

Street Traders, Regulation and Development in the eThekweni Unicity: An  
Assessment of the new Informal Economy Policy

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### Abstract

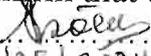
This research paper looks at the issues that arise when implementing the regulatory regime governing street trading in the city of Durban. It does three things. First, it provides a comprehensive overview of the context of the street trading policy environment, in an attempt to set out the various discourses surrounding street trading regulation in the eThekweni municipal area from colonial times till the present.

Second, the paper looks at the institutional profile of street trading and related issues within the operations of the city bureaucracy as part of the argument that its structural location determines, the attention and support that the sector gets. Consideration of related institutional variables such as location, budgeting, management strategy, and human resources revealed that the paradigm shift proposed by informal economy policy has occurred to some extent. However there are views that the organizational logic and culture of the municipality undermines speedy problem-solving mechanisms.

Third, the paper explores issues that have to do with the impact of the changing regulation and institutional environment on the operations and livelihoods of street traders. Regulation is operationalised as registration, spatial allocation, enforcement and system capacity. The related experience of the regulatory regime suggests that implementation remains a problem in transforming a progressive policy intention.

### Declaration

I confirm that the research report submitted herein is my own work

Signed...  .....

Date... 04/05/2004 .....

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## General Introduction

This research paper looks at the post-apartheid regulatory environment of street trading in eThekweni Unicity Central Business District as it affects street traders. Its focus is on the ability of women street traders to sustain their livelihoods through informal economic activities within an evolving regulatory framework of urban management. The paper adopts a broadly historical approach to the analysis of the regulatory regime. The topic is of interest because since 1994 city managers have tried to formalise street trading, a sector which is inherently informal. This paper looks at the dynamics and politics of the policy process in the post-transition period. Its focus is on finding out how the initial spatial gains made by the traders during the political transition period are being consolidated under a new regulatory regime.

Analyses of the informal economy and the transition from apartheid have tended to draw attention to the political contestation over space. The city was “invaded” and “conquered”, by traders who formerly had been forcibly excluded as Nesvag (2001) posits. At the same time attention is drawn to the attempts by city managers to control and regulate this contested space in an environment of flux. There are points of comparison; street trading has evolved a lot from what it was in the immediate post apartheid period. This paper attempts to show that even in the post transformation period, the regulatory regime is constantly changing as traders and urban managers negotiate, contest and confront images and practices held up by each as the most desirable outcomes of different views and uses of city space. We now turn to look at the broad summary of the topic.

### 0.1 Statement of the problem

Street trading has been recognised as a crucial node of job creation and income generation. In 2001, the municipality launched its new Informal Economy policy. This was a truly pioneering document because it has been product of intensive consultation with various stakeholders. At present the city officials are grappling with operationalising the policy on the ground. The research paper looks at the myriad issues that have to do with regulation of street trading in the city. Regulation in this paper refers to all the technical exercises that govern the use of space by street traders. Issues such as registration, licensing, spatial allocation, space rentals, enforcement of regulations and system capacity are operationalized as the regulatory regime in this paper. The regulatory regime is both a cause and the effect of the context within which it is being implemented and lived. The experience of regulation has not only far reaching effects on the operations of street traders but spawns a particular set of local politics at different times. In order to set out the impact of the changing institutional and regulatory environment on the trading conditions on the ground, the paper looks at three broad themes.

\* First, the study looks at street trading policies in eThekweni Unicity [EU] and how these policies towards street traders have changed over time. Street trading has been recently legitimised as an important component of urban economics both through national and local legislation. Analysis in this paper is based on the understanding that any policy points to commitment to carry it out in practice. Policy provisions determine work that should be done to deal with problems and the opportunities that the sector presents. In this instance a lot of progress has been made. The eThekweni municipality has developed a strong reputation as a site of best practice in terms of dealing with street trading due to work done to develop the Informal Economy Policy (2001) and the amount of infrastructure and budgetary allocation to the sector, and the innovative area management pilot initiatives. However as with all

ambitious plans to engineer social change and to spur entrepreneurial spirit, not all involved are happy with the present conditions. As Lund and Skinner (1999) observed, there is concern that despite positive policy making around the street trading sector, the interests of poorer, survivalist women street traders are disadvantaged. Local government policy and the institutional environment are in a state of flux. This situation alone highlights the need for engendering policy, especially one that has to do with allocation and regulation of trading space. Allocations policy is the fulcrum of most struggles and is a site where women need to be protected as workers in transcending cultural norms that seem to favour males first.

The success of street trading is very dependent on the accessibility of the operation to passers-by. In order to satisfy this need, many women traders appear to contravene municipal regulations that impose spatial restrictions, [Khoza and Naidoo, 1998]. However, the combination of their domestic and productive responsibilities restricts many of the women street traders. They do not benefit from the creation of 'immune zones' where people can trade on a first-come, first-served basis (Naidoo, 1993). Moreover, it is evident that with the introduction of 'deregulation', informal trading is vulnerable to being exploited by formal sector operators, who use informal traders as fronts. Involvement of formal sector operators results in great inequalities within the street-trading community as the gap between the relatively rich formal sector backed and poor survivalist street traders widens.

WIEGO (2002) argues that the ongoing policy debate over regulation and deregulation of street trading has seen deregulation being selectively advocated for small businesses, not for street trading. Questions of appropriate regulation suited to women trading in the streets emerge. At the same time regulation regimes are couched in attitudes towards street trading; especially negative ones, which impede rational policy analysis. As WIEGO (2002) further notes that it is usually thought that street traders are unregulated or avoiding regulation. As Horn (2001) points out many cannot get licenses and permits through no fault of their own and they often bear many costs – both legitimate (permits, licenses, site payments, storage, water, electricity and toilet fees) as well as illegitimate ones like middle men's fees, bribes and extortion. Many street traders, as WIEGO (2002) posits, clamor for the right to pay the relevant authority whatever rental required because this would afford them recognition and legal status.

Second, this paper looks at the institutional profile of street trading in the eThekweni Municipality as to how the structures of urban management are changing in order to accommodate new policy priorities. Similar to Skinner's (1999) five cities work, this research looks at the municipality's bureaucracy and governance. This section covers the location of responsibility for street trading in city structures. This results from the view that Skinner (1999) postulates, that location indicates priority given the sector and that location determines status/authority and standing in communication flows. The study also briefly looks at the trend in issues of budgeting and infrastructure development, to determine whether the reputed best city practices are still being kept.

Management is looked at, in the belief that commitment to managing a sector indicates political and practical will to see the sector prosper. Related to this point is the one of frontline staff and the issues of human capital transformation within the human capital in the organization of the municipality. This looks at the broader issues as to whether the city has the capacity to manage expenditure and develop street trading according to the needs of and in consultation with the operators and the public they serve. The paper also briefly examines the place of street trading in councillors' political mandates. Moreover, there is consideration of contradictory messages in the city council, sent out in regard to support and development of street trading and how these have affected mostly emotional policy-making around this sector.

The inherent instability of processes that aim to formalise the informal demonstrate the basic difficulties in formulating multiple responses to local economic development. Furthermore, the study also tries to explore briefly the nature and impact of local government restructuring on the changing fortunes of the sector within the city bureaucracy. Similar to Skinner (1999), the goal is to find out whether local government restructuring has led to greater coordination, more budgetary allocations and better treatment of issues arising in the street trading communities. However, this study concentrates more on the question of regulatory regimes governing use of public space.

Moreover, the situation of traders and the issues of regulation are compounded by the fact that local municipalities are in transition. The impact of different rounds of restructuring of local government was identified as a factor that shapes local government's actions, (Skinner, 1999). This has implications for such related issues as the institutional location of street trading responsibilities and the management approach, Councillors' engagement with street traders, appropriate frontline staff to deal with traders with their queries and financial resource allocation for street trading issues. For the majority of street traders in the Durban Metropolitan Area, the new political landscape has potentially ushered in a new lease of life, but needs further redress to suit their own needs. Skinner (1999) notes that the potential conditions for street traders have dramatically improved in the last decade but the actual conditions have improved for some.

Third and most important, this paper also looks at the dialectics of the regulation regime. That is, responses of street traders and reactions of officials to regulation. The impact of regulations is important for it points out the vagaries of implementation. One can argue that despite the flurry of activity to make consultations and policy-making representative and inclusive, allocations policy and its implementation, is the central bone of contention. Consolidation of street traders right to earn a living in public space is important but the primary issue still remains one's own plot to trade at. Scrutinising the impact of regulations is a concern. Khoza and Naidoo (1998) note that in spite of the fact that most of the people who have been directly affected by the relaxation of restrictions are women; they were never the immediate objects of the policy revisions. This means that work that gets done after the initial roll-out of the policy fails to do the majority of women involved justice. Women are seldom beneficiaries of new first-come, first-served plots. At times the combination of their reproductive roles and productive work disables them in the scramble for new reworked trading sites. In fact, for a number of reasons, the new deregulatory policies have often been to their disadvantage. In relation to this point, Horn (2001) points out that when looking at the regulatory regime, an effort should be made to find out what is being done in situations where traffic is tight and the availability of trading space is most needed. The city managers have the obligation to all urban citizens to make public space usable. This issue and other competing demands for usage of such space form statement of the problem. Women traders have had to conquer the pavements for their own productive good, which is being challenged by other key players' notions of rights, aesthetics and obligations. It has only recently dawned on city managers that pavement space is a development tool and this view is further problematised by interpretations of appropriate consumption of such space and dominant city images.

This paper aims to contribute to the basic empirical knowledge of policy towards women street traders. The methodological significance of this study is demonstrated because as Lund (1998:42) has observed, existing studies have not captured the gendered effects of deregulation on the position of women in street trading and there is much repetition between and among many Masters' dissertations about more or less the same thing. This research intends to look at a bigger picture, interview key informants across a broad spectrum of those

who deal with issues of women traders in eThekweni Unicity, and augment the information with other secondary data from studies already done relating to urban management. The policy significance of this research is to come up with information that might improve policy targeting in recognition that the conditions and position of both men and women engaged in street trading are not the same as much as their practical and strategic needs differ.

The key questions that the study concerns itself with are first, what policies and legislation governing street trading in eThekweni Unicity and what are their implications for determining the regulation of street trading? Second, how has the changing regulatory system affected the profile of street trading in eThekweni Unicity? Thirdly what has been the impact of regulations on the actual trading conditions of women street traders? The methodology utilized in this study has been semi-structured interviews of key informants<sup>1</sup>.

## **0.2 Structure of the paper**

This research paper is structured in the following manner. Section 1 covers introduction to the informal economy and Street trading policies in eThekweni Unicity. Moreover, it contains literature review and theoretical framework. Section 2 examines the institutional profile of street trading in the eThekweni Unicity considering issues such as institutional location, allocation of resources and infrastructure, management, staff, councillors, and local government restructuring. Section 3 articulates issues that have to do with women traders and the impact of regulations. This section also briefly looks at data collection and analysis methodology, data analysis of key informants transcripts, and components of appropriate regulation. Section 4 covers conclusion and recommendations. This section summarizes policy environment governing street trading, the profile of street trading in the city and impact of regulation on street trading. Furthermore, policy and methodological recommendations are noted. Section 5 consists of the bibliography and appendices.

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<sup>1</sup> These were drawn from ITSBO- Informal Trade and Small Business Opportunities; the key local government department dealing with issues of street traders in EThekweni Unicity. ITMB- Informal Traders Management Board; a federation of traders' organizations that encompasses various informal sector activities in eThekweni Unicity. StreetNet; Non-governmental advocacy organization on street trading issues and SEWU-Self Employed Women's Union, South Africa, a women's trade union for street traders and home based workers in EThekweni Unicity. Moreover the study involved intensive Literature Review and data Analysis from: policy documents, bylaws, research reports and some press clippings.

## SECTION 1: CONTEXT

### 1.0 Introduction

This section looks at the policy environment that governs street trading in the city. First, the section briefly articulates some of the historical factors that have shaped the present regulatory regime. Second, there follows a short literature review of research on women street traders in Durban. Third, the section briefly reviews some theories and policy approaches used to explain urban policies and informal economy operators.

This section examines briefly, the definition of policy, which ties in with an understanding that the way policies are made and implemented, depends on the pressures and struggles of actors which are affected/involved. Policies rarely adhere to the utopian zeal of those formulating them and become different when implemented on the ever-changing situations on the ground. Moreover, this chapter is written with the realization that stakeholders struggle to gain control of issues on the agenda. According to Anderson (1979:3) a *policy* is a purposive course of action followed by an actor or set of actors in dealing with a problem or a matter of concern. That is, policies are general principles that governments choose to go by when managing public affairs. This means that governmental policy at any level, be it central, provincial or local, has been more concerned with what *ought* be done and what *should* be happening to meet demand or assuage pressures of citizens. This is problematised by the struggle and conflict between interests, the need to bargain and compromise that has implications for what eventually comes out. "A city is not just a set of buildings, roads, parts and other infrastructure, a city is also a cultural text which we read and react to" (quoted in Kithchan 1999).

Policies are symbolic, in that they reflect and reinforce the values, beliefs and ideologies of their initiators. Policies reflect the way in which societies have evolved over time and are organized now. They also reflect the value given to particular systems of organization and the power of certain groups within those systems, for example, class, race or ethnic groupings, or particular interest groups. We can look at the way our cities are laid out, the high value given to some parts of the city as opposed to others, and the planning systems and rules that are imposed on the use of public space. Urban management policy, in this context street trading policy, shows that government activities to regulate this sector are not a mere technocratic exercise of allocating space and infrastructure in the optimum way. Street trading in the city is political. This is because, when people move to conquer pavement space, and city administrators feel the need to secure that space for other users, the types of relations that emerge in this instance create particular types of local politics and urban regulatory regimes. These local politics have a major influence on whatever regulatory policies are made to govern street trading.

In articulating the policy environment governing street trading in the city, the paper attempts to outline some historical factors that have shaped the present, especially the politics of space. This chapter is influenced by the view of Maharaj (2002:171) that any realistic urban structure must recognize that the city is an embodiment of the political, economic and social structure of society too. This means that in this instance, policy environment must be understood as part of socio-economic and political currents it exists in. Policy environment in this paper links ideas of general segregation with control over space. This is done with awareness that there are continuities and related discontinuities in the present regulatory regime that transcends temporal dimension due to this particular set of histories. Characterizations of urban life in Durban from the 1900s till the present are sketched out, interposed with issues of control over urban space especially in the central business district. This section shows just

how much the public discourses about spatial control feed in ideas about rights to the city, management of the city, the socio-economic function of property and popular images of a city aesthetic.

### 1.1 Policy environment and street trading in eThekweni Unicity

Looking at the issue of segregation and control over street trading, Durban like other South African cities fell under the influence of ideas about urban policy and public discourses about race and space. Control of street trading was fostered by new circuits of power that were designed to produce, as Popke (2001) notes, 'racialized working subjects' that were separate but fitted the grand vision of orderly and efficient management of urban space. Even before 1900 the Durban local state was actively engaged in imposing controls and restrictions on its black working class, notes Maylam (1995). This is an intriguing way that local government practically linked economic prosperity with the need for separate but crucial black labour.

- Segregation and control over street trading are related in many ways. Segregation controls access to the city, access to space and determines right to use this space to trade. Historical research shows that street trading is a long-established element of the urban informal sector in the city of Durban. African traders from rural areas came into the city on five day passes to hawk their goods in response to the city's particular needs for labour, notes Nesvåg (2002:284). Conditions of access and control over space were driven by two broad imperatives: the "sanitation syndrome" and economics of space. First emphasized by Swanson, (1976 and 1977) articulates urban segregation in terms of moral panic and racial hysteria, as whites increasingly came to associate the black urban presence with squalor, disease and crime. This view came to underpin the calls for formal segregation. This had implications for informal sector operators, for as Nesvåg (2000) points out,

*'street traders in urban areas have suffered from conflicts between different ideologies of development, modernity and notions of an urban aesthetic whose perceptions stereotyped street trading as an anti-modern, unsightly, uncivilized, unsanitary and even criminal, sector. This is partly due to the nature and perceptions of many of the goods and services involved in the street markets, which have primarily been targeted for 'non-whites' (to mention the few: umuti and utshwala, etc.)'*

For a while, as Maylam (1995) notes 'in the late 1970s and early 1980s, Marxists dismissed the 'sanitation syndrome' as a superficial, idealist explanation, (cited in Hemson, 1979:74). But still, a strong connection between the sanitary syndrome and drive to urban spatial segregation remains.

The second imperative that linked segregation and control over space had to do with the economics of space. A battery of legislation was promulgated that made it difficult for non-whites to get trading licences and do business profitably. This had an effect of lessening commercial competition, especially of the Indian merchant class, as Maylam (1995) documents. Spatial segregation also benefited the increasing white capitalist class by further facilitating labour control and, second, in releasing land for industrial purposes. City managers were trying to open up the land for rate-paying businesses while at the same time trying to stem the growth of inner-city pockets of poor non-white settlement that prevented this endeavour. Scott (1992:94) observed that the hilly terrain of greater Durban placed a high value on the flat land to the south of the city. This entailed the expropriation of property and the large-scale removal of communities, predominantly Indian. In 1916, the Durban Town Council introduced new *Native Affairs By-laws* that laid down precise procedures for the registration of Natives, who required employment contracts and passes to be allowed in the city. This targeted all street traders, but created particular adversity for African women as

there were few other income opportunities open for women at that time other than beer brewing and prostitution, [Naidoo 1993]. Even commercial domestic tasks such as washing clothes were considered male tasks during these first years.

Urban historical writing over the last decade has steadily revealed the wide range of laws through which urban segregation could be implemented. While some measures were obviously and directly segregationist, Maylam (1995) notes that others were more indirect, bringing segregation through the back door - via housing, public health or planning legislation. **The Native (Urban Areas) Act of 1923** codified control by whites of other races in urban settlements, although long-standing particularly in mining areas. It defined an African's legal ability to be in urban areas as contingent upon employment and empowered white authorities to control non-whites' access to urban areas. An African not needed to work for whites had no right to urban residency; those with permission to be in towns lived in segregated areas. In 1937 the **Native Laws Amendment Act** tightened up controls on how Africans gained access to the city. These laws had far reaching effects on the access of public space and economic rights of non-white informal sector operators. Thus, as Lanegrans et al (2001) quote Maylam (1990: 67), even before the National Party leadership devised and implemented apartheid, "the whole apparatus for regulating and controlling the movement and daily lives of urban Africans had already been constructed".

The local economy developed under these difficult circumstances; at this time the city's landscape was increasingly being shaped by influx control and segregation that existed paradoxically with huge demands for African labour. Observation by Lanegrans et al (2001) concluded that just as segregation seemed most entrenched, the Smuts government, (in power between 1939 and 1948), began to relax important elements. This period saw a sharp increase in urbanisation in response to economic growth and the influx of many African women in the process. Africans were required in the cities for the sole reason of servicing white needs, and once they ceased to do so they were to depart back to the reserves, (Naidoo 1993). Rural traders, according to Nesvåg, (2002:284), came in the city to service the growing needs of African labourers by establishing themselves around transport nodes and outside various sectors of activity- hostels, shebeens, market places. The place of female informal economy operators in the city was a crucial yet an insecure compromise.

Durban in the 1940s exhibited many of the problems faced by the city today, namely, extensive squatting, social upheaval, and violence. With the coming to power of the National Party in 1948 the concerns of many of the white residents and city officials of Durban were to coincide with the aim of the National Government to remove non-white people from the city centers. The Nationalists renewed commitment to influx control; slowing down and eventually reversing the tide of urbanisation. Despite passing a range of laws to restrict access to the cities the urban population continued to grow. Attempts to enforce the pass laws and demolish informal settlements led to an escalation in urban resistance, De Satge (2002) observed. The apartheid state responded to these events with a further package of measures to try to curb urbanisation. These included tightening up influx controls, attempts to impose urban labour quotas and to forcibly remove the surplus people from urban areas.

