vendors must make sure that the **food you sell is kept clean and hygienic.** It must be:
  - Placed on a table or stand at least half a metre from the ground.
  - Protected from flies and dust.
- You have a right to ask to see **proper identification** if officials of the assembly enter any premises where you are trading to carry out inspections.

What must I not do?

- You **must not stop an official of the assembly** from carrying out their duties.
- Food vendors **must not place food on the ground.**

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2.5 WHAT RULES MUST I FOLLOW TO MAINTAIN THE PLACE WHERE I AM SELLING?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Cleaning) Bye-laws, 2017.**

What must I do?

- ☐ You must make sure that you are **working in a structure that is authorized** by the assembly.
- ☐ If you work for someone else from a stall or other structure, **you must make sure that:**
  - The person or organisation that is paying you has the right permits.
  - The structure that you are selling from is authorized.
- ☐ You must **keep your place of business clean**.

What must I not do?

- ☐ You must **not throw litter or refuse** anywhere except into a bin.
- ☐ You must **not attach any structure** to a bar or restaurant **without authorization.**
- ☐ You must **not block another person or a vehicle**, or a public pathway or pavement.
- ☐ You must **not put up a structure next to a building where people or animals live.**
- ☐ You **must not fix any notices, posters or adverts** to any public surface unless you have permission.

Enforcement of the bye-law:

The cleaning bye-law sets out what you cannot do. This means that:

- If you do set up an unauthorized structure, the authorities can demolish it without first telling you.
- The authorities also do not have to tell you before they remove your belongings from an unauthorized place.
- The authorities do not have to pay for any losses that you may suffer when they demolish an unauthorized structure, or remove goods.
- If the space where you sell your goods is not clean, the authorities can give you three days to clean it. If you do not clean it within those three days, the assembly will clean it and charge you for the cost of the cleaning.

2.6 WHAT RULES MUST I FOLLOW IF I HAVE A TEMPORARY STRUCTURE?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Temporary Structures) Bye-laws, 2017.** This covers all the requirements for putting up and trading from a temporary structure.

DEFINITION:

Temporary structures *are structures that don't have a permanent foundation, and which can be moved from place to place. Examples of temporary structures are stalls and kiosks.*

What must I do?

- ☐ You must get **a permit from the authorities to put up a temporary structure.**
- ☐ When you apply for the permit, you **must submit a plan of the site,** with three drawings of the proposed structure.
- ☐ You must **renew the permit each year.**
- ☐ The structure can only be **built on sandcrete blocks.**
- ☐ You must **display the permit** for your structure where it can easily be seen.

What must I not do?

- ☐ You **cannot live in a temporary structure.**
- ☐ You must **not build it on water ways or public paths.**

Enforcement of the bye-law:

If you have not met the requirements of this bye-law or if the structure is unauthorized, then the authorities can remove any temporary structure.

But the authorities must first give you at least 7 days to remove the structure yourself before they remove it.

The assembly does not have to give notice to remove the structure if the structure:

- Covers any part of a community's space,
- Gets in the way of the community using their space, or
- Blocks the free flow of water.

2.7 WHAT RULES MUST I FOLLOW IF I SELL FOOD IN A CHOP BAR OR SIMILAR PLACE?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Food Safety and Hygiene) Bye-laws, 2017.** This covers any restaurant, chop bar, food joint, or place where you sell cooked food to be eaten on the premises.

What must I do?