Apartheid's urban project was largely implemented via **the Group Areas Act (GAA) of 1950**, which empowered white authorities to demarcate urban neighborhoods for specific races and to remove people living in the "wrong" areas, that is the Act also legislated that blacks were qualified to live in urban areas if they had either been born in the urban area and lived there continuously or had worked for the same employer for ten years. Coloureds and

Indians living in areas reserved for whites, such as Cato Manor, were the bulk of the people uprooted and moved under this act. Pass Laws enabled white authorities to control Africans in urban areas, and thousands without the correct documents were arrested annually. White authorities initially administered African townships although those areas were expected to be self-funding through rent and service charges and alcohol sales. In general, the most important official instrument to control and regulate street trading was the concession or withholding of trading licenses (Rogerson, 1989). It became very difficult for African street traders and small businesses trading in the city. Even in 'their own urban areas' - the reserves and Bantustan's - licenses were required which were reportedly difficult to obtain (Rogerson, 1989). With further industrialization, the development of repressive legal and regulatory systems, argues Nesvåg (2002:287), made it almost impossible to trade from the 1940s up to the early 1980s.

According to Nesvåg (2002:287), street traders still remained 'the notorious birds in the cornfield for in the eyes of the dominant discourse street trading was manifestly equivalent to 'non-whiteness', disorder, primitiveness, and its 'criminal' features have been perceived as sponging off the urban capitalist project. Street trading was not viewed as beneficial to a supposedly efficient system of male labour migration. By supporting the livelihoods of urban blacks, it further entrenched their stay in the cities that was not so desirable. Repressive street trade policies also stem from competitive antagonism between the so-called formal and informal sectors. However as Nesvåg (2000) rightly observes, this antagonism overstates the polarized nature of the concepts, as street trading is often intrinsically linked with the formal retail and trading sectors.

The *Durban City Street trading by-laws of 1962 (section J6)* were the most comprehensive and specific. They totally outlawed street trading in the city, Nesvåg (2002:287). They defined street traders as illegal intruders into the city eligible for prosecution by the Durban City Police [Nesvåg, 2000]. In the 1970s there were widespread attempts nationally to introduce measures aimed at reversing urbanization. Whereas the state had previously recognized a permanently settled African population it now attempted to withdraw these rights. This shift was mirrored by heavy political investment in the homeland system, industrial decentralization and attempts to displace urban growth to homeland areas. The State now attempted to make every urban African a citizen of an appropriate homeland. Furthermore, De Satge (2002) notes that by 1980 these and other measures had led to the removal of at least 720,000 people from so-called white urban areas, removals that according to Simpkins (2000) resulted in a net outflow of 203,000 Africans from urban areas between 1960 and 1970. Simpkins (2000) also estimated that closer settlements in the homelands grew to accommodate 3.7 million people from a very modest beginning 10 years earlier.

Looking at Durban, life became difficult for street traders as the city tried to wipe out the sector from the CBD. *The Natal Ordinance 11/1973* further restricted street trading. This provincial legislation restricted hawking of goods within 100 metres of a fixed formal business, and prevented hawkers from taking up fixed stands by allowing them to occupy a spot for only fifteen minutes, after which they were to move at least 25 metres away, (Nesvåg, 2002:287). No sales points could be occupied on the same day. Furthermore, it stipulated that all traders required a suitable license to hawk or trade. The situation of women informal traders became less tolerable. African women were seen as unwanted, or rather unneeded, and were dealt with accordingly. It became easy to constantly push them out. In addition, these women represented family life that again symbolized an undesired African urban permanence, [Nesvåg, 2000].

In the 1980's there were moves to reform apartheid. PW Botha now accepted the inevitability of urbanization and the new government rhetoric was about the need for 'orderly urbanization'. However there was little investment in infrastructure provision, which could have contributed to this 'order'. Instead informal settlements continued to proliferate around the metropolitan areas. As Morris and Hindson (1992) cogently observed, 'reform facilitated class differentiation transforming ...geographical space into socially demarcated residential areas with differential access to urban resources... accentuating rather than dampening conflict'.

The experience of street traders in Durban and other apartheid cities was up until the early eighties marked by regular harassment by city officials in the form of arrests, confiscations, and fines. But despite the harsh legal and regulatory environment, there was defiance and resistance, led mainly by African women who now dominated in this small, marginal and survivalist sector of the informal economy, Nesvåg (2000). To these women, who had no other means of survival, the constant threat of prosecution was regarded as less of a burden than the threat of starvation (Naidoo 1993). In the 1980's the struggle for space in the city and the right to trade as a mechanism to survive intensified as urban apartheid began to collapse and influx control was abandoned, notes Grest (2001:8).

In the early 1980's, the Durban local authorities started to reconceptualise street trading at the same time as street trading experienced a dramatic growth. As a result of increasing mass defiance by street traders, the city ran increasing costs of policing the small enclaves of street trade that started to emerge in the Warwick Avenue area. The relatively liberal Progressive Federal Party (PFP) took majority control of the city council and other local positions, notes Nesvåg (2000). There was an increasing realization that law enforcement was becoming increasingly impossible, and the city managers started to concede the economic immorality and dysfunctionality of existing legislation. The apartheid state was feeling the strain of widespread international and domestic condemnation. But according to Nesvåg, (2000) *'there were also other important reasons for this shift in policy: massive urbanization due to the collapse of apartheid influx control measures; escalating urban unemployment; organized mass resistance and strong international pressure against apartheid; increasing international focus on the informal sector and its potential contribution to solving problems of unemployment and poverty, and finally; the general international move towards economic liberalization.'*

Ensuing changes in the street trading sector ushered in by the dynamics of the socio-economic and political currents resulted in new attempts to approach the informal economy. According to Nesvåg (2000),

*'these developments resulted in the launch of two studies into street trading in Durban: the 'Market Survey' in 1983 and the 'Hawker Report' in 1984 (City Engineer's Department; 1983, 1984b).'*

The importance of mentioning these reports especially for the purposes of this study is that they present early attempts by city administrators to recognize and proactively deal with street traders, whether in democratic ways or else remains debatable. Nesvåg (2000) further notes that 'the reports, which studied the street market system, its extent, location, and policy options for street trading in general, marked a watershed in official policy towards street trading in Durban, and later in other South African cities'. The reports concluded that the illegal status of the street trader had to be re-evaluated, which was perceived as radical at the time, posits Nesvåg (2000).

*The original plan was to move all informal sector activities out of the central business district in a typical apartheid separate-development fashion, so that the highways and freeways could continue to dominate the Warwick Avenue area. But the Market Report (1983) pointed out that this market area was important precisely because of its location and the flow of pedestrians created by nearby transportation facilities and stressed the need for the market system to exist in the area. The Hawker Report (1984b) investigated the role of street trading in Durban's economy, and argued for a more flexible approach towards the regulation of street trading. It recommended a simpler licensing procedure, but more importantly, it introduced the idea of a number of 'immune zones' in the central business district where hawkers could operate on a 'free for all' or 'first-come' basis. The report considered that an element of control was essential to any functioning street trade economy, but emphasized that control measures should be fair to those within the system. (Nesvåg, 2000)*

In 1985, a sub-committee was established to find practical ways of implementing more favourable policies towards street traders. In addition to implementing designated trading areas, a more lenient policing approach was adopted by city officials. Another outcome of the report was the introduction of a new vending licence to replace the archaic hawker license, Nesvåg (2002) documents. This move created a simpler and more appropriate set of licensing requirements (Rogerson 1989; Naidoo 1993). The city of Durban moved from exclusionary regulatory regime to a more loosely regulated control system.

Three years after Durban's reconceptualisation of street trading came the **1987 White Paper on Privatization and Deregulation**. This central State policy document, according to Nesvåg (2000) saw the imperative for encouraging entrepreneurship and stressed that the approach to regulation should emphasize the promotion of economic activity and be less directed towards control. Although Durban's approach towards street trading in principle was in line with this deregulation move, officials in Durban were still struggling to find practical ways of putting these principles into action.

The policy of non-prosecution towards the end of the 1980s contributed to a dramatic increase street trading in Durban, which had the positive effect of creating much needed employment, but also gave rise to a number of problems, notes Nesvåg (2000). The deregulation process resulted in problems of co-operation, as street traders were uncertain of their rights and city officials were unable to respond to problems and complaints, which again resulted in the public perceiving a lack of interest or initiative on the part of the City Council. An increasing number of complaints came from the media and commuters', ratepayers' and residents' associations about the growing 'problem of street trading'.

Ironically, this relative lack of official regulation and control also brought in new problems for the street traders, argues Nesvåg (2000). New sorts of informal control mechanisms came in to fill the void, including 'take-overs' of trading areas with extortion of 'rent', informal supply cartels with their own means of controlling prices, and protection rackets and mafia's. This mainly targeted female traders and those with the least resources and connections. The opening up of informal trading also introduced new conflicts between traders, often based on race (Indian vs. African vs. whites), or stemming from newcomers who had no respect for, or knowledge of, the existing 'informal' rules governing the organization of street trade, [Nesvåg, 2000]. Nesvåg (2000) quoted below at length notes that:

*“There were several developments in the Warwick Avenue market system during the second half of the 1980’s. When the Hawker report was written in 1984, there were approximately 200 traders in the entire Central Business District (City Engineer’s Department 1984b). Counts done in September 1988 revealed that there were approximately 600 traders in the Warwick Avenue area alone, which had increased to approximately 700 in February 1989, and 800 in June 1990 (City Engineer’s Department 1989, 5; 1990, 70). At the same time there was an increase in the number of African traders operating in the area and a decrease in the number of Indians. In 1984, 71% of the traders were African, rising to 98% in 1990 (City Engineer’s Department 1990, 7). The gender distribution changed slightly, as more men entered the street trade sector (from 33% in 1984 to 40% in 1990) (City Engineer’s Department 1990, 7). The scale of operations had grown substantially, and the range of goods and services offered became more diverse and complex. The most popular items for sale in 1990 were fruit, vegetables and umuthi products, and the tendency was for traders selling similar goods to group spatially, forming informal street markets (City Engineer’s Department 1990, 70). There were also reports of higher incidences of ‘litter and disorganization’ in the area. Despite these developments, the City Engineer’s Department noted that the implementation of the philosophy of ‘reasonableness’ towards street trading had been ‘fairly successful’, and that street trading was now ‘firmly entrenched in the CBD’s economic structure’.”*

The 1990’s saw the boom of street trading in Durban, with the numbers of street traders reaching a formidable 19,800 in 1997 (Markewicz Report: *Daily News* Aug. 21 1997). The lenient policies formulated in the mid-80s were seen as one of the reasons for this growth. Other important factors were natural disasters (two floods and a severe drought) and the severe political violence that dominated the province in the 1980’s and 90’s, which drove people from their rural homes and into Durban. Although Durban is a major industrial city, most of these urban newcomers were forced into informal sector activities to make a living due to a lack of other employment opportunities and insufficient skills.

The early 1990s were dominated by the lack of state legitimacy followed by an unstable political climate due to the negotiations leading up to the democratic elections in 1994. Nesvåg (2002:291) notes that being in the international focus, white administrators were increasingly bound by an emerging ‘political correctness’ focusing on human rights and democracy, which made it practically impossible to attempt to clamp down on informal trading. The informal management problems faced by street traders in the late 80’s were intensified. Problems of cooperation between traders and authorities, inability of officials to respond timely to problems and complaints, racial conflicts about trading sites, arbitrary takeovers, sidewalk mafias and protection rackets abounded.

The national policy environment towards small and micro enterprises became much more favourable in the 1990’s, notes Grest (2001). In 1991 *the Business Act (No. 71 of 1991)* regarding the licensing and carrying on of businesses was passed by Central government. The Act introduced a new dispensation for street trading, restricting the powers of local authorities to make regulations or bylaws to prohibit street vending. According to Grest (2001) the Business Act seriously curtailed the rights of local authorities to regulate street trading and protected the rights of traders to trade. The Act completely changed the legal approach to informal trading and has become the basis of most legislation, [Lund et al, 2000:44]. The local government policy on street trading became consultative and developmental, with local authorities being made directly responsible for local economic development, [Grest, 2001:8].

Before the Act, street trading was controlled in terms of the *Licensing Act*, whereby only those with licenses were allowed to trade and respective local municipalities controlled the issuing of licenses. According to Lund et al (2000), the Business Act acknowledges street traders as business people who contribute to the economic production and growth of the urban spaces they work in and therefore, should be supported by municipalities. Moreover, the Business Act is important for it showed the government's acknowledgement of the role of the informal economy in providing incomes and employment for substantial numbers of urban inhabitants. The Act went a long way in protecting the right of street traders to trade in the streets, the local government was still allowed to regulate the way this was to take place but could not prevent trade, posit Lund et al (2000:45). The Business Act enabled local government to regulate trading but also protected street traders from the shifting moods of different players in local government. In 1995, the power to alter and amend Business Act was handed down to the provinces by presidential declaration such that provincial governments were enabled to make changes to this legislation to adhere to local conditions, Lund et al (2000:46) note. However, Durban local authorities were not content with certain definitions and provisions of the Act, as they wanted greater control of street trading, for example, the Act did not authorize Durban's 'immune zones', [Nesvåg, 2000]. As a result, during the subsequent years, Durban officials worked hard to amend sections of the Business Act, to regain their legislative means to regulate street trading.

Nesvåg, (2002:291) posits that a unique situation occurred where a degree of anarchy in Durban's streets prevailed for almost three years (1991-1993). The Durban authorities were forced to sit down and formulate new street trading by-laws, which turned out to be a complex process. *Street trading bylaws M.N. 97/95 Section J.6* specify restrictions and prohibitions which are still in force. They set out the conditions that properly ensure the cleanliness of place of business and protection of public health. Furthermore, conditions for trading in parks and gardens are specified. Objections in regard to display, removal and impoundment of goods are documented. The bylaws also considered general offences and penalties thereof. All this is done on the presumption that on prosecution, the street traders know the provision of these bylaws and the offence with which he or she is charged.

The new street trading by-laws were met with strong opposition from street trader organizations. SEWU and other organizations complained that they were not consulted in the drawing up of the new by-laws. They forcefully argued that the new laws automatically criminalized street traders, and in particular the prohibition of sleeping overnight at the places of trade, as there had been a long-standing demand for the provision of overnight accommodation. In addition, the by-laws ascribing comprehensive cleaning responsibilities to street traders amounted to a shift of public responsibility onto marginal street traders. In fact the City had a responsibility for the workplace of the traders, they claimed. Despite these and other objections, city officials immediately started various 'clean up operations' to clear the streets of illegal trade.

*The Informal Trading and Small Business Opportunities Department* (DITSBO) was established in 1993 to help address the growing problem of street trading and the lack of functional legislation, and to negotiate with street traders who by now had organized themselves into various bodies all claiming representation in the process. Not all of these organizations were taken seriously, as some of their leaders operated more in self-interest. Starting a street trader organization became a lucrative business for a few power hungry entrepreneurs. There were however a few exceptions from this trend. Most important was the formation of the Self-Employed Women's Union (SEWU) in 1994, which has in a

professional manner evolved into a powerful voice for female street traders and other self-employed women around the country.

The new street trading by-laws were finalized in September 1995, and implemented in January 1996. In 1995, the *Sunday Times* reported that 'sidewalk syndicates' had hijacked informal street trade and had started terrorizing traders in Durban, by charging up to R1, 000 a month for what should have been free prime trading sites. A city official claimed that immigrants from Pakistan, Nigeria and Zimbabwe had taken control over large portions of Durban's streets, and this was pushing out the genuine traders who were 'trying to make an honest living' (*Sunday Times* Nov. 19, 1995). But this was merely a publicity stunt, as the local authorities used these blown-up headlines to push for strict by-laws instead of accepting responsibility for the situation. Street trading now became restricted to two areas; the Central Business District core and the Beachfront, and on specific demarcated sites. Traders could operate only between 6 a.m. and midnight and overnight sleeping at the place of trade was forbidden. The erection of any structures was prohibited, and certain health and hygiene provisions were laid out.

One of the important national level policy documents to be produced this time was the *Development Facilitation Act of 1995*. This is relevant to the subject of this study because it stated that all laws, policies and administrative practices affecting land development should promote efficient and integrated land use. By recommending land reform that makes maximum use of all available resources, and avoids duplicating existing infrastructure and services, it meant that people in the informal sector were in the line to have some legitimate claim to using public space. This had interesting implications on urban struggles because the spatial form was being dismantled to give way for those formerly excluded in the city.

*The 1995 White Paper on National Strategy for the Development and Promotion of Small Business in South Africa* reported the government to creation of an environment that encourages and assists the new development and growth of the informal economy. In principle, this white paper recognized that the small business sector is highly diverse, with structures, problems, growth potential and access to support differing widely between segments. These differences related as much to the economic sectors - retailing, manufacturing, mining, etc. - as they related to the stages of growth of enterprises, viz. start-up, expanding or stagnating. From a broad strategy perspective the most important distinction was between survivalist activities, micro-enterprises, small enterprises and medium-sized enterprises, with the general term "small business" and the abbreviation "SMMEs" widely used to contrast this sector with big(ger) business.

Due to the similarity of some of the obstacles facing them, survivalist and micro-enterprises are often lumped together, whereas many support agencies feel that medium-sized enterprises need not be viewed as a category warranting particular attention. The SMME White paper (1995) further defined survivalist enterprises as activities by people unable to find a paid job or get into an economic sector of their choice. Income generated from these activities usually falls far short of even a minimum income standard, with little capital invested, virtually no skills training in the particular field and only limited opportunities for growth into a viable business. Poverty and the attempt to survive are the main characteristics of this category of enterprises. Support strategies should primarily help these people - a large percentage of whom are women, to get out of this sector. Given the large number of people involved in survivalist activities, this constitutes a vast challenge.

The year 1996 was marked by a tough stance towards street trading, with pre-dawn blitz on street markets. Nesvåg (2000) recounts his presence at one of these raids in September 1996, when over 40 heavily armed policemen and several rubbish disposal trucks moved into the Warwick Avenue area removing illegal shelters that were erected by *muthi* traders in Russell Street and Leopold Street. According to a senior police official, street traders supported the move to clear up the area, as it posed a serious health hazard, and the structures were hindering both traffic and pedestrian flow. Nesvåg (2000) further notes that the street traders' version was different. Madlamini Khumalo, branch leader for SEWU in Russell Street handed a memorandum to the City Police condemning the police action. The statement said: "We find it unacceptable that police are sent in to harass us without the responsible authorities being able to provide us with any alternatives" [*Daily News* Sept. 30, 1996 cited by Nesvåg (2000)]. She further told the newspaper that DITSBO had promised them a new market for the last two years, and called on the department to allow the traders to trade as they did until a new and more suitable place was found for them.

In 1996 the city produced a green paper as part of a growth strategy on economic development within the city. *Green Paper on Economic Development of 1996* derived an institutional form and a work program aimed at meeting the challenges identified. The need for the creation of job opportunities in the informal economy was identified. This document is an important influence on street trading within the Ucity for it challenges the stakeholders to recognize areas of untapped growth which can be absorbed by sectors such as street trading. That informal business can compete with larger businesses in equal footing.

The historic proclamation of *1996 Constitution, section 152* also had general implications on street traders as urban citizen of post apartheid South Africa. This document set out the way local governments must govern that promotes democratic and accountable government for local communities, ensures the provision of services to communities in a sustainable manner, the promotion of social and economic development, a safe and healthy environment, and inclusive local governance. Moreover, the constitution mandates the local government to promote the Bill of Rights that sets out the country's laws on human dignity, equality and freedom. All these developmental principles were and are still relevant for all street traders, as it has been proven beyond doubt that they are economic players that are here to stay. Street traders are urban citizens and crucial economic actors that need laws of the country to enable and protect them.

The *1998 White Paper on Local Government* committed local governments to help communities find sustainable ways to meet to meet their social, economic and material needs and improve the quality of their lives. The white paper was based on the underlying principle of developmental local government that maximizes social development and economic growth. By empowering, redistributing and democratizing development, the white paper envisioned creation of productive and livable cities. This document is of key importance to the regulatory environment that women street traders work in for it sets out ways in which municipal authorities should go about ensuring local economic development. That is, by having to review existing policies and procedures to enhance employment and investment, even to the extent of provision of special economic services leading to sustainable local economic development. This legislative document is crucial for it shows the overall vision of the government that seems to be promoting the informal sector economic activities, such as street trading for local economic development. The changes in policy towards informal trading has contributed significantly towards the opening up of this space where people can now legally

pursue informal trading activities without the constant threat of police harassment, note Khoza and Naidoo (1998).