- ☐ You need to get the **assembly's approval to run a place where you cook and serve food**, such as a restaurant, chop shop or food joint.
- ☐ You also need to get a **Suitability Health Certificate**.
- ☐ If you handle food, you must go through **a health screening** to get a **food handler's certificate** from the Metro Public Health Department.
- ☐ You might have to do **training in basic food and hygiene practises,** if the assembly requires it. The bye-law does not say when this is needed.
- ☐ You must have:
  - A separate room for public eating.
  - A separate kitchen that is used only for cooking and preparing food.
  - Separate toilets for males and females.
  - Separate changing rooms for males and females.
- ☐ You must make sure that **the public eating room:**
  - Is at least 5 meters long, 4 meters wide, and 4 meters high.
  - Has washable walls and concrete floors.
  - Has adequate lighting and ventilation.
  - Is clean and fly-proof.
- ☐ You must make sure that **the kitchen** has:
  - Concrete floors.
  - Storage for food that is fly proof.
  - Tables for preparing food.
  - Containers for storing and getting rid of waste.
  - A place to wash the dirty dishes.
  - Clean water for washing the dishes.
- ☐ You must make sure that **the environment** that the food is being stored, prepared and eaten in, is **clean and hygienic**.

- You must **handle the food carefully** and protect it from flies, dirt and animals.
- You must **store the food** carefully so that it doesn't spoil, and you must use **healthy ingredients and drinkable water.**
- You need to have **good personal hygiene.**
- You must use the **correct protective gear** so that you prevent contamination.
- You must make sure the food area is **not close to open drains or sanitary sites** such as toilets.

Enforcement of the bye-law

The assembly can withdraw any licenses that have been issued under this bye-law if:

- A change has been made to the premises without the permission of the assembly or planning authority.
- The person with the license operates against the provisions of this bye-law.
- The person with the license is convicted of an offence under this bye-law.

If your license has been withdrawn you can apply for a new license as long as you meet the requirements of the bye-laws. You must also pay a penalty.

If your license has been withdrawn you can appeal to the Metropolitan Chief Executive within seven days. The process for this is not set out in the bye-law.

- The Metropolitan Chief Executive must put together a panel to hear the appeal.
- The panel must report back within two weeks to the Metropolitan Chief Executive with recommendations.
- Once the recommendations have been received, the Metropolitan Chief Executive must write to the person challenging the license withdrawal to let them know of the panel's recommendations and what the final decision of the Metropolitan Chief Executive is.

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2.8 WHAT ARE THE RULES IF I USE A PUSH TRUCK TO TRADE?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Push Trucks) Bye-laws, 2017.** This covers informal traders who use push trucks.

DEFINITION:

***A push truck** is any vehicle with wheels that is pushed by a person. They are also known as 'trucks'.*

What must I do?

- You **must have a license for a push truck** and you must **pay a fee** for this license.
- You must be **18 years or older** before you can get this license.
- You must make sure that the push track is **in good condition and not a danger to anybody.** Before the assembly gives you a license a testing officer from the assembly will inspect your push truck to make sure of this.
- You must **use the push truck on the pavement.** If there is no pavement and you have to push your truck in the road, you must push it facing the traffic.

What must I not do?

- You must **not let anybody sit on the push truck** while it is moving.

2.9 WHAT ARE THE RULES IF I AM A PORTER?

In the Accra Metropolitan Assembly the bye-law that covers this is called the **Accra Metropolitan Assembly (Porters) Bye-laws, 2017.** This covers informal traders who work as a porter.

DEFINITION:

***A porter** is a person who carries goods or pushes a trolley loaded with goods. A porter can work at places such as a trading shop, market, lorry station, or taxi rank. A kayayei is also a porter.*

What must I do?

- You must have **the correct license** to operate as a porter.
- If you want to get a license, you must be **over 18 years old,** be **healthy** and have **no criminal record.** To make sure of this, you must go through a screening by the assembly medical officer, and a security screening by the police.
- Once you are a **registered porter with an identity card,** you must only **operate in the area that you have been given the license for.**
- You must wear a brown overall Khaki **uniform.**
- You must make sure your **license is visible.**

Now that we have covered all the bye-laws that are relevant for informal traders and porters, we will look, in the next section, at what can happen if you break the bye-laws.

Remember that if you break these bye-laws it is a criminal offence and you can face fines, prison or having your license withdrawn. You can also face being evicted or having your property confiscated. In the next section we are going to focus on what powers the authorities have to do this, and what your rights are if you are facing evictions or the confiscation of goods.

ACTIVITY

Here is a set of questions for you to think about:

- Which of these bye-laws are relevant for the work that you do?
- Are there any bye-laws that you find difficult to implement?
- What makes it difficult for you to implement those bye-laws?
- What do you think are some of the solutions to your challenges?

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SECTION 3: EVICTIONS AND CONFISCATIONS

Both the police and the assembly have the power to enforce the bye-laws that we have covered in section 2. As we noted in section 1, there are no bye-laws which give the authorities specific powers to evict informal traders. **But, because they do have the power to make sure bye-laws are followed, this implies that they do have the power to evict traders if they think it is an appropriate response to bye-laws being broken.**

Here are some examples of situations where the authorities would have the power to evict informal traders.

- The informal trader is operating at a location that is not licensed for that purpose.
- The informal trader does not have the required license or permit to operate in a public space.
- The informal trader has not complied with the terms of a license to operate in public space.

There is no law or bye-law which sets out the procedures that the assembly must follow when they evict you. However, there are **general principles** of law that they should follow.

These principles include the following:

- The assembly should make decisions about evictions, and carry them out, in a way that is **fair and reasonable** and **not arbitrary or biased.** This means that the authorities should make sure an eviction is a **reasonable response** to the problem faced. For example, it may not be reasonable to evict an informal trader if the problem is minor or there is another way to solve the problem.

- The authorities must follow the **right processes and procedures** (where these are set out in the bye-laws and in other Ghanaian laws). For instance, the authorities should give the person to be evicted the required notice period.

- The **dignity of the informal trader** must be respected and they must be treated like any other citizen.

As you can see, the bye laws are vague. They give the authorities a lot of power without clearly describing what that power is and its limits, and do not say what procedures authorities must follow to evict you. Since there are no clear rules to limit the power of officials and guide the eviction procedure you can only defend yourself against evictions by referring to the general legal rules explained above. You will have to explain these rules to the authorities and let them know that if they do not follow them their actions, such as evictions, are against the law. Authorities can sometimes get a court order to evict. This makes the eviction more official and much harder to challenge.

3.1 PROPERTY BELONGING TO INFORMAL TRADERS:

The law gives some protection to the property belonging to informal traders.

According to the law, the police can seize property if they have a warrant or court order which allows them to do so.

But, if the police have reasonable cause to believe that property that you have in a public space has been stolen or is connected to a crime, then the police can seize it even if they don't have a warrant or court order. Note that this is a very broad power because any violation of the bye-laws is a crime.

DEFINITION:

***Reasonable cause** means that the police officer or authorities honestly and genuinely believe that a crime has been committed. They must believe that there are enough facts and circumstances to show that a crime has been committed.*

For example: According to the bye-laws, selling food that is unwholesome is a criminal offence. This means that if a police officer believes an informal trader is selling unwholesome food, he can seize the food without a court order or warrant.

Informal traders do have a right to their property that has been seized. So if the police don't return the property, you can apply to a magistrate to get the goods back.

The police can sell your property if you have not claimed it within six months of it being confiscated. If the goods are perishable goods, like foodstuffs, then they can be sold at any time within the six months, but the money received must be kept for six months. After this time, you cannot reclaim the money.

3.2 CAN THE POLICE ARREST AN INFORMAL TRADER FACING EVICTION?

The police can arrest you if they have an arrest warrant.

But they can also arrest you without an arrest warrant if:

- You are committing a crime in the presence of a police officer (again, this is a very broad power because every breach of a bye-law is a crime).
- You are making it difficult for a police officer to perform his duty.
- You have an item that the police have reason to believe is stolen.

For example: Although you may want to express your anger and frustration about being evicted you could be arrested if you make it difficult for the police to carry out their duties, cause damage to property or unlawfully enter buildings.