From 1999 to 2000 the unicity moved in to spearhead a lengthy consultative process leading to the Informal Economy Policy. This was due to the awareness that absence of a solid policy to guide the city approach has led to too much crisis management of the sector. Policy was needed to make the city's approach clear and form the basis for appropriate legislation. More importantly policy was needed to solve coordination issues stemming from actions of different governmental departments. Policy also served to rationalize resource allocation and infrastructure development. Moreover, to provide a basis for agreements with non-governmental stakeholders to ensure collective monitoring. This was a highly progressive endeavor.

The policy also came up with new ways of doing things in the sector. There was recognition that the city is mandated to create job opportunities for the swelling ranks of urban population, TTT Report (2000b:2). Related to this point was agreeing to regard informal sector operators as workers, legitimate business people and local economic contributors. The policy solidly backed the view that sees informal and formal parts of the economy as linked intimately, [Durban Informal Economy Policy, 2000:4]. In this way the policy went a long way in discouraging polemics that view informal sector as a temporary, parasitic means of production. Furthermore the policy set out the new role of the city managers that things should not just be left to degenerate, that city managers have to manage a growing modern African city by dealing proactively with informal sector workers, [Durban Informal Economy Policy, 2000:4]. This entails a move towards a system of registration and regulation, rationalized rental system and enterprise support. The policy advocated promotion of a mixture of trading opportunities in pavement spaces and in markets and most importantly tried to help out home-based workers. The policy recognizes pavement space as an economic and development tool, that is, sites where street traders work have different values and rentals should be levied accordingly. All these approaches are advocated in the policy with an express realization that the city has to spearhead the process through use of its valuable resources such as land and buildings, [Durban Informal Economy Policy, 2000].

Durban's Informal Economy policy explores creative ways of supporting and developing the sector in recognition that government actions have the ability to rationalize the operations of the sector. More specifically, the policy recommends a one stop, interdepartmental registration system with simplified procedures, based on one information system. The policy recognizes the primacy of site allocations policy as a site for struggle and contestations between street traders. Site allocations policy if done appropriately should support growth and provide opportunities for new entrants. Moreover the policy looks into space rentals, mandating the city administrators to transform their thinking around informal traders as small business people. The policy recommends area-based management as a tool for effective and inclusive informal sector regulation. Relatedly, specialist support to the sectors within the informal economy is seen as a means of growing informal business. Most importantly, the policy considers ways of integrating management, support and enforcement/regulation. Small enterprises support such as capital finance and training is looked into. Also, the crucial role of the capable and strengthened informal sector organizations to deal with disputes with the city administration is dealt with. Moreover, ideas of integrating environmental health pointed out as important to ensure a clean and healthy environment that is hygienic and pleasant to work in. At the same time regulation is tied in with the ideas of promotion of safety and security through local action, that crime can be fought successfully by collaborative actions between

the traders and city officials. Then in any case it is imperative to secure participation of formal business to value the contributions of the informal sector in making the economy vibrant. In issues of regulation integrated institutional structures are close to rule because too many confused cooks spoil the broth, wasting limited resources. Most of all the policy makes effort to centralize the importance of evaluation and monitoring mechanisms as a means to deal with vagaries of implementation and institute revisions if necessary. At the present time the policy is being implemented and this paper tries to point some of the issues that come up in the regulatory regime as per recommendations of the policy.

The following sections define the conceptual framework that formed the basis of this study. First, various research articles are looked in order to establish what has been done by other researchers in the field. Secondly, theoretical frameworks that have relevance to the study are explored.

## **1.2 Literature Review**

Lund's study (1998) - 'the Synthesis report' - draws on existing research findings about the informal economy, women in the informal economy, and the working conditions of street traders. It draws on studies done since 1990, and mostly restricts itself to urban research. Lund considers a very brief history of the way that the political and economic control of previous South African regimes has had implications for the lack of development of informal economy. The main gist of this work concentrates on the profile of workers in the informal economy, who they are, what they do, their working conditions and what their problems are. Lund concludes that a wealth of research has been done since 1990's. Much of the research has been fairly conventional in design: interviews at one moment in time with traders. One gets a limited sense of the dynamics of people's lives. Existing quantitative studies have not captured the gendered effects of deregulation, and the impact of globalization on the position of women in street trading, Lund (1998) observes. There is much repetition between and among many of the academic Masters dissertations: they choose a small sample, and interview in depth about more or less the same thing and this is wasteful of limited research capacity, Lund (1998) concludes.

Skinner's (1999) research presents the results of a comparative study of five South African cities - Johannesburg, Pretoria, Durban, Cape Town and East London. It is written with the interests of survivalist, or poorer street traders in mind and with a particular focus on women. This paper looks at the institutional environment within which the traders work in different cities. It gives an overview of the changing policy environment with respect to women, the informal economy, and the new integration of economic policy in local government. Furthermore, effort is taken to describe each of the five cities, selecting characteristics which are most relevant to understanding street trading. The institutional analysis considers street-trading policies, and by-laws and then analyses local government restructuring. It then considers the implications for the lives of street traders of one of the key future changes within metropolitan governments - the greater centralization of power. The report discusses three trends in urban policy governing street trading - the outsourcing of the management of street trading to trader associations, to property owners and the creation of dedicated markets. The way in which this impacts on poorer women traders is highlighted.

Small-scale qualitative research has been done by some University of Natal's Masters students on the informal sector in Durban. Naidoo (1993) looks at women and the informal sector and examines the constraints that operate on women, as a result of their productive and

reproductive roles. She asserts that women street traders have affected the form of the city for the old structure based on temporal and spatial separation has been eroded. She has demonstrated that women street traders are knowledgeable agents who actively participate in their social and spatial worlds by utilizing a variety of supportive social networks and women street traders make a difference to their lives by modifying their working conditions and renegotiating their ideas of what they can do to ensure the survival of their families.

Nair (1996) hypothesized that street trading in crafts and curios, with its various constraints and limitations provides one of the few options for women to earn an income. She concludes that strategies aimed at stimulating the informal sector should be aware of many facets of the sector: survivalist and growing enterprises. She emphasizes the need for increased support services and recognition that there is increasing feminization of poverty.

Ndinda's (1997) fieldwork reinforces the evidence that women street traders experience specific problems related to 'recognition of their work, capital/credit, shelter, accommodation, crime and laws that impede their business operations'. Moreover, these women are forced to resort to individual and collective strategies to make the best of the actual conditions on the street. Ndinda's thesis is useful because it links the sustainability and effectiveness of policy interventions to recognition of women's own coping strategies.

Witt (2000) uses a very interesting methodology in the sub-sectoral study of the informal economy, a 'filières' framework that explores the production, marketing and distribution of fresh produce in the EU. The usefulness of this methodology is that instead of following the street trader, as the case in most studies of this nature, it follows the vegetable, thereby illuminating the linkages between the formal and informal sector. Witt (2000) concludes in relation to these linkages that there is a real danger that a policy geared towards an informal economy may create an environment where illegal informal activities thrive. Formal sector operators may take advantage of progressive Informal Economy Policy by escaping formal sector regulation and business practice.

Valodia (2000) looks at the nature of the regulatory environment and the incentive structure fashioned by the South African state, drawing out how this relates to the issue of gender in informal and flexible work in South Africa. In order to make the issues tractable, he focuses on trade and industrial policy and labour regulations. 'The paper outlines the growth and extent of atypical forms of employment in South Africa, and the gender dimensions of this... then examines the character of the ANC government's trade and industrial policy and labour market policies, and analyses the extent to which these policies take account of, and how they impact on, women's position in the labour market and the growth of atypical forms of work'. He argues that, notwithstanding its progressive gender policies in other arenas, the trade and industrial policy of the South African state has not and does not take due cognisance of the structural position of women in the labour market. As a result, these policies fail to respond, appropriately, to the growth of informalisation and flexibilisation. The nature of labour market policy on the other hand displays a more nuanced appreciation for and an understanding of the insecure and exploitative nature of atypical forms of work that many women find themselves in. (Valodia, 2000).

Grest (2001) examines the relationship between urban management, emerging forms of urban citizenship and the informal economy in Warwick Junction. He 'explores the effects of the complex transitions currently underway in South African cities and their interrelatedness: the ending of apartheid, the collapse of urban influx control, the conquest of new urban spaces by

those formerly excluded, the democratization of local government and the emergence of a new developmental mandate for city administrations.’ It is further noted that combined with these transitions are some effects of globalization, exacerbated the post-apartheid normalization of socio-economic and political regime are changing urban form of the city of Durban. Job losses due to the opening of markets and greater competition, growth informal economy, informalisation and decentralization of business, and the incorporation of South African cities into the circuits of international criminal syndicates, also account for changing urban form, [Grest 2001].

The paper highlights issues of policy making and consultation with organized interests in street trading by: outlining ‘organization and activities of informal traders, grouped within the Self Employed Women’s Union and the Informal Traders’ Management Board, and their relations with urban management structures’ Grest (2001). This paper is useful because it further looks at some selected street level practices as a means of discussing the complex relationship between questions of urban citizenship, regulation, and economic development in the central city area. The paper concludes with some comments on questions of central city sustainability in the light of the more general trends, and the competing needs of informal traders, property owners, tenants and urban managers, Grest (2001).

Chen et al (2001) provide a conceptual and normative framework – with promising examples - for developing an appropriate policy approach to the informal economy in different contexts. The paper describes key aspects of the informal economy – its size and composition, its linkages with both poverty and growth, its legal status, and the risks and opportunities associated with it. It examines the debate over whether governments and other stakeholders should intervene in the support for and regulation of the informal economy. The paper discusses how four different functional areas of policy relate to the informal economy: macro economic policies, urban policies and regulations, labour policies and standards, and social protection policies. This paper is highly relevant for research on women and the informal sector because firstly, it ‘seeks to broaden the policy lens from an (almost) exclusive focus on micro-level interventions - including single “magic bullet” solutions and a myriad of targeted schemes – to a wider structural or systemic perspective’. Secondly, the description of two examples of inclusive policy-making processes relating to the informal sector: the National Labour Commission in India and the Informal Economy Policy Review in Durban, South Africa, also makes the paper relevant for this research. Thirdly, in its conclusion it comes up with some principles and guidelines for facing the challenge of undertaking inclusive policy processes to develop appropriate policies for the informal economy in different contexts.

Most importantly the usefulness of this paper comes from ‘the experience, knowledge, and findings of the activists, researchers, and policy makers in a global research-policy network called Women in Informal Employment: Globalizing and Organizing (WIEGO). WIEGO is part of the international movement of women in the informal economy inspired by the Self-Employed Women’s Association (SEWA) in India.’ Carr et al (2001) note. This movement also includes two international alliances of organizations representing (or working with) home-based workers and street vendors called, respectively, HomeNet and StreetNet, (Carr et al, 2001).

There are also some quantitative studies on issues related to women street traders in eThekweni Unicity. These include the Street traders Survey by Data Research Africa (DRA). This study (1998) was aimed at assisting the Urban Strategy Department of the City of Durban with planning for enterprises trading from public space. Furthermore, the study was

aimed at finding out information to plan for infrastructure development, small business growth, membership in trade associations, and officials' engagement with street traders, and township development. Overall statistics were able to provide a picture of street traders access to markets, their economic sustainability and security, (DRA, 1998). Most importantly the research was able to enumerate that in a total of 19 865 street traders in the sample, the majority, 11 872 were women (61%).

**Table 1: Gender and activities in the informal economy in Durban Metropolitan area**

	male	female	(missing N)	Total N	% of all traders
Selling any food	15.5	31.5	(226)	9171	<b>46.2</b>
Selling any other product	13.7	20	(54)	6459	<b>32.5</b>
Other activities	10.8	11	(115)	4235	<b>21.3</b>
<b>Total</b>	<b>40</b>	<b>62.5</b>			<b>100</b>

**Source: DRA (1998) adapted by Lund (1998)**

The research findings in Table 1 show that, in regard to number of street traders by gender and sector, selling food and fresh produce is the most popular activity for women trading in the streets.

Lund (1998) comments in regard to the DRA findings that there are many more men than women in the 21-30 year age group, and this then changes until in the 41-50 year age group, there are many more women than men. Men are thus entering street trading earlier and withdrawing earlier. Women are more likely to start later and trade when they are older. These patterns are clearly related to childbearing and rearing, and possibly to men leaving the informal sector to take up formal work opportunities, or to become successful entrepreneurs operating away from the streets in built premises, [Lund, 1998]. This is related to educational levels, more women (14.4%) than men (8.6%) have no schooling. The DRA study also found that 81% of women and 87% of men could read and write their mother tongue, but only half of women (and two thirds of men) could read and write English, Lund (1998) observes. This survey concludes that because there is a preponderance of women in the sector, their continued marginalization in the formulation of policy and programmes requires this finding to be re-emphasized.

Another quantitative research report related to the operations of the street trading in eThekweni Unicity is the Greater Warwick Avenue and Grey Street Urban Renewal Project - Economic Opportunities Study, (1998) prepared by Markeswicz English, Raewyn Peart and CSIR for the Urban Planning and Design Department of the Metro. The study report sets out to provide an economic and policy contextualisation within which economic strategy and economic action are developed. The study provides an economic profile of the area, briefly describing the interlinkages between the various economic activities: formal market activities, formal retailing, transport related activities, informal trade and service provision. Most importantly the report places these economic activities within the broader context of the eThekweni Unicity in regard to employment creation and contribution to the development of the tourism sector. Moreover, the report identifies some of the obstacles to economic development in the area. In regard to informal trade, it echoes the same concerns raised in Data Research Africa's study. These include women street traders fear for their security and being victims of crime, shortage of storage, cheap overnight accommodation, crèche facilities,

ablution facilities and shelter from the elements. The report also looks at policies at the metropolitan, provincial and national government levels that could impact on the economic strategy of the area. The report provides some broad strategic directions that could be adapted in formulation of economic strategy, from leaving things as they are to radical overtures such as increasing economic thresholds and bridging the informal/ formal economy divide. The report's usefulness is in the comprehensive way it has identified interlinked impacts of various economic sectors and actions on the viability of street trading to sustain the livelihoods of those who depend on it.

Operation Jumpstart commissioned Mike Maughan-Brown and Associates with Seneque Smit and Associates to prepare concept proposals for the Warwick Avenue Area with the purpose of assisting to create necessary preconditions for development. The usefulness of this 1993 research lies in its comprehensive situation analysis. The report documents the number of traders, approximately 3000 by 1993. The report looks at management and control by city authorities, designated trading areas, some legislation on street trading and problems of street traders. The report provides an interesting commentary on constraints to development such as lack of planning, deteriorating physical condition of the area, environmental degradation, conflicting land uses, animosity between formal/ informal business operators, land tenure issues and inflexible transport plans. This report goes further to set out concept proposals for the Warwick Avenue Area to maximize development.

### **1.3 Theoretical framework**

The ideas of the following theoretical and policy approaches are examined in order to establish their usefulness in explaining the new Informal Economy Policy and actual conditions of women trading on the streets. This is done with the belief that trying to situate the politics and practice of regulation feeds in ideas about what is the informal sector and how it manifests itself. Questions being asked in this material revolve around setting the basic tenets of an approach. Establishing its usefulness for conceptual definition of women street traders and forms of regulation.

Informal/formal sector linkage approaches include analyses that acknowledge that formal sector depends on the informal sector for cheap inputs and wage goods for its workers. Informal sector in turn depends on formal sector for clients and income. These three theories are summarised by Chen et al (2001) as, dualism, structuralism and legalism.

#### **Dualism**

This theory views the informal economy as a separate marginal sector – not directly linked to the formal sector - that provides income or a safety net for the poor (ILO 1972). The basic belief is that the informal sector exists or persists because economic growth or industrial development has failed, as yet, to absorb those who work in the informal sector. This theory is interesting because it asserts that street trading is a marginal sector which does not have much relation to the formal sector beside providing temporary respite for people waiting for formal sector jobs. This research paper seeks to prove otherwise. The dualists, according to Carr and Chen (2001) view the informal economy as a separate marginal sector – not directly linked to the formal sector. The informal sector as it is studied in economics draws its framework from the "dual-sector" economy model outlined by Arthur Lewis in 1954 as noted by Capozzola (1991). Lewis believed LDC economies to be comprised of two sectors: the traditional agricultural and the modern industrial. The Harris-Todaro model of 1970 further defined

informality, [Capozzola, 1991]. Large numbers of rural peasants without the skills necessary to be absorbed into the urban industrial workforce were migrating to urban areas. In the meantime, they set up small-scale independent businesses in order to meet their basic needs. Harris and Todaro (1970) cited in Capozzola (1991) saw this as a temporary phenomenon; individuals would pursue jobs in the informal sector only until they found employment in the urban industrial sector. They argue that the informal economy exists or persists because economic growth or industrial development has failed, as yet, to absorb those who work in the informal economy. The dualists subscribe to the notion that there are few (if any) power relationships between those who work in the informal and the formal economies. This study tries to look into the nature of informal economic activity and regulation and found this assertion to be an inaccurate account of street trading especially the relationship between allocations policy, regulation and conditions of transition. Street trading is hardly transient, it is the view which is followed in this research that it is a permanent feature of urban life.

### **Structuralism**

This perspective views the informal sector as being subordinated to the formal sector (Castells and Portes, 1991). This perspective argues that, in order to reduce their labour and input costs and thereby increase their competitiveness, privileged capitalists in the formal sector seek to erode employment relations and subordinate petty producers and traders, Carr and Chen (2001) note. The structuralists subscribe to the notion that the formal economy exerts a dominant power relationship over the informal economy in its own interests. In this perspective, street traders are seen as fronts for bigger formal traders. This theory provides a useful angle in regard to the relationship between regulation and development of the street trading sector. Castells and Portes (1989) posit in their articulation of the structure of the informal economy that the following three elements deserve special attention when looking at informal sector activities. (1) The systemic connection with the formal economy, (2) the special characteristics of labour employed in informal activities and (3) government's attitude toward the non-regulated sector. Structuralism asserts that the informal sector activities are integrated into formal sector activities. Castells and Portes (1989) do assert that research during the last ten years shows consistently that the informal sector is an integral component of total economies, rather than a marginal appendix to them. 'The specialized networks formed by unregulated enterprises free large firms from the constraints imposed upon them by social control and institutional norms,' argue Castells and Portes (1989). Furthermore, it is noted that the economy in most countries tends to work in a two part system whose boundaries and interactions are determined by the political orientation of government and other social variables in place, [Castells and Portes, 1989]. These two levels of the economy have little to do with traditional dualist distinction between 'monopoly capital' and 'competitive capital'. This is because large corporations in the formal business sector may engage in sharp competition and small businesses often operate within a captive market as extensions of large firms, [Castells and Portes, 1989]. In this way structural deregulation of the economies with concomitant informalization, and progressive policy developments only serve to benefit formal business to spill over and capture informal sector operators.

Workers in the informal sector tend to have specific characteristics that can be subsumed under *downgraded labour*, [Sassen-Koob, 1984] cited in Castells and Portes (1989). As it is the case in the street trading sector in South African cities, women are mostly survivalist, with a lower living wage and fewer benefits as compared to the formal sector, as Lund et al (2000) have demonstrated. Moreover, although those in informal activities are frequently harassed, the informal sector, as a whole tends to develop under the auspices of government tolerance, [Castells and Portes 1989]. The Unicity does realize the crucial nature of informal sector

activities in spurring economic growth in the city and generating much needed jobs for the urban masses, that is the main reason for its concerted effort to plan for and implement the new Informal Economy Policy.

According to Castells and Portes (1991:32), the informal sector does not result from the intrinsic characteristics of activities but from the social definition of state intervention. The current process of worldwide economic restructuring, following a structural crisis of the global economy since the 1970's, has prompted the expansion of informal activities and realignment of the class structure of many societies, [Castells and Portes, 1991]. This perspective is useful in illuminating the dynamics of the relationship between politics of space, bureaucratic structures and street traders' livelihoods that are contested to determine certain outcomes.