3.3 WHAT ARE THE PROCEDURES THE POLICE MUST FOLLOW IF THEY ARREST INFORMAL TRADERS?

- The police can restrain you once you are arrested, but only enough to stop you escaping and the police must respect your dignity at all times.
- The police can search you when you are arrested.
- The police must tell you the reasons for your arrest in a language that you understand. You must also be told that you have the right to a lawyer of your choice.
- If there is a warrant for your arrest they must tell you in detail what it contains. You have a right to see the warrant.
- If they take you into custody, the police must grant you reasonable facilities (like a telephone call) to find legal advice, bail, or take whatever steps are necessary to help your defence or your release.
- The police cannot hold you in custody for more than 48 hours (2 days) without a court order.

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SECTION 4: WHAT ARE YOUR LEGAL REMEDIES IF YOU ARE FACING EVICTION?

4.1 WHAT CAN INFORMAL TRADERS DO IF THEY ARE FACING EVICTION?

If you are facing eviction, you can apply for **judicial remedies,** or you can apply for **administrative remedies.** These remedies are explained below.

Judicial remedies can involve either:

- Having a court review what happened to you or your situation, or
- Enforce your human rights.

Administrative remedies can involve either:

- Going to the assembly to complain about what happened to you or your situation, or
- Bringing your case to the Commission on Human Rights and Administrative Justice (CHRAJ).

DEFINITION:

***A legal remedy** is a way for you to use the law to enforce your rights or correct a wrong that has been done to you.*

4.2 WHAT ARE JUDICIAL REMEDIES?

These are remedies that involve going to court. The court can act to make sure that administrative bodies, like the District Assemblies, are not misusing or abusing their power.

You can either apply for an order for a judicial review or you can apply for an order for the enforcement of fundamental human rights.

What relief can the courts give?

They can:

- Stop the authority from continuing with its actions.
- Reverse the decision of the authority.
- Release a person who has been unlawfully detained by the police.
- Force the authority to carry out a public duty they have been refusing to carry out.
- Prevent the performance of any action.
- Order the payment of damages if this is appropriate.

Emergency relief: The court can give emergency relief before the final decision about the case is made.

The individual or the organisation can apply for an "interlocutory injunction" (pre-trial order). This is an order to temporarily stop the authorities taking action which might cause harm to an informal trader.

You can only apply for a pre-trial order once the main case has been filed in court, not before.

The court will look at the facts of the case before deciding whether to grant this pre-trial order or not. It can either grant the order with no conditions attached, or it can grant it with conditions attached.

For example: An informal trader might be facing eviction from a public space and wants a judicial review of this action. The informal trader can file a case before the court to challenge this eviction. The trader can then ask the court for a pre-trial order to stop the eviction taking place until the main case can be heard.

DEFINITION:

An interlocutory injunction (pre-trial order) *is a legal order issued by a court that temporarily stops an action, or requires someone to do something, while a legal case is still ongoing. It is generally granted before a final decision is made in the case so that the situation is kept as it is until the final decision is made.*

How can I obtain relief from the courts?

- You can go to the High Court.
- You do not have to have a lawyer to represent you, but it will be helpful to have a lawyer to advise and guide you.
- You will have to pay fees for filing the case.

In the table below you can find the main elements of the two ways to obtain the relief: judicial review, and enforcement of human rights.

When can I use these procedures?

Judicial Review	Enforcement of human rights
You can apply to the court for a judicial review – which means the court must relook at the reasons for your eviction (or any other action of the police or public authority) and decide if they are valid or not. You can use judicial review when the actions of the assembly are: • Illegal - in other words actions which are not within the authority of the assembly or actions that go beyond their authority. • Unreasonable - so that no reasonable person would take that action. • The right processes have not been followed.	You can apply for this if there has been a violation of human rights. Human rights that could be violated include: • The right to administrative justice, which means administrative bodies and officials must act fairly and reasonably, and follow the requirements imposed on them by law. • The right to personal liberty. • The right to dignity. • The right not to be discriminated against. • The right to own property.