### **Legalism**

This theoretical approach views the informal work arrangements – or, more specifically, unregistered businesses - as a rational response by micro-entrepreneurs to over-regulation by government bureaucracies (De Soto 1990). The argument is that, those who run businesses informally do so to reduce their costs and increase their wealth. Street traders therefore, seek to seemingly evade regulation and payment of taxes because local municipalities sometimes charge fees beyond their relative earnings and more often; licence procurement is a costly, lengthy business. This perspective highlights the dynamics of traders' interests and need for regulation. The legalists view informal work arrangements – or, more specifically, unregistered businesses - as a rational response to over-regulation by government bureaucracies. Hernando De Soto, director of Peru's Instituto Libertad y Democracia (ILD), proposed an alternate view of informal sector activity in his landmark 1986 work *El Sendero* (The Other Path). Arguing that informal sector activity is essentially a function of government regulation, De Soto has influenced policy makers from Ronald Reagan to the United States Agency for International Development (USAID) to Mario Vargas Llosa, novelist and Peruvian presidential candidate, Coppozola (1997) notes.

De Soto sees the crisis in developing countries not as a problem of too much capitalism, as Latin American dependency theorists have claimed, but rather of too little capitalism. "Capitalism has not failed Peru," argues De Soto (1986), "Peru and most other developing countries have never tried capitalism." Facing overwhelming government intervention and regulation, the urban poor have no alternative other than to pursue employment in the informal sector. People conduct extralegal business, says De Soto (1986), because leaders, military and civilian, authoritarian and totalitarian, "subject them to a pre-capitalistic mercantilism in which a small elite controls a legal system designed to reinforce the privileges of that elite." To test the relationship between Peru's "power elite" and manipulation of the economy, Coppozola (1991) notes that De Soto's institute, the ILD, conducted an experiment to determine the difficulty of legally establishing a small sewing business in Lima. The study estimated that a wealthy man, with well-placed connections and a lawyer, could get the final permit in about two hours. Working six hours a day, a Peruvian man of average income and education needed 289 days, two bribes, 11 permits, and US\$1231 to be certified. Such expenditure represents 32 times the minimum living wage in Peru. It took 43 days and US\$600 to open a fruit and vegetable stall. Women attempting to create businesses legally typically have even less success.

In brief, what distinguishes each of these schools as Carr and Chen (2001) observe, is that their underlying model of power or power relationships. The *dualists* subscribe to the notion

that there are few (if any) power relationships between those who work in the informal and the formal economies. The *structuralists* subscribe to the notion that the formal economy exerts a dominant power relationship over the informal economy in its own interests. The *legalists* subscribe to the notion that informal entrepreneurs exercise their own power – or choice – to operate informally as a response to unreasonable bureaucratic controls, [Carr and Chen, 2001]. Other observers would argue for a comprehensive framework that recognizes that the linkages and power relationships between the informal economy, formal sector, and the public sector differs according to the segment of the informal economy which one is talking about, Carr and Chen (2001) further articulate. “To illustrate, street vendors often have to vend informally because they are not incorporated in existing regulatory frameworks or because existing regulatory frameworks are too punitive or constraining” (Carr and Chen, 2001).

Under the general field of Development theories, feminist policy approaches have been promoted by feminist policy entrepreneurs within development agencies and by critics outside development institutions, since early the seventies (Goetz, 1997). The use of these gendered development theories in the analysis of issues of women street trading and policy development arises from the recognition that women are key role players in advancing the wealth and well-being of nations, and in this particular case, constitute the majority of street traders. Since development is the end to policy interventions, these theories offer an interesting angle to the sentiments of feminist scholars, practitioners and advocates working in the field.

### **Women in development (WID)**

These policies seek to improve women’s educational and employment opportunities, political representation and participation, and physical and social welfare. These efforts have been prompted by the observation that in developing countries women are being excluded from development measures, or worse, women were being involved in development processes in ways that deprived them of their independent rights, roles and access to resources. WID policies are based on the politics of access- getting women into development agencies, ensuring that more resources reach women directly. This perspective is useful for it would assert that to give women in the street trading sector more access to support structures and to create an enabling environment is a key to development. Supporting the women street traders to make a living efficiently mobilises resources and uplifts poor households. As the oldest and most dominant perspective, WID has manifestly influenced the course of the field, [Visvanathan, 1997:17]. Its origins can be traced back to the early 1970s after the publication of Boserup’s (1970) book, *Women’s role in Economic Development*. This book was able to clearly document the regressive impact of development initiatives on women’s lives and livelihoods. American liberal feminists, to advocate the integration of women in development, as producers and workers, articulated the term WID. Moser (1993), Tinker (1997) document the evolution of the historical events and theoretical discourses that helped secure the place of WID in development theory and practice.

The theoretical base of WID is linked to the assumptions of the modernization theory of the 1950s to 1970s. Its programmes generally stress western values and target individuals as the catalysts for social change, (Visvanathan, 1997) further notes. Modernisation theories are generally grounded in the worldview that sees developing countries societies as authoritarian and male-dominated, thus it appears to show insensitivity to the plight of women. As Visvanathan (1997) contends, liberal feminists have accepted and endorsed this worldview. By contrast, progressive feminist critiques of modernization theory have found it implicitly

gendered and its characterization of women distorted and detrimental. By the 1970s it was realised that the benefits of modernisation had somehow not reached women and in some sectors undermined their existing position. The focus of WID has been to integrate women in economic systems, through the necessary legal and administrative changes. In the case of women street traders and the impact of the changing policy and institutional environment, it is immediately visible that advocacy to engender policy, which drives departmental mandates and operational realities in the eThekweni Unicity, would be the prime target of WID policy influence.

The contribution of WID has been crucial because women's questions became visible in the arena of development theory and practice. In mainstreaming women's issues in development agencies, significant gains were made to conscientize governments and other development partners to the importance of women in increasing the productive capacity and economic efficiency of countries. Critiques of WID tended to centre on its failure to take account of the differences in women's situations, especially in terms of their reproductive role and responsibilities within the household; on its tendency to assume that all women are a homogeneous group, without taking into account cross-cutting factors such as class and ethnicity and on the exclusive focus on women, with no attention paid to gender relations and the unequal power relations between genders, note Porter and Judd (1999:10). Rathgeber (1990) posits that WID was solidly grounded in the traditional modernization theory that assumed wrongly that women were not integrated in the process of development. In this way, it implicitly accepted the existing social structures without questioning the sources of women's subordination and oppression. WID is criticized for being a non-confrontational approach for it does not question why women have not benefited from development strategies.

### **Gender and Development (GAD)**

The slow process of WID policies in equalizing power in gender relations led to the shift from WID to GAD. More than a change in terminology, this represented a reassessment of concepts, analysis and approaches in gender equity policies. The realisation that the sluggish rate of change in women's material condition related to women's lesser power in social relations led to moving feminist policies beyond access to recognition that redistributing power in social relations is important. The GAD approach stresses direct challenges to male cultural, social; and economic privileges, so that women are enabled to make equal social and economic profit out of the same resources. It goes beyond just creating enabling environments for women to make money in street trading to empowering them to put themselves in a better position in society relative to men. GAD emerged as an alternative to WID and represents the confluence of diverse feminist perspectives. Visvanathan (1997) notes that GAD draws its heritage from feminist activism in the women's movement as well as from a schism in the ranks of Marxist feminists, many of whom challenged the notion that class analysis alone could explain women's position in society. The socialist feminists that dominate this theory have incorporated lessons learned from WID failures and its subsequent revisions. The outcome is an analytical framework that emphasises gender relations in both productive and reproductive spheres. According to Young (1992) the usefulness of GAD in engendering policy analysis is that it focuses not just on women as with WID, but on social, economic and political relations between men and women in societies. GAD uses gender relations rather than 'women' as a category of analysis and views men as potential support base for women in development, (Visvanathan, 1997).

The focus of GAD offers a holistic perspective looking at all aspects of women's lives, Rathbeger (1990) asserts. It treats development as a complex process that is influenced by a variety of social forces. Young (1992) sees GAD expectations as inclusive of such factors as the states' crucial role in providing support social reproduction and recognition on the part of the scholars to locate their analyses in gender divisions, generational differences, concerns for economic independence and political activism. GAD goes beyond the call for special policy targeting for women street traders to transforming those societal pressures that constrain women to realise their fullest potential. Keeber (1994) also situates the contributions of feminist structuralists' capital accumulation and social relations of gender as a clear exposition of GAD policy approach. In her depiction of this group, she underscores GAD's common base with Marxist and Dependency approaches that seek structural reforms. Elaborating on the implications, Young (1992) points out that GAD goes beyond Marxist analysis and its preoccupation with economics and its sweeping generalisations of patriarchal oppression. GAD connects productive and reproductive work with social relations of gender. The contribution of the GAD policy approach to development and feminist advocacy has been inclusiveness-since it welcomes gender-conscious men without alienating the ethos of WID's female solidarity. Moreover it recognises the women's contribution inside and outside the household, including non-commodity production. Most importantly GAD succeeded in entrenching the realisation that women are agents of development within potentially enabling/disabling cultural contexts. (Ostegaard,1992).

#### **1.4 Conclusion**

This section has shown that the street trading context in the city is as much determined by history as much as it makes the history. That is, the regulatory environment is the cause and effect of the city. Cities provide the physical, social and political arena to facilitate production, distribution and accumulation at which in a local level politics are influenced by politics of consumption. This means that street traders do not just struggle to legitimise trade in public space but are part of the overall politics by urban citizens to find their place in the city. The thematic discussion on the urban histories and regulatory regimes reveals that Durban has long grappled with competing claims to space and that access and rights to this space have been linked to the ideas of race, public health, housing and labour control. This temporal analysis also shows that at every period city administrators always grappled with policy interventions on contested space, and have been aware the actions of the administration could affect growth and particular characteristics of the informal sector.

Control over street traders and space in the city has changed, but there are continuities and discontinuities that transcend temporal dimensions. In colonial times, consolidation of business development and the racial hysteria of the sanitation syndrome determined the place of non-white inhabitants in the city. Exclusionary legislation and town planning practices served to make whatever trading activity that black informal traders could engage in difficult. Only during late the apartheid period, when it became morally indefensible and costly to the state did the city grudgingly accept the place of street traders in the city core. The transition era shows the invasion and re-conquering of the streets by an influx of street traders that not only brought problems for city managers but for the viability of traders' businesses. The lenient regulatory regime led to the street trading's brief flirtation with anarchy. The city has been slowly gaining some sort of regulatory control over use of space in the city, the Informal Economy Policy of 2000 being one of the most innovative yet progressive attempts to instil a new regulatory regime.

The literature review reveals a number of interesting trends. As compared to Lund (1998) synthesis of literature on street trading in South African cities, there is a lot more diversity of topics and findings on the subject informal economy and working conditions of its operators. There is a nascent, highly useful material specifically on street traders and urban policy and yet to be developed material on regulatory regimes and informal economy sector. The theoretical framework revealed useful approaches to informal sector, especially those that describe the characteristics of informality in relation to formality of business enterprise. Moreover the feminist approaches documented efforts to conceptually integrate the contribution of women in urban economies while realising the need and potential of street trading as a means to realise practical and strategic gender needs.

The policy context and conceptual framework reveal that relationships between the variables of the informal sector, gender, space and legality are fluid at any given time. The conceptual framework clarifies the manifestation of reality set in the urban historiography. The overall links that can be drawn are that the context of street trading and regulation is highly contested not only in theoretical definitions but also in the arena of lived experience. At the same time, street traders are now in a better position to get their voice heard as contributors to the local economy.

## SECTION 2 -The profile of Street trading in eThekweni Unicity

### 2.0 Introduction

This chapter looks at the institutional profile of street trading in the city, in the belief that whatever development is made in the sector relies heavily on the bureaucratic and political commitment of the city authorities. As demonstrated in the preceding section, policy is the cause and effect of a particular set of local socio-economic and political currents. The changing fortunes of the street trading sector can be said to rely on the dynamism between local economic power brokers [big business] and the struggles of the street traders to get their issues tabled on the city hall's agenda. Looking at issues of institutional profile, the paper tries to map out the way that the city operationalises the regulatory regime on the ground. This section tries to find out the loops of policy process: legislation and execution. For the purposes of this research, the profile of the sector has to be understood in relation to the events from the global to the local level of governance and economy that shaped the actions of local politicians and bureaucrats in dealing with informal sector operators since 1994.

South Africa's 1994 democratic national elections and the subsequent local government elections launched the country into a period of far-reaching institutional restructuring, note Hall and Robbins (2002:43). There was a flurry of activity to rid the newly elected government of legacies of apartheid and to develop the country and its peoples. If this was not enough of a challenge as Hall and Robbins (2002:43) note, the political changes also brought into cities, the effects of globalization, which Grest (2001) argues were felt more strongly with the post-apartheid normalization of economic and social life.

*'These include the loss of employment attendant on the opening of markets and greater competition for local manufacturing industry, the consequent growth in survivalist economic activities in cities, a tendency towards the decentralization of business- the flight from the central city, the influx of economic migrants and refugees from the rest of Africa, and the incorporation of South African cities into the circuits of international criminal syndicates'* [Grest, 2001].

It is this context that South African cities have been forced to engage in serious soul-searching about their role in the new political era while facing up to the complex and dynamic global economic forces. (Hall and Robbins, 2002:43). Matters of governance and delivery in cities have gained potency as the realisation crept in that cities are more than just habited spaces but fulcrums of whole economies. This means therefore that economic development is not merely a consequence but a guiding rationale behind the existence of local government. Concepts relating to the city's role as an economic agent, mediator of economic processes and a provider of economic services have been central to post apartheid city formulation, Hall and Robbins (2002:43) note. The tenets that have been espoused in the legislation as dealt with in the preceding section show the metro as having made significant progress since 1994. The mandate to oversee local economic development that has to take cognisance of issues of supporting the growth of small businesses to emancipation of women as economic actors has seen serious attempts in improving the livelihoods of many poor families in the city.

All these local economic development ideas feed into the existence and debates surrounding street trading in the city of Durban. This is due to the realisation that the informal economy has a function to fulfil and is here to stay. At the same time there is need to understand that its accommodation does not mean degeneration to anarchy, that public space is liable to municipal control and its usage comes with attendant rights and obligations. The new Unicity managers are charged with the process of growing the sector and formalising its operators and at the same time are tasked with implementing appropriate regulations for street trading. The

importance of policy and implementation in the informal economy comes with an urgent need by urban citizens for government delivery of services. However, Hall and Robbins (2002:43) posit that the policy tools to fulfil economic mandates of the city are weak and the possibilities and limits of the new focus need to be understood as products of the political and bureaucratic context in which they are created.

This section analyses the profile of street trading in the city bureaucracy covering the location of responsibility for street trading and the informal economy in city structures, looking at a range of issues about officials and councillors concerned with it. It then considers the implications of local government restructuring for the lives of street traders and attempts to update Skinner (1999) question 'whether this has led to greater coordination, more budgetary allocations and better treatment of issues arising in the street trading communities.'

The issue of the profile of street trading is important here because changes determine the sphere of influence that street trading might win in the competition of agendas that city managers have to deal with. Moreover this section is justified because having the most progressive policy may not be enough, a policy can be turn out to be no more than rhetoric. Policies can be ignored, especially if there was inadequate 'buy in' from relevant stakeholders. Policies might be accepted in principle but not taken seriously, particularly if there are competing agendas or inadequate staff. Policy intent can be subverted along the way, which is likely when people who are translating it into regulations or budget allocations do not understand fully the purpose of policy, or worse, do not agree with it.

Related to preceding issues of accommodation of street trading and the need for policy guidelines for the sector, the basic point that can be made is that street traders are not a homogeneous group. Some are better resourced than others. However the fact that the great majority are poor drives the need more than ever for city managers to deal with street traders by:

*'Acknowledging their relationship with the formal sector - they are already an integral part of the urban economy; recognising that they have different operational characteristics and needs; recognising that they have the potential to add to the cultural character of the city; acknowledging that they face many difficulties, hardships and disadvantages; and understanding that there are many forms of informal trade/activity, each of which have different requirements in terms of location and infrastructure.'* [Khoza and Naidoo, 1998].

The section on the policy environment shows the city as having made progress in this instance. But then there is an urgent need to check if there is need for policy and operational revision between the immediate post-apartheid period and the present. We now turn to look at the particular characteristics of the city and the authorities charged with issues that affect the profile of street trading.

In 1996, the Metropolitan Council area of Durban covered 1 366 km<sup>2</sup> and included a population of over 2.3 million people, [DMC, 1996]. The local government election held on 5 December 2000 ushered in a new system<sup>2</sup> for municipal authorities in Durban. The local

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<sup>2</sup> The eThekweni Municipal Area, (see map in appendix 1). This area stretches from Umkomaas in the south, including some tribal area in Umbumbulu, to Tongaat in the north, moving inland to some tribal area in Ndwedwe, and ends at Cato Ridge in the west. The EMA covers an area of 2297 square kilometres, with a population of approximately 3 million people. The newly demarcated boundary increased the Durban Metropolitan area by 68% although increasing the population by only 9%.

government election enabled the amalgamation of the former seven council areas and the incorporation of some tribal land into one metropolitan area<sup>3</sup>. The majority of the newly incorporated areas are very rural in character with 50% of the area being used for subsistence farming and only 2% under urban settlement. These areas have little or very poorly maintained infrastructure. Being incorporated into the EMA brings hope of access to better services and opportunities to these residents. The provision of basic services to these areas is the challenge that council now faces.

### **The political and bureaucratic transitions**

The relevance of the following discussion on the changes within the municipality for this study is to set the context within which the institutional profile of street trading is being decided. This section looks at the political and bureaucratic changes that the municipality has gone through to explain the particular idiosyncrasies that seem to influence policymaking and management of street trading.

Politically the former metro council was comprised of proportionally elected councillors and indirectly elected representatives of the local councils that fell within Durban Metro Area. The mayor was a ceremonial head of the council and was indirectly elected while the Executive Committee acted as the highest decision making body. The Council acted through a series of standing committees to which departments reported. Following the 1996 elections, the ANC held the balance of power with representation from the National Party, Democratic Party, Minority Front and Inkhata Freedom Party, candidates representing Ratepayers Associations and some Independents.

Subsequent to the December 2000 elections, as the new council structure in appendix 2 illustrates, there has been the introduction of a single Unicity council, where under the provisions of the Municipal Systems and Municipal Structures Acts the Executive Committee has full Council powers and is chaired by the Mayor. Under the new dispensation, the eThekweni council has 200 councillors. One hundred of them are elected ward councillors and the other hundred candidates were elected to represent political parties on the basis of proportional representation. The Mayor is the chairman of the Executive Committee and performs the duties, including any ceremonial functions, and exercises the powers delegated to the mayor by the municipal council or executive committee. The mayor decides when and where 9 members of EXCO meet. As specified in the municipal website, <http://www.durban.gov.za/council/index.htm> [15/06/03] it is composed in such a way that parties and interests represented in the Unicity council are represented in EXCO in the same proportion. The Executive committee is the management or principal committee of the municipality. It receives reports from other committees of council and must forward these reports together with EXCO recommendations to the full council. The council has six committees and every councillor serves on at least one committee. Members of the Executive Committee are tasked with the responsibility of chairing the supporting committees<sup>4</sup> that meet at least once a month. They have certain delegated powers by which they take decisions on behalf of the council, and are required to report and make recommendations to Council on matters falling within their spheres of operation. In regard to the office of the speaker, the Local Government Municipal Structures Act provides that each municipal council must have

<sup>3</sup> There are seven operational entities within the EMA. These are the Metro, Central, Inner West, Outer West, North, South and Umkomaas Operational Entities.

<sup>4</sup> The supporting committees are: Tender and Contract Committee, Town Planning Health and Safety, Economic Development and Planning, Infrastructure, Transport, Culture and Recreation, Housing, Land and Human Resources

a chairperson who is a Speaker. The council elects the Speaker at the first sitting of the council after the local government elections. The Speaker acts as chair at council meetings, and ensures compliance with the council's code of conduct, rules and orders. He or she also ensures the proper functioning of the legislative side of the council, and is required to be impartial. The Speaker also ensures community participation in legislative initiatives and should communicate with the public on the performance of the council.

The city administration has been undergoing a very slow but useful process of restructuring, with the realization that cities of today are not just municipalities of old that depended on national level government for direction and funds but are in themselves engines of national economic growth. The administrative reorganization of eThekweni municipality seeks to address a myriad of interrelated challenges. First, at the international context, challenges that the city is facing include tapping into the positive effects of globalization while staying off its vagaries, fending off the competition for commodity markets and foreign investment with other cities in both South Africa and established global cities. Durban is also being forced to seek out high technology, nurture partnerships and knowledge-based development. The high average urbanization rates are increasingly putting pressure on the city's resources, needing innovative problem solvers in the administration. Negative pressures on environmental resources and demands for sustainable livelihoods, services and goods also feed into these anxieties. Increased informalisation and casualisation of the workforce, that leading more able-bodied workers to seek refuge in the informal sector has come up with new regulatory challenges for the municipality.

As the municipal website <http://www.durban.gov.za/council/index.htm> [15/06/03] documents, the combined legacies of colonialism, racism, sexism and capitalism on the society continue to determine the actions and policies of the municipality. Therefore building a strong local government sphere and enhancing its status within a stable co-operative governance framework, is a key goal of eThekweni Unicity. Building stable institutional and administrative systems in local government, deepening local democracy and accountability, improving and accelerating service delivery and economic development, and building financially viable local government are therefore primary reasons behind the logic of the creation of the new Unicity. eThekweni's critical developmental challenges as specified by the Monitor report (2000) include: Economic growth, jobs, income, meeting basic needs, alleviating poverty, developing people, managing HIV/AIDS, ensuring safe and secure environments, striving for sustainability.

Erstwhile bureaucracy was deficient in many ways. As identified in the municipal website <http://www.durban.gov.za/council/index.htm> [15/06/03] the bureaucracy was largely a silo-based institution, that had fragmented planning and delivery, an insufficient strategic focus, unclear measures of management performance, and unrepresentative top management. This meant therefore that to deal with these new challenges things had to change. In trying to fashion the bureaucracy at par with these new mandates, transformation was prioritized as: converting existing service units and departments into project-focused clusters that are organized to achieve common business processes as well as integrate and deliver on a wide range of outputs, [<http://www.durban.gov.za/council/index.htm> [15/06/03]].

In so doing, attempts are made to build internal capacity, but also developing partnerships, and where needed, outsourcing functions which are not the core business of the municipality. The municipal website posits that this system is meant to ensure management has clear performance agreements with all employees having clear job descriptions, and to allow for a

management team which ensures that an appropriate mix of skills and demographic characteristics exists to lead the administration. The bureaucracy of the new Unicity depicted the appendix 3 reflects an attempt to create a more coordinated approach to city management that recognizes the new challenges that the city has to deal with<sup>5</sup>.  
[<http://www.durban.gov.za/council/index.htm> [15/06/03]]

This analysis of the profile of street trading in the city bureaucracy is driven by recognition that the implementation of policies and operational regulations is defined and shaped by the organisational context. Bureaucratic capacity has a huge impact on co-ordination. In Durban, the key elements of the context are the considerable uncertainty over how to achieve appropriate regulation for street traders given that implementation can be pursued through the actions of relatively powerful service-providing line function departments.

## **2.1 Institutional location**

In looking at the issues of institutional location of street trading in city bureaucratic structures, much can be learned about the priority given to the activity, for location determines status/authority and standing in communication flows, (Skinner, 1999). Institutional site can make a big difference to profile, to the efficiency of communications and to chances of being allocated resources. We turn to look at the Sustainable Development and City Enterprises cluster a more closely because this is where the branch of Informal Trading and Small Business Opportunities is located. This office assists the City Manager in the development, co-ordination and implementation of the city's Corporate Plan, including: sustainable development, co-ordination of the integrated development plan (IDP), co-ordination of priority and special projects, co-ordination of city entities, area based management. ITSBO is a branch within the Business Support Unit whose aim is generally to ensure the development of a comprehensive business support system including support of large, medium and micro enterprise sector, support and management of informal trade, regional investment facilitation, rural economic development support. (See the ITSBO organogram is attached in appendix 4.)

Looking at the issue of location and the profile of street trading in the city, the connection that is being made is that in many cities, street trading is often placed in health or traffic departments, creating an impression that officials perceive street traders a health or traffic hazards. (Skinner, 1999). In Durban the city set a positive trend of locating affairs of informal economy in the Informal Trade and Small Business Opportunities (ITSBO) under the Business Support Unit. Functions of ITSBO are depicted below in Fig 1.

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<sup>5</sup> In regard to communication lines, municipal website <http://www.durban.gov.za/council/index.htm> [15/06/03] the Manager reports to the Council, its Executive Committee and its office-bearers (particularly the Mayor and Speaker). The Unicity Administration is organized as follows: Manager, with some Offices reporting directly to the Manager; Deputy Managers who report to the Manager and have defined strategic and line function responsibilities; Heads of Units which report to specific Deputy Managers; and Departments which report to Heads of Units.

**Fig 1: Functions of Informal Trade and Small Business Opportunities**

<i>Manage</i>	<i>Development and upgrading</i>
<ul style="list-style-type: none"> <li>• Existing and new trading areas</li> <li>• Restricted and non-restricted zones</li> <li>• Handle complaints</li> <li>• Liase and control permits</li> <li>• Issue and control permits</li> <li>• Liase with other relevant departments and the private sector</li> <li>• Act as PRO for city on informal trading issues</li> <li>• Control monthly payments of traders</li> <li>• Take control of sites</li> <li>• Allocate trading sites</li> </ul>	<ul style="list-style-type: none"> <li>• Develop and upgrade new trading areas through the establishment of a multidisciplinary team</li> <li>• Identify suitable land</li> <li>• Establish running costs</li> <li>• Assess attainable revenue</li> <li>• Report to appropriate committee</li> <li>• Generate final drawings</li> <li>• Hand over sites to contractors</li> </ul>

Source: Markewicz English and Associates, 1997:6.

However, attention has to be drawn to other departments which have dealings with traders affecting conditions on the ground. These are categorised by Khoza and Naidoo (1998) to include:

*The Durban City Police* is crucial in this respect because in the past, police played a crucial role in the suppression of informal trading activities in the DMA. The Durban City Police are called in to assist the ITSBO in removing traders who contravene the street trading by-laws. They are also mandated to confiscate goods and equipment in the possession of these traders. Additionally the police act in their own capacity in enforcing the street trading by-laws. The new Informal Economy Policy (2000:15) documents that the problem has been that SAPS and City Police have different functions, posing major problems of coordination in street trading issues. Moreover, rapid changes in the police due to constantly evolving staff, human and skills shortage leave ITSBO at loss.

*The Department of Urban Planning and Design* initiates informal trading projects and provides assistance on an agency basis to the ITSBO. This assistance is in the form of design and planning skills that the ITSBO does not presently possess. ITSBO has no design capacity; it uses the design skills of other departments in their informal trade development projects. Although the department is paying for these skills from other departments, it has no control over these departments.

*The Department of Traffic and Transportation* provides facilities at any newly established taxi or bus ranks, manages traders located at these ranks, and provides toilets for commuters and traders. The ITSBO is responsible for the provision of trading facilities at existing ranks.

*The Department of Architecture* assists ITSBO and other departments in the design and planning of informal trading facilities and infrastructure. It acts as a service department and has no capital budget.

*The Department of Health* has the role of monitoring trading activities ensuring health regulations, especially those relating to the sale of food, are adhered to. The department has also developed training materials and programmes on occupational health, with material support from the private sector. Traders have been offered a wide-ranging programme of

health education, through weekly lectures and demonstrations, with incentives for attendance and the credentialing system. (Interim Report, TTT, 2000).

*The Department of Land Transactions* has dealings with issues of street trading in the city because when a portion of land has been identified for the establishment of trading infrastructure, the Department of Land Transactions determines the owner of that particular portion. This means ITSBO relies heavily on the department for much of the operationalisation of its spatial allocation policy, yet does not have control over its functions.

*The Department of Parks and Recreation* is responsible for maintenance of toilet facilities at taxi ranks and essentially operates as a contractor paid by the Department of Traffic and Transportation. There seem to be moves to get the taxi associations to assume responsibility for maintaining toilet facilities at the taxi ranks. This brings in the possibility of conflict between taxi operators and street traders on right to usage of ablution facilities.

The worrying factor when considering some parts of the city bureaucracy that have day-to-day dealings with street traders is that there seem to be a variety of actors. This in itself is not a bad thing. However, the multiplicity of actors, who are guided by their own line functions, poses problems for coordination of field activities that have a powerful impact on street traders. It is difficult to understand the logic of some institutional arrangements, which are further, compounded by ongoing rationalization of former local government substructures into a single Unicity council. Moreover, the separation of the promotion and enforcement arms in matters of street trading poses serious coordination issues. ITSBO is there but has no control over other departments, which means *coordination* is often a lengthy and difficult process, posing questions about the ability of different actors to implement promotive policy intent. Moreover, Khoza and Naidoo (1998) argue that although the state's response to informal traders is at present positive, there is lack of capacity within state institutions to respond to traders' needs. The provision of services to address the need for shelter, tables and chairs, and refuse removal, is not being adequately met. The city needs efficient and effective management of public space which street traders lay claim to. However the rationalisation of these interests in ways that satisfy every stakeholder is mainly dependent on the ongoing policy implementation.

## **2.2 Allocation of resources and provision of infrastructure**

Positive gains have been made in this regard because for about the past eight years, substantial amounts of money and personnel have been allocated to informal trading. Budlender (2000:1) notes that since the democratization of government in the city, the North and South-Central Local Councils allocated about R45 m for the informal trading infrastructure. The city has done well for street traders but not necessarily the invisible informal economies like homebased workers. In 1999, about R15m was spent and ITSBO had over 50 members of staff. There was a rapid increase in satellite markets, which is one indication of the city's commitment. Some infrastructure development has proven to be inappropriate such as markets/stalls in undesirable locations and/or delays in allocation policies. Interim Report of TTT (2000)

Previous budget processes were not always effective due to conflicts that arose from the prioritization process between projects, and a sense that some communities received services and infrastructure at the expense of others. There were often major delays, with the budget being approved long after the start of the new financial year, resulting in actual project implementation delays. It was felt that there was a lack of a systematic and programmatic way

of deciding on what projects would happen over a period of time, because the budgeting process had little or no relationship with the IDP or overall city strategy. [<http://www.durban.gov.za/council/index.htm> (15/06/03)]

In an attempt to articulate the changed budgeting approach and the funds that are available to ITSBO to undertake all street trading regulation and support functions, the section will look a bit more at current budgeting process. An underlying principle is that of developing underdeveloped areas, whilst at the same time maintaining areas that have been historically invested in. Budlender (2000:1) notes that the different sectors of the informal economy have different incomes, different potential for growth, differences in ease of business start-ups, different relations with formal business, different organizational ability, different demographic characteristics, and they also have different needs. Care should be taken to help those who need most help.

[<http://www.durban.gov.za/council/index.htm> (15/06/03)]

In thinking about the budgets, there are broad categories of expenditure that affect the informal sector: targeted and mainstream funds that is, expenditures that are explicitly targeted to promote economic development, or the informal economy and secondly, all other mainstream expenditures that have an intended or unintended impact. On the issue of targeted expenditure in the past, the budget of ITSBO comes to the fore. Looking at the bigger picture, the budget of the Development and Planning Department which ITSBO fell under, before the 2000 rationalisation into a unicity, accounted for the 7% of the 1999/00 operating budget of the N&SCLG<sup>6</sup>. Moreover, Development Facilitation accounted for 42% of the department's operating expenditure and 3% of the total operating budget. ITSBO accounted for 71% of the Development Facilitation operating budget and 2% of the total operating budget. In addition, the number of capital budget projects made a huge impact on resources allocated to the informal sector, notably street trading. Already in 1997/1998 the Central Councils allocated R26.657m for marketplaces, shelters, storage and tables, 4/5 of the monies being allocated for the central business district, while little went to the black townships. [Budlender, 2000].

In analysing the previous budget process it is evident that expenditure was not necessarily strategic, but instead focused on ensuring that individual projects were implemented without recognition of the key challenges [as identified in Long Term Development Framework (LTDF)] or citizens' needs. The new budget process acknowledges the reality that as a municipality there is limited funding and therefore it is important to provide for crucial strategic aspects of the city's budget up front. Similarly budgeting for aspects that have more leverage potential to harness more resources and maximize benefits is an important principle that is subscribed to. Unlike the previous budgeting processes, the IDP and recent legislation now require that the city's budget be a five-year process. Whilst the current Councillor term of office runs over the next three years, projects and programmes are proposed for the next five years to ensure continuity. This can be reviewed when new Councillors are elected. What is important about this approach is that Councillors now have a multi-year view of the budget process. They will know exactly when which projects will happen in their wards / areas. The allocation of the projects can therefore be scheduled and programmed in a way that all communities receive services over the next five years.

[<http://www.durban.gov.za/council/index.htm> (15/06/03)]

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<sup>6</sup> North and South Central Local Governments, some substructures before unification.

What is significantly different about the new approach is that all the projects are **not** allocated upfront before the end of the first financial year. Instead a more realistic, pragmatic and flexible approach is adopted. Block sums and splits are allocated and the details around exactly which projects happen on the ground is a subject for discussions and finalisation between the Councillors and citizens at the Area level. In regard to the operating budget, certain elements of the budget are fixed, and do not allow for global re-allocation. There are two components to the budget, the operating and capital components. [<http://www.durban.gov.za/council/index.htm> (15/06/03)]

Of the total municipal budget of R8.8bn, the operating budget comprises the bulk of the budget at approximately R7.3bn. What is significant to note is that only a small percentage of this operating budget is flexible, in that it is available for allocation. Most of the budget is committed to fixed costs like salaries, interest & redemption charges (interest repayments on loans to meet capital expenditure) and organisational overheads. The capital budget (approximately R1.3bn) is on the other hand mostly flexible and available for project allocation. Only a small amount is committed from previous budgets. What is significantly different about the new way of budgeting is that budgeting does not happen once off, but is a phased / staggered process. The first step in the budgeting process is to allocate the budget into broad categories of expenditure. [<http://www.durban.gov.za/council/index.htm> (15/06/03)]

What is interesting in the allocation of the capital and operating budgets is that it has become even more difficult to see exactly how much goes strictly to street trading. Moreover the flexibility of this budget process makes it problematic to track down the effects of intentional and unintentional expenditure on traders. This makes it almost impossible to account for the direct impact of these monies on women traders. This means that evaluation and monitoring processes should be more efficient while policy revisions should be done sooner. Otherwise loopholes of flexibility and discretion, though good for inclusive governance, can undo good progress that has been made in this instance.

### **Management strategy**

Durban has been exceptionally innovative in developing new models of project-based management and development, receiving national and international attention, exemplified by the Warwick Junction Project, the Cato Manor Development Association, the Beachfront Committee, all which concentrate on the development and management of particular areas in the city. City officials have spent valuable time in creating consultative relations with relevant stakeholders in the street trading sector. The relevance of a discussion of area-based management for street traders is the fact that it is an explicit strategy of managing public space and services by the city's bureaucracy.

Odendaal and others (2002) review arguments in favour of area-based management. International and national trends that favour the area-based management initiatives include their inherent sustainability and the integration of municipal functions that saves funds that could be wasted in duplicatory functions. Area-based management initiatives are comparatively inclusive and innovative. Their focus on implementation and delivery count in their favour. However, area based management does not guarantee sustainability and integration. Odendaal and others (2002) note that area-based management can perpetuate existing interests and older fragmented forms of development, which the policy might have made a conscious decision to move away from. These initiatives also have relative financial

and institutional autonomy because of sufficient funding and capacity. Their high public profile fosters political support from above and below. Area based approaches are not a stand-alone measure but need to be considered in relation to broader social and economic policies. <http://www.saplanners.org.za/SAPC/papers/TodesOdendaalCameronPP.pdf>

In justifying the city's path to area-based initiatives, Durban's Inner eThekweni Renewal Urban Management Programme leader Richard Dobson, said a twin approach of urban regeneration and urban management, is needed, (Joubert, 2003). The city council identified five areas of need ranging from rural townships to industrial areas to initiate a roll-out of services and instigate area-based management. In the city of Durban, Dobson an experienced, area-based project manager said, the advantage of working with an in-house initiative is that

*“Operating within the council enables one to stay within decision making loops, outside agencies often use the problem-by-problem solution, while working from the inside is a sustainable solution. During the past two years between R12m and R14m has been invested in Durban's inner city areas, including the beachfront and the Durban South Basin, which between them account for 70% of Durban's economic activity. [Joubert, 2003].*

"We are seeing a general trend towards people staying in the city centre. The new rates bill also means that decentralised office areas are more expensive to run, which in turn benefits the urban areas," says Dobson, [cited by Joubert, 2003].

The combination of area based management, with sector based support, has the potential of achieving efficient management, continuous local area negotiation with stakeholders, the promotion of linkages between formal and informal businesses, increased self-regulation through trader associations and targeted support for enterprise development. The current situation as set in the informal economy policy (2000) has been that there are areas where trading is entirely legally prohibited. It is effectively prohibited in certain areas where there are no sites being allocated or where management of particular shopping areas prohibits hawkers. Street trading is restricted in certain parts of the central business district and the beachfront with no discernable logic to the restricted zones. Area-based pilot projects have demonstrated a change in these situations. Dedicated management of project areas and precincts has meant fewer occurrences of traders being shunted from one department to the next. (Informal Economy Policy 2000)

#### **2.4 Frontline staff and transformation within the city bureaucracy**

In terms of the Municipal Systems Act, Local Government is required to manage expenditure and development according to the needs of, and in consultation with, the residential and business communities of the whole Municipal Area as noted on. This has resulted in a completely new process, and all the municipal operations are changing to meet these requirements. The eThekweni Municipality has embarked on a process of transformation to align the organisation with its vision. Integrated Development Plans (IDP's) are important in this respect because they guide the development of the city so that all services are provided in a co-ordinated way, considering all aspects of people's lives. All local communities and other key stake holders have been involved in preparing these IDP's in an enormous consultative process throughout the municipal area. The new approach of local government is "to facilitate and ensure the provision of infrastructure, services and support, thereby creating an enabling environment for all citizens to utilise their full potential and access opportunities. These ideas though they seem like technocratic speak; signify a change in approach by city managers. That development cannot just be an uncontrolled enterprise spurred on by unsuitable

institutions whose staff dictate to the citizenry that they are supposed to serve.

[<http://www.durban.gov.za/council/index.htm> (5/06/03)]

These documents point out the realisation that in the era of cash-strapped and globally-challenged cities, managers have come up with innovative ways of doing things, and they have to nurture partnerships to share the burden. Therefore measures that enable citizens to contribute towards a vibrant and sustainable economy with full employment are one way of doing things. In this paper that deals with regulating street trading, the focus is therefore on citizens doing things for themselves, with local government providing all the support to make this process happen. This is an especially important statement when looking at the issue of street traders operating in the Umcity. Not only is this approach more effective in a context of scarce resources, but it also has overwhelming support from citizens and civil society groups who are eager to work in partnership with local government to facilitate development.

Along with the changes in process, the demographics of human resources at the eThekweni Municipality are changing to ensure that they are representative of the communities being served. The Human Resources sections of the various Service Units adhere to an affirmative action policy, aimed at achieving equality in representation across both demographic and gender groups. In line with the legal imperatives applicable to all organisations in South Africa, targets have been set, and a series of pro-active strategies have been put in place to ensure that they are met. Presently, area managers are charged with respecting the need for secure space for traders. They are responsible for the development and promotion of street traders as entrepreneurs. The management of the interests of the informal and formal economy while considering the needs and demands of pedestrians and motorists for urban space also should fall within the sphere of their function. Moreover area managers have to take cognizance of issues of town planning and service provision, while also enforcing bylaws that have to do with street trading. [Lund et al (2000:64)]

Despite official commitment to affirmative action in the public service, not only in terms of race but also gender, officials dealing with street trading, be they department heads, area managers or enforcement officers, are predominantly men, (Skinner, 1999). Since the majority of street traders are women, there men have problems of understanding or even knowing about the gender-specific issues faced by women. Many officers who have been in traffic or police departments and are now dealing with street trading are making a difficult shift to viewing street trading as developmental. They are still stuck in former attitudes of criminalization and law enforcement. (Lund et al, 2000). The economic reality of survivalist traders is often not understood by officials in payment of fines or determining cost of sites. [Skinner, 1999]. Traders are often not treated in the same way as other entrepreneurs, exemplified by movement of traders to new sites without giving due consideration for them to reorient their customer networks, [Lund et al, 2000].