Here are some examples for the different procedures

Judicial Review	Enforcement of human rights
Examples • If a person has received all the required permits by the assembly to put up a temporary structure, then they are acting within the law. If the assembly decides to remove or destroy the temporary structure, this may be considered illegal, as the assembly does not have the authority to destroy or remove lawful structures. • The assembly cannot remove an unauthorised temporary structure unless they have given the owner of the structure at least 7 days notice to remove the structure. If the assembly removes the structure without giving notice, the actions of the assembly may be considered procedurally improper, as it has not followed the right procedure.	Examples • The assembly will not be acting fairly and reasonably if it decides to withdraw the permit of an informal trader, without giving the informal trader notice. It is also unfair if the withdrawal is based on an alleged wrongdoing by the informal trader, but the trader doesn't have a chance to explain why that permit should not be withdrawn. An application may be made for the enforcement of fundamental human rights, on the grounds that the right to administrative justice has been undermined. A person has a right to a hearing before the authorities take a decision that negatively affects their rights. • Under Article 15 of the 1992 Constitution, all persons have the right to dignity, and to not be subjected to torture or other cruel, inhuman or degrading treatment or punishment. So for example, if a metro guard on duty beats up a hawker, the hawker can make an application for the enforcement of their fundamental human rights on the grounds that their right to dignity has been harmed.

Who can start these procedures?

Judicial Review	Enforcement of fundamental human rights
Judicial reviews are generally brought by the person directly affected. However, an organisation can make the application, as long as they are making it in the public interest.	An application can only be made by an individual who is the victim of the human rights violation.

What steps should I follow?

Judicial Review	Enforcement of fundamental human rights
Procedural steps: **Step 1:** Write to the person or institution (for example, the assembly) against whom you want to bring the case (and the Attorney-General if the police are involved) to notify them that you are going to take legal action. **Step 2:** File a written application at the registry of the High Court. You must make the application within six months from when the event that you are complaining about happened. The application consists of a written motion (a request to the court), and an affidavit (your account of what happened written out in a sworn document). The motion should contain: • The names of the parties and their addresses. • The order or relief sought. • The reasons for the application. The affidavit should contain: • The full name and address of the applicant. • The facts relied on. • The reliefs sought. • The reasons for those reliefs. • The name and address of the persons directly affected by the application. **Step 3:** The parties against whom the application is served, for example the assembly, can respond to set out their defence. **Step 4:** 14 days after filing the notice of the application, you must file a statement of case setting out legal arguments and relevant laws or regulations. In the statement of case you must set out the legal reasons why the court should rule in your favour. **Step 5:** The party against whom you are bringing the case is also entitled to file a statement of case within 14 days of receiving your statement of case. **Step 6:** The court will set a date for the hearing. The court will decide the case based on all the documents that have been filed. The court can also decide if it wants to hear oral submissions.	Procedural steps: **Step 1:** File an application for the enforcement of fundamental human rights at the registry of the High Court. You must make the application within six months of the date of the event that you are complaining about happening or within three months of becoming aware that your human rights might have been violated. **Step 2:** The affidavit that you submit with your application must contain: • Your full name and address. • The facts relied on. • What you are seeking and why (known as the "grounds"). • The name and address of the persons directly affected by the application. **Step 3:** Notice of the application must be given to the Attorney-General and all other parties named in the application. **Step 4:** A date will be set for a hearing. Any party to the case is allowed to call witnesses.

4.3 WHAT ARE ADMINISTRATIVE REMEDIES?

These are remedies that don't involve going to the court, and instead involve seeking help from a government body.

You can pursue an administrative remedy in two ways:

- You can bring a complaint to the assembly, or
- You can bring a complaint to the Commission on Human Rights and Administrative Justice (CHRAJ).