A preference for employing people who had themselves been active in the informal trading sector is also paradoxical. Although there are advantages in employing people who have a direct understanding of the sector, there may also be disadvantages. (Skinner, 1999). Officials do have capacity problems of their own which compound their abilities, finding themselves responsible for carrying out functions, for which they have little training or skills. There is a shortage of funds for training and of personnel but that many site supervisors expressed a wish to expand their skill to include more business support. [Informal Economy Policy, (2000:15)]

## 2.5 Councillors

The importance of the informal sector and small businesses, in the thinking of local government in the new dispensation, can be seen in the representation in a number of standing committees. Officials from ITSBO sit on a variety of committees, the most important being the Sustainable Development Committee. This is a positive trend towards more inclusive governance and regulation of street trading in the Council's political structures. Councillors need to understand street traders are part of their constituencies among various interests represented.

In regard to councillor's involvement with the traders some worrying points can be made. Councillors represent different political parties and their approach to issues of street trade may be motivated by a number of factors which might not be in the best interests of the street traders, such as forthcoming elections or the need for a quick solution to the problem rather than a developmental one. Also the issue of subtle conflict between elected politicians (councillors) and paid officials (bureaucrats) complicates the struggle for influence on street trading policy. Lund et al, (2000:67) note that there is a fair amount of political support for informal trade infrastructural development etc. because it is a very visible way of council demonstrating that it is doing something. But only a minority of councillors approach this issue from a developmental perspective. With the elections, for example, there is usually pressure from councillors for officials to become firmer enforcement wise, [Skinner, 1999].

This contradiction is evident despite the change in government; local councillors often have a fairly conservative approach to street trading. A Durban official in Skinner's (1999) research said:

*'The views of councillors have not changed with the change of racial make-up of council. In fact in some cases they are more hard-line than their predecessors.'*

Political support is vital. Skinner (1999) notes that one official put this particularly strongly, saying that nothing happens within informal trade without political approval. However officials, street traders organisation leaders and street traders frequently complained that councillors do not understand the issues, and the environment in which decisions are made is not consistent.

*'The councillor who heads the informal trade standing committee now may well be supportive; however the person who replaces him may have the interests of the formal sector at heart.'* (Skinner, 1999).

Moreover, there is that difficult relationship between bureaucrats and politicians, for bruised egos hamper progress. Skinner (1999) notes that,

*'there are many councillors who feel that developmental local government is not good governance. They are not interested in process but in getting things done quickly and efficiently'*.

## 2.6 Local government restructuring<sup>7</sup>

The impact of different rounds of restructuring of local government was identified as a factor that shaped local government's actions. In the Durban metro the administration as articulated in the preceding sections, has gone through a radical makeover, affecting very much the profile of street trading in the city. The location of ITSBO, communication lines and general efficiency that matters relating to street trading have been dealt with. Furthermore the restructuring processes happened over a short period of time. Skinner (1999) observes that,

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<sup>7</sup> This section is inspired by research done by Skinner (1999) and her own views are liberally quoted.

*'Transformation has occurred at almost every level, creating paralysis, uncertainty and low productivity levels and motivation of staff'.*

Centralisation has had financial implications. Restructuring aims at creating an environment where funds are saved and wasteful duplication of functions is prevented, and most importantly efficiency and effectiveness of services offered by the municipality is improved. This has implications for street traders, as Skinner (1999) quoted below notes:

*'Street traders largely come from disadvantaged backgrounds and live in previously disadvantaged areas. If redistribution of resources is to be better facilitated by centralisation of power, then it is likely to impact on street traders in a positive way. Moreover the unicity has been good for planning and consistency and better coordination of policy implementation. In terms of policy and legislation there were varying degrees of duplication of responsibilities'.*

Before local government restructuring and the amalgamation of the unicity, all six substructures had different sets of street trading by-laws and approaches. This meant, as Skinner (1999) revealed, that with each council being a legal entity that councils could come up with different policies and by-laws. This was happening and appeared to be about people - both officials and councillors - wanting to keep their power bases intact. This system was causing a lot of confusion on the streets. At the same time confusion caused lot of rogue elements to assert themselves. Anarchy breeds middle men, protection rackets and other mafia that retarded regulation of the street trading sector and most often, not much progress was made to grow the sector.

Like any means to engineer and change people's lives, there are still those pessimistic about centralisation into a unicity. As Skinner (1999) argued:

*'Those who have argued against the mega-city proposal point to a very real loss of democratic deepening and this is likely to have implications for street traders. The mega-city proposal entails a dramatic reduction in the number of councillors. Marginalized groupings will have even less access to political actors than is currently the case. The voices of women street traders are thus less likely to be heard. To counter the reduced direct access that centralisation may bring, having accessible officials like area managers becomes all the more important.'*

## **2.7 Conclusion**

This section is written with a realization that local states have unique histories and specificities that determine the nature of both political and bureaucratic practices. Valuable progress to raise the profile of street trading in eThekweni Unicity has been made. Positive trends include the status of the institutional location of the informal sector, most visibly street trading in the city's bureaucracy. That having its own branch makes a huge difference to efficiency of communications and potential resource allocations. Moreover, Durban has become a global example of relatively substantial resource allocation and infrastructure provision for the informal sector. Dedicated management of projects and precincts has accrued valuable lessons of continuous negotiation. And representations in city's strategic committees show that both politicians and bureaucrats are trying to create inclusive and effective governance. Though centralization has undoubtedly been useful, in terms of coordination, efficiency and effectiveness of metro wide policy, concerns still remain about accessibility and democracy in the unicity. However, institutions that govern street trading are complex and coordination remains a problem. There is apprehension that there is a lack of fit between a generally progressive policy climate and the organisational culture of some parts of the city's bureaucracy.

## Section 3 The impact of regulations on trading conditions of women on the ground.

### 3.0 Introduction

This section attempts to look at the central research question that has to do with the impact of the present regulatory regime on the trading conditions of women street traders. When looking at the regulation regime as an issue one has to first understand that change is everywhere, and although it often tends to evade our theoretical tool-kits its impact is practically unavoidable. One of the major aspects of change is the creation and consolidation of sector-specific regulatory regimes. [Levi-Faur and Jordana (2002)  
<http://www.upf.es/dcpis/esf/oxlist.pdf> 03/11/03]

In legal and economic literature, there is no fixed definition of the term *regulation*. In order to delineate the subject and because of the limited space, a further definition is nevertheless necessary. In this article, regulation will be taken to mean the employment of legal instruments for the implementation of social-economic policy objectives. A characteristic of legal instruments is that individuals or organizations can be compelled by government to comply with prescribed behaviour under penalty of sanctions. Corporations can be forced, for example, to observe certain prices, to supply certain goods, to stay out of certain markets, to apply particular techniques in the production process or to pay the legal minimum wage. Sanctions can include fines, the licensing of violations, imprisonment, an order to make specific arrangements, an injunction against withholding certain actions, or closing down the business.

It has been difficult to operationalise regulation as not much has been written on regulatory regimes and the informal economy. As Horn (2001:1), quoted below at length demonstrates,

*For a long time, there have been debates as to whether the approach to economic activity should be a regulated or de-regulated approach. In relation to street vendors, regulation meant the removal of street vendors, "clean" streets uncluttered by vendors who were all to be found in controlled markets. Deregulation meant overtrading, littered and crime-ridden city centres that chased away foreign investment. As a result, where free marketeers advocated deregulation, it was often selectively advocated for small formal businesses, but not for street traders or any other part of the survivalist informal sector. Also, the distinction was not often made, in this polarised regulation/deregulation juxtapositioning, between different kinds of regulation (i.e. labour regulation, trade regulation, fiscal regulation, etc.)*

The dividing line between being regulated and remaining non-regulated is quite complex. (Chen et al, 2000:13). The official international definition of the informal sector provided by ICLS quoted in Chen et al (2000:13), defines an informal enterprise as one whose size in terms of employment is below a certain threshold (determined nationally) and/or which is not registered under specific forms of **national** legislation, such as factories or commercial acts, tax or social security laws, established by national legislative bodies. It does not refer to registration under regulations enacted by **local** authorities for the purpose of obtaining a trade license or business permit (Husmanns, 2001). This gives rise to a common situation where a business is registered with a local authority – notably, a city council – but is not registered with a national authority and does not submit its records to the system of national accounts. Another not-uncommon situation is that a business may have to pay taxes to local authorities even if it is not registered with the local authority. For example, some city councils deploy tax collectors to collect daily market fees from all street vendors whether or not they are registered. Many city councils impose indirect taxes on street vendors in the form of fines and bribes. A related situation is that some city councils impose market fees or indirect taxes

on street vendors but do not allow vendors to register or, if they allow registration, do not allocate space or permits to street vendors.

To complicate matters further still, Chen et al (2000:14) articulate two broad types of regulations. First, there are regulations related to **becoming** legal: notably, registration and licensing. These are the ones referred to in the international definition of the informal sector. Then, there are regulations related to **remaining** legal: notably, taxation and labour obligations but also health and safety regulations. The notion that informal workers avoid regulation primarily in order to avoid taxes is simplistic. More emphasis needs to be placed on an analysis, from the perspective of persons trying to develop a small enterprise, of the costs of and barriers to being regulated; and, from the perspective of wage workers hired under informal contracts with no protection, of the costs to them when their employers avoid labour regulations. In such analyses, the nature of existing institutions and policies – whether they are poorly or well designed – and their influence on informal activities and arrangements needs to be taken into account. [Kuchta-Helbling (2000) cited in Chen et al (2000:14)].

Some individuals and households take up informal economic activities for sheer survival. What attracts most of them to the activities that comprise the survival end of the continuum of informal activities are their relative ease of entry, reliance on local resources, small manageable scale, and minimum capital investment. Informal activities of this kind allow disadvantaged individuals or households to maximize what is often their only real asset, their labour power. Those who operate at the survival end of the informal continuum operate illegally either because the costs of formalizing their economic activities are simply too high or the procedures for doing so are too complicated, intimidating, and time-consuming, [Chen et al, 2000].

From the point of view of street vendors,

*'The issue is not to choose between blanket regulation versus de-regulation, but to devise appropriate regulation. The first principle is that appropriate regulation can only be framed with the participation of street vendors themselves. As municipalities seek to make changes to the laws that will affect street vendors it is clear that vendors must have seat at the table.'* (Horn, 2001:1).

She further argues that when looking at the regulatory regime, questions should be asked as to whether regulations reflect the practical reality in which market vendors, street vendors and hawkers ply their trade, particularly in areas where the traffic is heavy and the available street market space is far outweighed by the need for such space. Also, issues of capacity at the municipal level to implement the proposed laws effectively and efficiently should be looked at and whether such laws/regulations are enforceable

For Horn (2001:1)

*'A term for regulation by negotiation is voice regulation, implying the participation of all interest groups in determining the appropriate regulations and regulation system. There have been many examples of municipalities which have started such processes, but have not been able to sustain them, for various reasons.'*

This probably remains the biggest challenge to municipalities in their dealings with street vendors and their organisations. Looking at Durban as a city, progress has been made. According to Lund et al (2000) successful elements of the policy process include simplified

and incentivized registration, established representation of trader organizations on planning/policy committees, and support to trader organizations using existing municipal assets. City officials and traders worked together to improve the image of the informal economy.

The point made here is that it has been established that women street traders make up about 60 percent of the total population of street traders in the unicity, especially when considering the inner city area. Therefore, measures that the city bureaucrats and politicians use to intervene in terms of regulation and support, have to be appropriately gender sensitive. In making a connection between the profile of street trading and the organisational ability to address specific needs of women, Khoza and Naidoo (1998) note that ability of women to initiate change is largely limited by a number of factors which derive from the organisation of urban informal trading and the structuring of gender relations. This has meant that despite the introduction of more tolerant policy towards urban informal trading, the experiences of the women street traders reveal that the benefits are unevenly shared.

In looking at the situation of women in the informal sector, the advocacy group WIEGO sets out a number of characteristics of women in this sector. Women are more likely to operate from an open rather than a covered space. Women are more likely to operate from an insecure/illegal space and trade in perishable goods thereby generating a lower volume of trade. Most often women work as commission agents or employees of others and earn less than men. Women face a variety of risks in informal economy employment and these include: gendered risks, risks of production technologies, risks arising from position in production and supply chains, regulatory risks, geographic risks, political/socio-economic risks, seasonal risks. [[www.wiego.org](http://www.wiego.org), 03/11/03]

In justifying why women need to organise as women, WIEGO argues that women tend to trade/vend in the most vulnerable circumstances due to discrimination against women in most economies, leadership positions in unions/trader organizations are generally male-dominated, and women need space/opportunities to develop leadership/create agenda for their needs. [[www.wiego.org](http://www.wiego.org), 03/11/03] Gender biased policy intervention is possible because government officials are men who at times cannot specifically champion strategic women's issues. In most cases, literature (that is, by-laws for street vendors) is not written in indigenous language and generally women are less educated than men. This means gender-biased wording in official documents doesn't acknowledge women as vendors as Skinner (1999) observed.

According to Khoza and Naidoo (1998), the experiences of women street traders in the unicity raises three important issues about the future of women's participation in urban informal trade. First, existing macro-planning attempts to 'support' people do not consider that different people have needs which vary, depending on their life experiences. Secondly, the needs of women are diverse and their objectives differ widely. The following distinctions could be made: those women for whom informal trading is crucial to their survival and those who seek to maximise their profit and build a business; those who enter this sector temporarily and those who see it as a life-long survival strategy; those who have well-established 'businesses'; and those who are just starting out.

Representatives of women traders interviewed in Khoza and Naidoo's (1998) research suggested that these distinctions were not given thorough consideration in the policymaking and implementation. The third important lesson is that the perpetuation of unequal access to

resources in the city is a major constraint to women. Although in principle, the city makes provision for the establishment of a primary health facility, much-needed overnight accommodation, and a crèche, the new modernised trading space is likely to reinforce patriarchal social relations and facilitate capitalist accumulation, rather than challenging existing power relations in the city.

### **3.1 Data collection and analysis methodology**

The methodology utilized in this study has been semi-structured interviews of key informants<sup>8</sup> from several representative organisations. These respondents were drawn from organisations mentioned in general introduction as ITSBO, ITMB, SEWU, StreetNet and some researchers. This was an attempt to move away from the common limited qualitative questioning of a few traders on a once off basis. Lund (1998) sees this as a waste of research resources, and a very overdone/non-creative data collection methodology.

The semi-structured interviews<sup>9</sup> were appropriately suited to finding out relevant information from informed sources, given the constraints of time and resources. There was no sampling of any sort. Respondents were picked as spokespersons for the administration or organisations or in consideration of research done related to the topic, and snowballed by referrals. Respondents were knowledgeable in their own field, area managers, or policy advocates on the organizational front. Interviews being as open as they were enabled informants to have frank discussions that did not seem interrogative while at the same time maintaining relevance and rationale, keeping discussion to the general questions formulated before-hand. Moreover an ongoing dialogue between the key informants and the researcher through emails, telephonic discussions and other means, were established after interviews as to refine and augment information obtained.

Moreover the study was based on an intensive Literature Review and data analysis from policy documents, bylaws, research reports and some press clippings. This material has been summarised in the conceptual framework presented in the context of section one. Literature review and theoretical framework surveyed work done and provided some valuable statistics to augment the mainly qualitative data that was obtained from the informant transcripts.

The focus of this study was specifically on women street traders and regulation. However, the information collected from the respondents soon revealed that regulation is more of a sectoral than a gender-specific issue. This is a reason advanced as an explanation of the gaps between the theoretical framework, especially WID/GAD policy approaches and the research findings.

Data analysis involved coding of key informant transcripts according to thematic variables operationalized as the regulation regime. These are registration, spatial allocation, enforcement and systemic capacity. The basic logic of the argument developed is on the official and non-official versions of the regulation regime to draw conclusions.

### **3.2 Components of the regulatory regime**

In this paper regulation is operationalized in the ways that the city processes street traders from entrants to existing legal traders. First comes the issue of registration tied to when a person acquires a permit. Then, spatial allocation that entails application of criteria, procedures and other practices that have to do acquiring a trading space. What follows then is what happens in terms of all involved, street traders and officials, in terms of their rights and

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<sup>8</sup> List of Key Informants is available in appendix 5

<sup>9</sup> One version of an interview schedule used is attached in appendix 6

obligations when applying either operational policy or policing the existing law. System capacity in terms of regulation is looked at, dealing with the ability of the mandated city unit to carry out the business of developing and regulating this sector effectively.

### **3.3 Summary of key informants transcripts: Regulation in practice**

In this section the gist of data analysis will have to be in what the respondents felt were issues that warranted attention in the area of street trading, the regulatory regime and its impact on trading conditions on the ground. More work was done mapping out what is actually being done to regulate traders and problems experienced thereof than really weighing the impact. The implementation phase is still too recent to really be able to access the impact of the Informal Economy Policy. On the municipal front, questions were asked to establish what the ITSBO does to fulfill its mandate of regulating street trading. Various non-official informants were asked questions relating to avenues of recourse and problems that traders encounter in the operation of the city's regulatory regime.

Interviews were conducted with key ITSBO staff in operating Durban CBD. These were the ITSBO branch manager and 5 Area managers. Regarding the functions of ITSBO in the regulation of street trading, the official version noted that the branch exists to manage, improve, control, support and develop the street trading activities. Before consolidation into a unicity, ITSBO was under the directorship of the Development Facilitation Department and has been now moved to Business Support under directorship of Lindiwe Mahlangu, unit 4 of Sustainable Development and City Enterprises cluster according to the latest city administration organograph. The significance of this move is that street trading still retains its own unit in the city bureaucracy despite attempts to decrease a number of units. ITSBO is managed by Phillip Sithole and presently has about 7 Area managers, 9 Laison Officers and 1 permit officer. A lot has changed from 1994; there have been two elections already. Different Operational Areas have unique characteristics: Warwick junction is a major transport node in the very heart of the city processing about 450 000 commuters per day and is home to a diverse trading goods and activities from perishable goods to traditional medicine. The Beachfront is a tourist node spanning the golden mile of beach area; the street traders here are mainly women vendors selling crafts. The South covers peripheral areas such as Bluff, Merebank, Chatsworth, Umlazi and is mostly a non-restricted trading zone. The CBD operational area covers the Victoria Embankment up to the Umngeni river inclusive of Smith, West, Commercial streets, which are the very core of the city.

Non official respondents used for this paper include the **ITMB**, whose formation was an initiative of the city back in the 1990s. The intention was to congregate all street-trading organisations to speak to the city in one voice. It is a federation of street organisations such as ACHIB, Semunye and a few others in eThekweni municipality. Its main aim is to represent traders, to lobby officials and councillors to deal with issues that affect street traders favourably. Issues of regulation of street trading are a focus area for the ITMB. This is because regulation and development are not mutually exclusive. ITMB advances the view that the city needs orderly trading and limited numbers of street traders in public space to ensure sustainability. **SEWU** organises workers to negotiate, fight for their rights on the understanding that any self-employed woman can fight. SEWU concentrates its efforts on vendors and home-based dressmakers, and muti traders. Regulation is important to SEWU because space is a primary resource, traders need to have and protect their plots. There is a need to protect women as persons and citizens by police.

**StreetNet** was conceived through a network of individuals and institutions concerned with increasing the visibility, voice and bargaining power of street vendors throughout the world. The network includes vendors, activists, lawyers and researchers. The focal point of action of StreetNet International is the The Bellagio International Declaration of Street Vendors, drafted by Alliance founders in 1995. This declaration sets forth a plan to create national policies to promote and protect the rights of street vendors, and calls for action all levels, by individual traders, traders' associations, city governments, and international organizations. A longer-term objective of StreetNet is to build a case and mobilize support for an ILO Convention on the rights of street vendors. For StreetNet, voice regulation is basic to the formulation and implementation of appropriate regulations. For StreetNet, appropriate regulation is that which looks squarely at the needs of the traders. It rejects as sterile the idealised notions of the European city type held by some authorities. Definitions of a functional city are hardly consensual: clean empty streets are not a priority here. Maputo Market in Mozambique is the filthiest but attracts droves of tourists.

Looking at the key informant transcripts, issues of concern are organised and discussed below using the regulation regime themes.