What relief can be offered?

Petitioning the assembly
The law does not set out specific relief or remedies that the assembly can provide. The person petitioning the assembly should ask for the relief that they want. The assembly will consider the petition and may decide to grant the relief asked for. The assembly might also decide that another form of relief is more appropriate.

What relief can be offered?

Commission on Human Rights and Administrative Justice (CHRAJ)

CHRAJ can act as a mediator and invite the parties to try and resolve the issue.
 	
If mediation does not resolve the issue, or CHRAJ does not think mediation is appropriate, CHRAJ can also decide to conduct a full investigation into the complaint.
 	
After investigating the matter, CHRAJ will give a decision and make recommendations:
 	
• They can call on the authorities to take any appropriate action to remedy, correct or reverse any actions taken by the police or assembly.
 	
• For example, they can ask the parties to:
 	
  • Negotiate and reach a compromise.
 	
  • Report the matter to the superior officer of the offending person.
 	
  • Seek a court order that is appropriate for ending the offending action.
 	
The authority you complained about to CHRAJ (for example, the assembly) must take adequate and appropriate action on the recommendations. If it does not do so within 3 months of receiving CHRAJ's report, CHRAJ is empowered to bring an action in court for the enforcement of its recommendations.

How can I obtain this relief?

Petitioning the assembly	Commission on Human Rights and Administrative Justice (CHRAJ)
You can submit a request ("petition") to the assembly. • You do not have to have a lawyer to represent you but it will be helpful to have a lawyer to advise and guide you.	You can make a written complaint to CHRAJ. • You are not required to have a lawyer to represent you but it will be helpful to have a lawyer to advise and guide you. • You do not have to pay any fees for making complaints at CHRAJ.

When can I use this procedure?

Petitioning the assembly	Commission on Human Rights and Administrative Justice (CHRAJ)

You can submit a petition to the assembly for any matter for which the assembly is responsible. This can include:
• Matters of administrative injustice like:
  • unreasonable refusal to grant permits
  • undue delay in granting permits
  • unlawfully revoking permits
  • taking actions against informal traders without prior notice
• The abuse and misuse of office such as:
  • extortion and blackmail. For instance if an official uses his position to force you to pay him money before he will take any action; or he uses information he has about you to blackmail you.
• The violations of human rights such as:
  • physical abuse
  • unlawful arrests
	You can make a complaint to CHRAJ on the grounds that there has been:
	• A violation of human rights.
	• Injustice.
	• Corruption.
	• Abuse of power.
	• Unfair treatment by any public officer, including the police and the assembly.

Who can start these procedures?

Petitioning the assembly	Commission on Human Rights and Administrative Justice (CHRAJ)
Any district level stakeholder, including someone who lives in the district, may petition the assembly.	Complaints to CHRAJ can be started by either: • The affected person, or • If the affected person has died, or if they have a good reason for not representing themselves, then someone else can represent them.

What steps should I follow:

Petitioning the assembly	Commission on Human Rights and Administrative Justice (CHRAJ)

• You can submit a petition either in writing or verbally to the Secretary of the assembly.
• The assembly must respond to the petition within 3 months of its receipt.
	• You can make a complaint in writing or orally to CHRAJ at any of its regional or district offices.
	• If you submit a written complaint you, or your representative, must either sign or thumbprint the document.
	• If you make a verbal complaint it will be written down by an officer of the Commission who must read it over and explain the contents to you and request you to sign or put a thumbprint on the written statement.
	• The written complaint must contain:
	  • The full name and address of the complainant.
	  • The name of the person against whom the complaint is made.
	  • The particulars of the grievance and any relevant documents.
	  • The nature of the injustice suffered by the complainant.
	  • The reliefs sought.