### **Registration**

The municipality seeks to register all street traders within its boundaries for purposes of having statistics to formulate support and regulation initiatives, and has mandated ITSBO for this function. Appropriately, licences which could have been an adequate means to track all traders, irrespective of whether they have spatial permits or not, were abolished by the Business Act of the 1990. Horn (2001) notes that

*'The main difference between the licence system and the permit system as applied to specific areas, is one of legality. In the licence system, everybody who trades without a licence is committing an illegal act – the licence regulates the very right to trade. In the permit system, people are free to trade legally in most areas, but in certain proclaimed areas they may not trade without a permit to trade in that area – the permit regulates trading space'.*

Although the present Informal Economy Policy recommended registration of street traders, the practicalities are still being worked on. There is a lot of confusion as to the ability of the system to efficiently and effectively register traders without losing some traders through jurisdictional gaps. This is illustrated by the case that at present it could be said that ITSBO uses permits issued to track numbers of street traders. The only problem with this would be inability to account for traders who do not have legal space to trade in. Registering the numbers of people for purposes of identifying them is a good idea, but the ITMB does not endorse it, as the city has to do the work on implementing it on the ground. There are already other pressing issues to be dealt with such as the operationalising the rental system for all traders. On trying to find out whether there are licences, the SEWU informant stated that licences are alive and well for people trading at the beachfront, for craft workers and food workers. On the need for some sort of identification system for registering, SEWU argued that street traders and hawkers [mobile traders] need distinguished. This is because these hawkers jostle for trade on rent-paying traders spaces, heightening potential for conflict. Moreover there is a need for all parties involved in street trading sector for statistics. Registration is useful for regulating not only established legal traders but to formalise the illegal traders because there is subtle conflict between these two groups of traders. Therefore, SEWU endorses registration of all traders to ascertain the statistics and the dynamics of the sector. For SEWU, the idea of identity cards solves a lot of problems

Anyone who wants a vending permit can apply after looking for a trading site in some specific areas<sup>10</sup>. Looking at rentals, the officials said that the department issues permits, and that charging the trader for the permit depends on the type of business that is carried out and the facilities on site. Traders pay variable rentals per month according to type of goods sold and facilities provided. The Informal Economy Policy (2000) sets out the rental rates as follows: a street trading site without shelter is R10.00 while those with shelters pay R35.00, per month. Storage in the CBD is R50.00 per month. At Church Walk Market, traders pay between R550.00 and R1500.00 per month. Other flea markets cost R11.00 per day per table and other arrangements are made through individual negotiations with officials administering the flea market. The Early Morning Market has seven rates according to the size of the site ranging between R57.00 and R300.00. In Mansel Road Market, the car boot section costs R168.00, the pinafore section, R34.00 and the housed section R200.00. Clairwood Hive costs R110.00. For a short-term tenancy agreement, the amount is decided through negotiation and can range from R50.00 and R1000.00.

### **Allocations policy**

Currently the procedure in the city is that there is a standard letter that gives traders a guide as to how to apply. The application letter requires that traders should also attach a hand sketch of the area they are applying for and a site map that traders can obtain from the Planning unit. Also, information about the types of goods to be sold and equipment that is to be used needs to be supplied. Traders applying for sites are also instructed to furnish ITSBO with an address and telephone number for reply. The information is directed to the area manager in charge of the area for site inspections to be carried out and final authorisation. Time taken to procure a permit depends on the type of equipment the trader is using. For instance, if one is just going to use a table to display goods that are being retailed, the procedure can take up 3-4 weeks. For a stationary container, the process can take months because there are number of different departments involved such as land transactions, planning and utilities departments.

The aim of the allocations policy is to support growth, and provide opportunities for new entrants, in an economically sustainable and socially useful way. It can be a powerful tool for job creation, and for the inclusion of the people who were excluded from economic activity in the past. For ITSBO, it will be implemented in a way that will create linkages between experienced and inexperienced operators. ***First preference will be given to women, young people (18-35 years) and physically disabled people, as well as to South African Citizens.*** Council will use the allocation of sites to address the lack of economic opportunities to previously disadvantaged communities. In allocating sites women and young people and those who are physically challenged as defined by national legislation will be given preference. Legal foreigners with work permit will be allowed to trade provided they meet the agreed criteria. Preference will be to co-operatives that are accredited and registered with council's relevant department. Preconditions include: commitment to pay for stall rentals, one site per trader per household, no other business shall be owned by the trader being allocated the site, no formal employment, commitment to comply with legislation and by-laws, to make sure that products to be sold are in line with the specific character of the area, as the council aims to promote potential economic / market trends within the area.

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<sup>10</sup> Umgeni, Springfield Park and Phoenix, Dalton, Clairwood, Umbilo, Chatsworth, and Merebank, Overport, Newlands East and Newlands West

Principles of the allocation policy are that in a council-managed, defined site, and restricted trading area, a cut-off date to legalize all traders in that area will be applied. Thereafter any one who illegally trades after the cut-off date will be removed and the department will report monthly to council with regard to legalization to traders. Moreover, only people at the entry level of business will be allowed. Council will promote progression of traders to more valuable sites, such as the upcoming Shakaland project, and ultimately into formal markets by providing a range of opportunities to develop people and their businesses over a limited period, after which if the trader needs to utilise the same site, he/she will have re-apply for it. The Department sees the permit as an agreement for trading on council property. Traders have to sign the same documents when the allocation of the site is undertaken between the council and the traders. Application for the transfer of sites within household/family (next of kin) in a case where the owner is in critical condition, ill, death, or disability will be forwarded to council consideration. (Viewed in terms of the trader if special circumstances apply.) the council will review the history of the area to find out if there are some implications in terms of allocations that should be weighted differently from the normal agreed-upon criteria or if the traditional criteria should applied.

Unfortunately the officials seem to agree especially in the CBD and Warwick Junction that traders are trying to reject these criteria. They feel threatened by the most transparent procedures of redress. StreetNet argues that in many cases vendors have extremely good ideas about regulation – common law rights, kinship rights and other values. In this matter StreetNet argues that rights and obligations to a place are determined by having priority of access to it. Relatedly, traders in the city seem to acknowledge that spatial regulation and control means having a maximum for a particular area. Confident of the usefulness of the new regulatory regime, vendors did not even have a problem with something that is more of a market discrepancy, that is, dictation as to what they could sell, for example, at the beachfront; traders are allowed to sell only crafts. This means that when looking at basic principles of the regulatory regime, traders did not have problems. However, regulatory problems began to appear in instances when, such as every Christmas, a whole crowd of people would move to the beachfront to compete with those who are established there. Most of these invaders were not survivalists but fronts for formal business. Issues of overtrading in these situations become more pronounced.

Moreover, in regard to spatial allocations criteria, StreetNet posits that the primary thing is who has been there the longest. This has been a big subject for discussion, and has never been resolved. Even in the Implementation Working Group, which was tasked with overseeing the execution of the Informal Economy Policy, it was a contentious issue. The fact that certain determinants: political, kinship and common laws are used in various ways either positively or negatively to give people preference over others means that everybody has to fiddle with those issues. They will continue to be issues that need to be understood by anyone implementing policy. Spatial regulation for StreetNet is different for different areas. For example, West Street and Smith Street have newer people whereas the dynamics at the beachfront are different because issues of kinship determine allocation. Vendors are very traditional people whose concern would be the issue of securing livelihoods that is, household income stability. The rationale for allocation might be understandable - but it is very difficult to implement because many problems of corruption and nepotism are bound to appear.

For StreetNet allocation policy is the heart of the regulatory regime and contrary to common views, people are highly supportive of its progressive elements. However some very powerful people seem to block its ratification by the council because of their opinions about the

aesthetics of the African city. Their Eurocentric views of the beautiful city sweep street traders under the old arguments of crime and grime. The positive thing about Durban's regulatory regime is that good things have become localized such as usage allocation styles that have been shown to work in pilot projects such as Warwick Junction. Different approaches to the same law need to be harmonized. Durban is better than Cape Town or Johannesburg because in times of operational difficulty has it not shifted responsibility of managing street traders to non-state agents and thereafter shifting the blame when things do not work out. Legal challenges need to be made to the right of municipalities to sub-contract management functions.

In regard to spatial regulation, the ITMB sees space as something to fight for and argues that spatial allocation is a difficult process, not as straightforward as some elements would have. For them, the idea that the government identifies plots and then allocates is misleading if not ambiguous. The space is invaded and conquered. ITMB acknowledges that the present system is necessary to ensure that there is no escalation to chaos. People need to be ensured decent business especially in the core areas where overtrading is an issue. ITMB suggests that criteria are unacceptable because of the disadvantages they breed. ITMB argues that people themselves are against criteria and that there is need for negotiation and partnership in making decisions about matters of who gets priority to space. There is a culture of doing things from the top-down that impedes negotiation. Criterion-setting especially in initial stages, is not consultative. Criteria should be more inclusive because families have different capacities-wealth. Some street traders are genuine but because a criterion excludes them, they are left with no option than illegal trading. Also, the increasing population and competition among new entrants is compounded by formal sector job losses that exacerbate the situation.

At the same time, in some places there are other criteria that seem to operate for new entrants. SEWU pointed out that at Beachfront and Russell Street Muti Market, some sort of inheriting sites by family members is pursued. On the workability of waiting lists that the officials suggested had been abolished, ITMB guarantees that they are still very much around, and that people are getting onto waiting lists. Looking at concerns about legality/illegality of some operators and those who deliberately avoid regulation, ITMB notes that workshops are conducted to encourage the procurement of permits as a business decision. There are Street Committees that police streets making sure that everybody is on the waiting list. On allocations criteria, ITMB would rather have first come first served principle. Moreover, ITMB sees the lack of understanding between ITSBO and street committees in this matter as breeding inequality, if those who have permits are listened to, and those who have not are constantly being chased off the streets. For ITMB, issues like this can be avoided because contrary to official opinion, there is space in the CBD, being opened up by businesses moving out and leaving council buildings unused. SEWU claims that there are vacant plots in existing trading spaces. As a corrective measure SEWU is negotiating to the council to build a market. SEWU contends that behind the Workshop there is a large underdeveloped space that has potential to alleviate space issues in the CBD.

Perception by entrants that they have to be in the CBD, where the business is, compounds spatial allocation issues. Most organizations promise people they will get them trading spaces, and so become like employment/procurement agencies. Thus these organizations end up practicing selective membership. If you fight for universal rights like SEWU then it is not even an option. Even among members there are those who will have space and those who do

not. At the same time nobody wants to favour those who have. Space is limited and organisations cannot promise everyone space. What SEWU tries to do is to encourage traders not to make decision about trading spaces unthinkingly. They should not be sidetracked by false perception of crowds in the CBD. For example, KwaMashu Station might have a bit more space than the CBD because you find that in the CBD there are more middlemen extorting money, and the cost of setting up business is high. Moreover there is more competition and though there is bigger market for traders' goods, shares that go around are less for individual traders. The issue of whether you can sell or not, is not determined by whether you get your name on the waiting list or not. Ultimately, the waiting list does gain entrants some level of acceptability. StreetNet warns potential traders that being ushered by the municipality is not everything, people should talk to established traders first to find out what is happening, and the dynamics on the street are such that other people end up being ostracized.

### **Enforcement**

Durban Metro Police is mandated by the city to enforce regulations. Presently there is not enough manpower to deal with street traders and the organisational logic of enforcement makes it difficult for ITSBO to work together with the police. However ITSBO frequently liaises with metro police on issues of enforcement. There seems to be an understanding with units within the police that enforce trading bylaws and impoundment of goods is only a measure of last resort. Enforcement is the second-level lever of the regulation regime and the extent to which traders understand enforcement says a lot about how they get by. One ITSBO informant claims that there is some tiny element of truth in the view that the police criminalize street traders, because it is clear that people cannot be moved around like common petty criminals or vehicles. What happens in the unicity is that more often than not the only people who are removed are the illegal traders.

Goods are confiscated if the trader is illegal or selling goods that are not permitted by law. Moreover traders are often removed for trading in certain un-demarcated areas. But usually liaison officers and area managers try to deal with the problem before reporting to the Metro Police. Enforcement is the province of Metro Police. ITSBO officials liaise with police commanders in issues concerning street trading on the assumption that information will be trickled to the bottom for usage by policemen on the beat. Moreover, ITSBO furnishes the police with the necessary records of legal traders in the area. If a trader then contravenes street trading bylaws or general regulation, the police deal with the case accordingly, depending on the offence. ITSBO area managers seem to agree that fines that have been stipulated in the different bylaws for example: obstruction of traffic (traffic bylaws), defacing fire hydrant (fire regulation) are the main guideline. The police impound goods, count the goods and issue a ticket (summons). How fines are given depends on the kind of offence committed. One might have been obstructing traffic, resulting in a R100.00 fine, if there was prior warning then the fine will be a bit more substantial. If a trader has his goods impounded, then they pay a fine to get them back within a time frame. If a trader does not get them back on time or they perish before hand, environmental health officers are called in to inspect the goods and authorise the police to dump them. Inability to pay fines results in traders being summoned to court. If the trader keeps on doing the same things, then the department simply cancels the permit.

According to StreetNet, impoundments do not happen a lot because Durban has a better thought-out policy. This does not mean that there are no enforcement issues, but they are not as critical as other in other areas. There is less protest for those who get impounded from the general population of street traders because there are people who just place themselves on a

plot without due process by all involved. This is because corrupt street organizations promise people plots in exchange for their membership but have not managed to circumvent the normal processes of getting such a place. Impounding goods is a contested issue here in Durban. Even though it has been made more humane we have to understand that regulations have impoundment clauses so that a person may have their goods confiscated under certain circumstances. In Durban, StreetNet posits that there are no provisions in the regulations to charge fines.

This means that fines are illegal, which calls for a need for a test case for litigation. The Legal Resources Centre is going to test private property laws arguing that the police do not have the right to fine traders. Enforcement is a technical issue and in principle it has to have a legal base. In practice old habits govern and determine the ways of doing things and that is not legal. Legal challenges of this nature show us for example that in principle the fact that a person does not pay rent means they can just be duly evicted. This brings in questions of who has the right of enforcement. The actions of some municipalities to outsource their law enforcement responsibilities for street trading to traders' organisations has illuminated this situation because they have no law enforcement powers and therefore cannot vindicate their methods. Enforcement is constituted by these technicalities and empowered by them. There is understandable logic as to why management of policing issues has been dumped in traffic departments for those cities that have no metropolitan police, though this is inappropriate, it is not surprising. The reason is that people have not thought through enforcement and policing in practice and this illustrates the legal illiteracy of the population they police. The minute the people become aware of their rights it forces greater consciousness about the way policing is done. This is only starting to happen now this is linked to the fact that in South Africa the level of political oppression is not that high any more.

Policing for a street vendor is practically contravening regulations but not criminal law. A vehicle that gets parked in an inappropriate space gets its owner a ticket. That does not mean the owner is a criminal. There seems to be a disjuncture between police and ITSBO in regard to the informal economy policy. For example the car guards were being threatened with removal as a subtle attempt to weed out foreigners. StreetNet argued that these events demonstrated that ITSBO and Metro Police do not communicate in line with the new policy. There is a lot to be done with a policy and some elements within the city administration need to be familiarised with it. Policy enforcement does not mean implementation, for there is lot of putting infrastructure in place rather than simply strong-arming. ITMB and metro police share this function. ITSBO and ITMB sometimes collude together and you find that the police only act on instruction. The case of removal of mainly women muti street traders in Leopold Street, before the Russell Street Market was built, illustrates this. The department must partner the police and set out the ultimate enforcement structure. SAPS and Metro Police have to determine the type of police who can deal with street traders on ground everyday (bobby on the beat/guard, security-armed). Overall, StreetNet posits that the municipality has not invested enough in equipping staff for humane enforcement. All this is ironic given the fact that Metro police contributed to Technical Task Team that was well constituted in drawing up the new policy.

Traders' representatives suggest that there are problems with police dealing with street traders. ITMB observes that the police are not trained to deal with traders without either treating them as vehicles to move around or as petty criminals. Police (Indian and White policemen) are not trained to negotiate with street traders who are mainly Zulu and do not really communicate in English. ITMB claims that traders are not really involved with the

police on these issues, yet the police deal with traders. The city administration, especially ITSBO communicates to the police separately. The situation is compounded by the fact that the police seem to have nothing in writing to guide their actions to charge and impound traders. ITMB suggests that the police need to be made aware that street traders are business people. When they take too much space, cutting the flow of traffic and/or movement of pedestrians, a more nuanced approach is needed. Negotiation and warnings are the way to go. ITMB suggests that sometimes the feeling is that the Metro police try to keep things/people in their place and that street traders should stay small and more manageable.

There seems to be a bit of confusion between Durban Metropolitan Police (DMP) and the SAPS (South African Police Service) in the matter of enforcement in the of city bylaws. SAPS are meant to deal with crime, not street traders. DMP is mandated by the city to do so, while the SAPS deal with serious crimes. This has meant that if SAPS came and confiscated trader's goods and DMP came to serve the same trader with summons, then one does not know where to complain. Traders' representatives maintain that money in bribes is taken from traders everyday and the situation does not justify regulation. On impoundment, ITMB suggests that traders have no time to go to courts. On appeals avenues, ITMB says that in the case of moving people from next to the Grey Street Mosque, lawyers from Diakonia centre provided legal help. Pounding is a huge setback for many traders for it spoils goods for sale and in cases where they have not managed to pay a fine, courts waste valuable trading time. Moreover, the fine depends on the nature and severity of contravention of law by traders. The fines are expensive, from R100, which is more than the average that some traders make in a day. The ITMB notes that is no appeals committee, but the city administration is thinking about it. ITMB pointed out that other players in enforcement beside police include their own initiatives such as Traders Against Crime. ITMB also maintains that its structures have been responsible for self-enforcement, without which the streets would be chaotic. ITMB does this through Street Committees. For example, members talk to individual traders and they make sure that if somebody dies communication with families is carried out to see who in the family can occupy the deceased trader's space. Representatives go around to tell people to clean up their sites and encourage cooperation with area managers and liaison officers.

### **Regulation System Capacity**

Traders are a new sector and up until now, nobody has had to define what informal traders have to have to qualify as such. As a result definitions of what capacities the person managing the same traders has to have are problematic. Officials are saying in terms of training needs that they all come from different backgrounds and need to have a tailor-made programme to bridge the diverse expertise of officials working in the field. There are many dynamics in the sector; officials need to be able to address the changes fast in a multidisciplinary way in an environment of flux. Street trading management needs progressive team players; officials deal with people's lives not just what is on their tables. Issues such as the impact of AIDS, thuggery issues, orphans need subtlety of approach.

In regard to staffing, officials have concerns; most of them are saddled with really huge areas to manage. For example, there are 2 liaison officers who assist the area manager in the CBD operational area. There are specific areas designated for street trading that need specific regulation. Other areas need different regulation altogether. More people are needed but officials feel that will be determined by a degree of restriction of street traders on a certain space. For example in the CBD operational area at Durban station, traders operate in a not so commercially busy area, which is relatively uncontested. In Springfield traders are not clustered on the same area, selling the same things. All this suggests that the specific

character of an area determines the challenges. Liaison officers are present only in an area that has been previously restricted, that is certain numbers of traders are needed there. In restricted areas, ITSBO, street trading committees, and other stakeholders determine how many traders can be on a place by looking at the impact and sustainability issues on the environment. Officials maintain that they always persuade and encourage traders to come to them before they start trading on a certain area so as to get appropriate advise and check if the conditions are suitable for trade.

When looking at the systemic capacity to diffuse information a number of issues arose. Officials feel that there is awareness among traders that there is an informal economy policy, copies of which are widely disseminated at trading places. Liaison officers are available to explain the contents of the policy if needed. A lot of things are changing and implementing policy is a learning curve for all involved. Traders come to understand the importance of the policy in an issue-based way. When they have a dispute about allocation, then all parties involved go back to the policy document to see what it has got to say about that. Co-ordination between different departments has improved with the new way of doing things. Presently the city administration is implementing area-based management as recommended by the policy. Area programmes, spearheaded by dedicated multidisciplinary teams include representation from Metro Police, Durban Solid Waste, and ITSBO with its area managers and liaison officers, Architecture, Planning and other field agents. This helps officials to get to know what is being done in other departments in order to (gauge) the impact on traders and engineer this change in accordance with ITSBO's mission.