READ EACH OF THESE EXAMPLES AND THEN ANSWER THESE QUESTIONS:

- Do you think the informal traders were breaking a bye-law? Give reasons for your answer.
- Do you think the authorities' response was appropriate?
- How do you think the informal trader could defend their rights in this case?

Example 1:

Mary was selling plantain chips on the street. A police officer said she was blocking traffic and obstructing the public way. They cautioned her to stop but she carried on selling. She was then arrested at the Sakaman Traffic Light.

Example 2:

Forster was displaying his items for sale in a stall he had put up on the pavement of a busy area in town. He had a license to trade. People walking down the street had to move into the road to get past his stall. One day, without warning, the authorities came and took down his stall and confiscated his goods.

Example 3:

Baako is a food trader. He has been operating with an operating permit and a Suitability Health Certificate. His operating permit has become obscured by a sign which shows the price of his goods. The Authorities want to confiscate his food goods because they say he is operating without a proper license.

Example 4:

Abina sells clothes. She has a stall where she makes and sells dresses. She has been very busy and the stall has become very dirty. One day the Authorities come and want to confiscate her goods immediately because she has not been keeping up with the cleaning.

HERE ARE SOME POINTS YOU MIGHT WANT TO CONSIDER WHEN YOU THINK ABOUT EACH OF THE EXAMPLES:

Answer 1:

The bye-law on hawkers says that you must not trade on pavements of the principal streets in the assembly. This could be understood to mean that you cannot trade at the traffic lights of these streets either. The hawkers bye-law also says that you may not block vehicles or people when you are trading. Mary should have moved her trading position so that she was no longer trading on a principal street and she was not blocking vehicles or people.

Remember also that she should have had her Hawker's License visible while she traded.

Answer 2:

The bye-law on temporary structures says you cannot block a public pathway with your structure. So Forster is committing an offence by blocking pedestrians. Normally the authorities would have to give you 7 days to take down the structure, but because it is blocking public space they can take it down immediately.

Answer 3:

It is unreasonable of the authorities to want to confiscate Baako's food without giving him a chance to make his permit more visible.

Answer 4:

The authorities cannot confiscate her goods immediately. They must give her three days to clean her stall.

If she does not clean it in three days then they can send someone in to clean it for her and charge her the cost of that clean.

ABOUT US

WOMEN IN INFORMAL EMPLOYMENT: GLOBALIZING AND ORGANIZING (WIEGO)

Women in Informal Employment: Globalizing and Organizing (WIEGO) is a global network focused on empowering the working poor, especially women, in the informal economy to secure their livelihoods. We believe all workers should have equal economic opportunities, rights, protection and voice. WIEGO promotes change by improving statistics and expanding knowledge on the informal economy, building networks and capacity among informal worker organizations and, jointly with the networks and organizations, influencing local, national and international policies. Visit www.wiego.org.

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Acknowledgements & Disclaimer

WIEGO would like to thank TrustLaw, The Thomson Reuters Foundation for facilitating the connection with Renaissance Law Chambers who conducted the research underpinning this guide. WIEGO would also like to thank Sandra van Niekerk, Independent Consultant, for helping to turn the research into this resource. This guide is offered for information purposes only. It is not legal advice. Readers are urged to seek advice from qualified legal counsel in relation to their specific circumstances. We intend the guide's contents to be correct and up to date at the time of publication, but we do not guarantee its accuracy or completeness, particularly as circumstances may change after publication. WIEGO, Renaissance Law Chambers, Sandra van Niekerk and the Thomson Reuters Foundation, accept no liability or responsibility for actions taken or not taken or any losses arising from reliance on this guide or any inaccuracies herein. Thomson Reuters Foundation is proud to support our TrustLaw member WIEGO with their work on this guide, including with publication and the pro bono connection that made the legal research possible. However, in accordance with the Thomson Reuters Trust Principles of independence and freedom from bias, we do not take a position on the contents of, or views expressed in, this guide.

This guide is part of a series supported by the Wellspring Philanthropic Fund.