Area managers spearheaded the formulation of the policy because it was very difficult to allocate a space on the basis of “thumb sucking” information and when there was a problem or an argument with a senior official or any other person there was nothing on paper to back whatever decision made. Transformation (bureaucracy and policy) impact on regulation has meant that officials are stating that expertise should be flexible for area managers to work in different areas. Street Committees must be properly constituted, elected and trained and function appropriately so as to allow more meaningful interaction. Traders need to be informed of what is happening on the ground. There might be a lot of confusion of who is who, traders have to get used to street committees telling traders what to do in certain ways (negotiation). Cooperation by Street Committees is important for appropriate regulation and management of the sector for corroborating of thinking of all involved. Officials see the need to bolster information feedback and report back.

Contradictions remain in the system about which officials feel there is not much they can do. For example, law prohibits cool drink vendors in the traffic intersections. Yet at the same time controversy is raging as to how the newspaper vendors got authority to sell in the same traffic intersections while other vendors who use the same method are disallowed. Another example is that trailers are regarded as part traffic but you find them on pavements these days and officials constantly have to look at how deal with these as part of street trading. We must accommodate new things: slight changes among the new bylaws are needed.

The field staff works very hard even beyond their normal scope of action, sacrificing time that they could be with their families. In Warwick Junction for example looked like a squatter settlement, before the current efforts to institute some order. Traders used to build permanent structures on the pavements. Valuable time is spent to negotiate cessation of these activities. In the past five years, for the first and the third Wednesday of every month, there have been collaborative night street cleansing operations. Metro police, City Health, ITSBO, and Durban

Solid Waste work on this. Even when moving people from their old trading places, clear reasons for doing so are communicated to the traders. Enough time is invested in these processes in such a way that the traders can give assurances to their customers and the spaces that traders are being relocated to have enough passing feet.

Looking at infrastructure capacity, officials feel traders complain about shelters, that they are too high and do not protect them from elements without enough appreciation that trading shelters are not residential rooms, that directives such as those in town planning have to be followed because at the end of the day many of these places are pavements that fall under the jurisdiction of traffic regulation. Moreover traders complain about infrastructure yet the non-payment rates on the part of traders for rentals are alarmingly high. There seems to be an inadequate view that does not see the contribution of these monies for cleaning up and upgrading existing sites let alone new developments.

In regard to capacity to oversee new infrastructural developments, suggestions have been made but the relevant committee, whose decision will be ratified by the EXCO, has not approved them. Officials, with their powers of discretion, cannot transcend proper channels and say just because there are people trading in a particular area, it is a trading site. ITSBO reports that it is the Sustainable Development Committee that can declare an area suitable for trading. There are a series of standing committees that ITSBO belongs to but the SDC is the one that will take the decisions made about space in the street trading sector to the EXCO. Overall, officials feel people need to change their minds, that besides a more obvious need for control and order, the present regulation regime tries to assimilate equity and democracy issues in practice. Officials also note that most of the traders representatives' resistance stems from the contradiction between representing both legal and illegal traders and the pressure of promises made and worse of monies taken from some aspiring traders in improper ways. Moreover, the officials feel that ITSBO has been a dumping ground for negative opinions about street trading, that other problems such as vagrants and street kids end up being dumped on them.

When looking at systemic capacity for information feedback, ITMB suggests that reporting back to the mass of street traders has not been done. The Informal Economy Policy is just being implemented. ITMB alleges that there is no commitment to a culture of agreements made because if so the city administrators would have no problem in telling the people what the policy is about and how it is changing the way street trading is run. In terms of capacity, ITMB alleges that the frontline staff in Winder Street and those field staff at trading places are not enough in terms of numbers. Moreover, there is a need to train the ones already there to deal with a rapidly changing, dynamic and diverse sector. Traders' representatives argue that it is a daily struggle to work with ITSBO. Traders' representatives allege that the city administration does not know the statistics of traders yet every month get salaries. Traders' representatives allege that city officials and councillors still do not know what is happening in the sector. The same view applies to councillors. The issue of turnover that is the rapidly revolving manpower, in city administration makes long-term partnerships difficult and agreements are broken. Communications between traders' representatives and officials need to be intensified and should not be formalised. This causes unnecessary distance between representatives and officials, hampering genuine negotiation and problem-solving processes. This means that bureaucratic protocol should be lessened to deal with things in a speedy manner.

For StreetNet, municipal capacity is very low. The negotiating skills of staff need to be increased so that there is mutual understanding and honouring of agreements and they should stop negotiating ways out of crises. Municipal staff should respect obligations to reach agreements and to monitor progress. Value is enhanced between officials and non-officials because there is understanding of consultation versus negotiation. Things should be put in writing not just spoken about (verbal agreements). Democratic agreements should be put in writing and popularised. ITSBO needs to be capacitated in terms of having more programs on conflict resolution and negotiation for its frontline staff and its financial resources (capital funds) need to be increased. Also there should be a culture of reporting back which has decreased in quality. Care should be taken in ways that information trickles down. Things are not so bad despite capacity flaws. StreetNet posits that when looking at the regulatory regime, implementation is much more of a problem than the laws themselves.

In terms of resources, especially infrastructure there has been genuine attempt for example the Warwick junction project. Overall, ITMB feels that ITSBO needs to “pull up its socks” and make sure that in places like Mansel Road where people do as they please, are regulated. Traders’ feelings in regard to regulation have been that there is something in place as a guideline but concerns still crop up in terms of implementation. ITMB posits that issues of literacy and comprehension of the new policy need to be taken care of. ITMB warns that policy might be useless as long as its implementation tries to impose regulation.

ITMB suggests on the subject of new bylaws that they cannot submit their suggestions if not called upon by the city. Bylaws should be developmental in every sense and should define clearly the distinction between hawkers and vendors. The fact that there is silence concerning these means a redraft was necessary and needs the traders’ voice. And in setting up stakeholders who are going to contribute, questions remain as to the place of bodies such as the Chamber of Commerce. For ITMB, traders’ word about how they want to be regulated is key. The system needs to be constantly renegotiated and area management initiatives should be encouraged, but their effects should not be overestimated. Most of all, for the ITMB, there is need to see solid products/results as proof that the city is doing something.

SEWU points out that the general feeling about ITSBO and its operations and general city administration, is that the monthly rental of R35.00 is costly. On the operations of mobile traders, the city is perceived as not doing enough. Infrastructure is inadequate, especially storage. Overnight accommodation remains a pressing issue. Plans that were made to find overnight accommodation for street traders in Alice Street went cold. Nothing is done, yet bylaws prohibit and make it difficult for traders to carry on their business under present conditions. SEWU feels that ITSBO needs a bigger capital budget. Overall, SEWU feels that the law/regulations are now appropriate for women. Laws are good for women for they are progressive, but implementation is flawed. On empowering traders’ organizations, SEWU posits that street traders’ assistants find it hard to organize. Some women lose their jobs if they are unionised especially those with Indian employers. SEWU concludes that traders understand that some good things are in the pipeline, but an effort should be made to find solutions.

### **3.4 Conclusion**

Regulation and its implementation remains a paradox in the city of Durban. The key informants transcripts reveal a number of versions of regulatory regimes that operate on the conduct of the business of street trading. In this paper, regulation is operationalised as the

interrelated continuum from registration, spatial allocation, system capacity and enforcement. A number of implementation vagaries are revealed.

First, registration is still a piecemeal affair that needs to appropriately account not only for numbers and diverse activities that operators deal in, but also the phenomenon of itinerant traders. This is not only a problem for legal traders but also for the ability of city officials to manage trading sites. Moreover, all seem to agree that some sort of identification system needs to be in place to include those traders who are still in the process of acquiring permits and mobile hawkers too.

Allocations policy, which respondents seem to agree is the heart of the regulation regime, has illuminated a number of concerns. Allocations criteria that favour women, youth and the disabled on account of providing opportunities for most vulnerable entrants, are being rejected by some elements at street level. Reasons vary from the apparent inequities it breeds and its non-inclusiveness. Spatial allocation itself is still plagued by intense competition for the same desirable central locations. These not only have long waiting lists but are difficult to police. The new provisions of prohibiting or restricting areas have made prime business locations costly. This exclusion is not specifically stated in laws or regulations governing street trade but succeeds in squeezing out poorer, mainly women survivalist traders. The regulations of the former metro sub-structures still confuse a lot of traders in the streets. The issue of overtrading and fronts remains a controversial reality for both city officials and genuine traders. Overtrading spawns situations of conflict that make it difficult for all involved to earn a decent living from the sector. Also, issues of spatial allocation that happens in an environment of competition spawn particular clientelist/ patronage relationships that discriminate against the less resourced, yet deserving recipients of municipal help. Spatial allocation and its pressures for viable trading space illuminate the need for the city to see space not only as a development tool but also as an arena within which people struggle to fulfil their practical and strategic needs.

Enforcement, which constitutes an important part of the regulation regime, also revealed a set of concerns from all fronts. On the agency that is legally mandated to enforce city bylaws, traders seemed to be confused about the jurisdictional territories of both the SAPS and Durban Metropolitan Police. The poor information circulation and high staff turnover causes police on the beat to either treat street traders as criminals or like vehicles that need to be moved – not like people breaching spatial laws and regulations in their attempt to eke out an honest living by selling on the streets as Horn (2001) noted. Impoundments and relocations do not happen on a large scale in the city yet these still count for an insurmountable setback for some traders. Questions arise as to how much does the system guarantee private property rights of the poor.

The most interesting revelation is the assertion by traders' advocates that fining, already seen as a too costly penalty, is illegal. This brings in questions of law versus habit, technicalities and the legalities of enforcement agency. Moreover the issue of paucity of negotiation channels between traders' representatives and the police itself show the contradictions that create so many glitches in the smooth running of the system. The issue of appeals for aggrieved traders also crops up as a concern and also a necessary braking mechanism to ensure less lengthy court time for all involved. As Horn (2001) argues, a good way to be both effective and fair at the same time, is to go ahead vigorously with enforcement according to agreed procedures, and to have an easy and accessible appeal procedure for anybody who feels aggrieved with the way in which laws or regulations are enforced.

System capacity is the running engine of the regulation regime. It reveals a lot of the capabilities of the ITSBO and of organizational muscle of traders' representatives. Issues of the capacity of municipal officials and field operatives to creatively and timeously deal with the dynamic and volatile sector are noted. There seems a consensus that ITSBO needs capacitation, not only in diversifying and harmonizing officials' skills but also in capital budgets to fastrack infrastructure development and better management of existing sites. The policy has made recommendations that require a lot of implementation. Less political interference and the coordination of field agents will determine the health of the systemic capacity to respond quickly to demands and supply factors in the field. Most importantly the issue of making and sticking to agreements has been cited as crucial to the credibility of the system. Crisis negotiation is not only ad hoc but hardly makes logical let alone sustainable regulation practice.

Traders' representatives are also in need of capacitating if they are to constitute strong and influential partners for the city managers in running the regulation regime. The terrain lends itself to a high level of opportunism and individual self-interest. Not only do shady characters try to extort hard-earned funds out of street traders on the promise of getting them services, but also they get confused in effectively representing both legal and illegal traders. The organisational constitution of some of these organizations, hardly qualifies as democratic or representative. At the same time a paradigm change is needed. Spatial control does not leave room for invasions and conquering territories. The new era has dawned for all involved to perform their rights and obligations before claiming entitlements.

## **Section 4: Conclusion and Recommendations**

### **4.1 Introduction**

This research paper attempted to do three things. First, to provide a comprehensive overview of the context of the policy environment that street trading resides in. This being an attempt to set out the related discourses that influence and are influenced by regulation of street trading operators in the eThekweni municipal area. Second, the paper looked at the institutional profile of street trading and related issues in the operations of the city bureaucracy. The municipality is restructuring and transforming its character. In practice this has huge implications for how the regulation regime is being operated in an environment of flux. Third, the paper explored issues that have to do with the impact of the changing regulative and institutional environment on the operations and livelihoods of street traders on the ground.

### **4.2 Policy environment**

Though the initial focus of this paper was to look at women street traders, the final assumptions that this paper draws out are of general application to the street trading population in the eThekweni municipality. This is because it became apparent that the issues covered here are more sectoral than gender-specific. The conceptual framework employed in this study was useful to some extent. The literature review highlighted the diverse topics and findings on the informal sector and urban policy, and revealed the paucity of research done on the impact of the new deregulatory policies on women street traders. Informal and formal sector theoretical approaches illustrated the structural environment that informs regulatory regimes. The feminist policy approaches were not fully utilised as the study took a sector-specific turn. Nevertheless, feminist policy approaches demonstrated the possibility that regulation regimes need to be engendered as to take cognisance of practical and strategic needs of women traders.

South Africa is undergoing a very rapid process of change. Durban is no exception. The economy – both formal and informal is a part of this fundamental transformation. This paper highlights issues of trying to regulate- that is to formalize -informal operations that have no regulative precedents. This means a lot of trial and error is involved. A rapidly changing environment makes regulation a controversial reality for both officials and affected stakeholders. Consequently the regulatory regime is an ever-changing process resulting from the struggle of agendas of some well-intentioned visionary and progressive elements and/or otherwise in the city streets. On the context, which answers the research question as to what is the policy environment that governs the operation of street trading eThekweni municipality; consideration of various legislative documents and some research reports revealed a number of interesting but otherwise not so new trends. This is because the paper looked at the history, politics and urban history to articulate their influences on the way the sector is regulated. This also feeds into the implicit and explicit views about dominant city images/aesthetics, and the ways and means that these have of influencing whatever regulatory regime that is dominant at a given time.

Durban still qualifies as a best practice city in terms of informal economic policy process, considering where it comes from. This means that Durban has better regulation and management structures for street traders than other South African cities. The historical glimpse into the evolution of the colonial to the segregated apartheid city reveals the long urban policy preoccupation with the sanitation syndrome, segregation and influx control and other measures that were designed to banish African trade from the city centre. The context shows how some operators tried to transcend these systems even when the environment was most hostile. The section on context also reveals how even the broad anti-apartheid

movements and international outcry led to varying degrees of control or loss of control over the space in the city. Moreover, the context sets out the factors that led to invasion and reconquering the city by informal sector operators and the anarchy that ensued thereafter. Furthermore, the context explores the reassertion of city officialdom in the post-apartheid era, which is saddled, with priorities of transformations within their own structures to institute some form of control and development. The context shows clearly the intimate relationship between power and public policy that in this instance is not a zero-sum relationship. Development and control seem to be two general themes that inform the new policy discourse on use of space in the city.

The policy environment in the municipality is innovative and to some extent effort is made to be comprehensively consultative with all affected stakeholders. In regard to the regulation regime, the city suggests an accommodation rather than prohibitive practices. The intentions of Durban's policy environment in regard to street trading are illuminated by the most recent informal economy policy. The process and content are significantly progressive. Authorities now see street trading not just as a poverty alleviation measure but also as a very important player in the city corporate plan. This recognition of street traders as important economic actors not only assists in mainstreaming concerns of those working in the informal economy in city's priorities but also with practical policy solutions.

#### **4.3 The institutional profile**

The inquiry reveals a number of interesting changes. This comes from a research hypothesis that institutional location determines priority in terms of status, authority, and standing in the communication flows. Monies allocated to capital and operational budgets of ITSBO and other Economic Development Sectors together with trader's engagement with its frontline staff are important indicators of bureaucratic commitment to orderly development of street trading. Moreover the issue of traders' organizations and their relationship with city officials and councillors reveals the political dimension of agenda-setting in local government.

The ensuing political and bureaucratic transitions since 1994 have raised the profile of street trading in the city's agenda. The initial gain made by street trading in getting ITSBO made into a line department has been somewhat curtailed by the present rationalization of the city's departments. ITSBO is now just a branch within the Business Support Unit. The logical suggestion is that communication lines become a bit blurred and one starts wondering about the real priority given to the sector in practice. Moreover, issues of coordination crop up in an environment that needs operations of different line departments/units branches. In any case, street traders have to deal with activities of officials not only from ITSBO but also from Traffic and Transportation, Urban planning and Design, Architecture, Health, Land Transactions and many others. This therefore means some sort of confusion in trying to develop and regulate the sector.

Secondly, allocation of resources and provision of infrastructure has been a much-touted affair. There was initially a very rapid increase in developing markets and stalls for use by traders. At the same time these processes have not been without their problems. In some places traders are flourishing with basic provisions made for them. In others, markets are almost empty pointing to issues of undesirability of these facilities to traders or problems with allocations. Some places in the central business district are overloaded and congested. Urgent intervention by the city is needed and will be that is accompanied by the usual politics of space, rights and responsibilities. Traders' representatives seem to agree that the city has not done much building of new markets for the few last years. When looking at budgets and

allocation of resources, there has been a general paradigm shift in the city about how monies should be allocated. Past budgeting on the higher level was driven by contestations around prioritizing projects and favouritism to certain areas; major delays in making money available to functions on the ground led to some kind of implementation freezes, identifying the city's inability to provide a long term sustainable city strategy.

Presently the budget process has been an all out, consultative affair that not only seeks to address the flaws of the way things were formerly done but seeks to actively develop emerging sectors while maintaining sectors that have been invested in. What is worrying however is that the current way of budgeting makes it difficult to trace the exact amount spent on street trading, especially when looking at capital projects. Looking at the management strategy, there is an overall agreement by all key informants that area programmes, area precincts and teams are useful. Warwick Junction project proved to be a successful pilot that expressed the value of these multidisciplinary teams. In conclusion, one can say these integrated area-based programmes do offer potential for solving many problems of bureaucratic delay, with hands-on management by dedicated teams independent enough while remaining inside decision-making loops. Most importantly these nurture ongoing consultation with stakeholders and linkages between formal and informal economies. The issues of councillors remain, the impact of their decisions still determine the fate of street traders. Ambiguous relations between officials and politicians notwithstanding the street traders still are in a good position to get their issues tabled on the agenda. The institutional profile remains quite visible in an environment of acute flux.

#### **4.4 The impact of the changing regulatory regime**

This section illuminated the constant renegotiation in issues of regulation. When addressing the specific needs of women, the ability of women to initiate change is largely limited by a number of factors that derive from the organisation of urban informal trading and the structuring of gender relations. The needs of women are diverse and their objectives differ widely. Interview transcripts reveal a number of not surprising views. City officials seem to express a need for order and control as a prerequisite to development. The move towards more developmental interventions in the street trading sector is consciously recognized as dependent on a change of attitude and the regulation of street trade in ways that are not only fitted to needs of urban citizens but appropriate to the street traders. On registration, officials from diverse operational areas, dealing with management of street trading seem to agree that knowing the numbers of those operating within public space, whether legal or not, is useful. This is not only an information-gathering exercise but also an attempt to legalize street traders as small businesses.

Currently ITSBO is trying to come up with strategies to tie permit allocation to the practice of registering traders, to the extent that some places are being reallocated to the existing traders such as the case of the CBD Operational Area. Allocations policy seemed to be an area of most effort by officials as there is agreement that it is at the very heart of regulation regime. While the policy intent of the site allocations policy is to support and provide opportunities, especially for the new entrants, officials agree that the vagaries of implementation sometimes do retard progress. Because the site allocations policy is being used by the city as a means for not only job creation but also for the inclusion of people excluded from economic activity in the past, officials cite an apparent threat that spatial allocation criteria has posed to some elements in the sector, who are trying to reject it.

Moreover, the issue of the waiting list seemed to be confusing a lot of people; some maintaining that they still exist even though the policy recommended they be eliminated. In regard to charges of operating, which are tied to aspirations of the city to empower street traders as small business people, there is a variable rental system according to facilities provided, types of goods sold by the traders and other valuing criteria. In seeing the pavement space as a development tool, the city makes an effort to charge traders for operating in ways that recognize the average incomes they make.

When looking at the issue of enforcement, officials seemed to agree that enforcement is indeed a means of policing belligerent, mostly informal traders. The officials seem to all agree that most legal traders; that is those with permits, hardly get impounded. For them enforcement which involves the Metro Police, is a measure of last resort. Most agree that the police are doing all they can but the Metro Police should still get its house in order in terms of sending teams of well-trained people who do not shuffle traders like vehicles or worse; common petty thieves.

In regard to the regulation system and issues of capacity some officials feel the system is doing fine, that whatever frontline staff and resources available are enable them to meet the challenges of regulating the sector. There is a need for bigger capital budget, to get more infrastructure development. The issue of illegal traders is both a pain for officials and traders because, besides being difficult to regulate, there are seeds of conflict in their wake. Moreover issues of political meddling by councillors remain, making officials wonder if it is possible to implement sustainable control and order let alone appropriate regulation.

A non-official version of regulation emphasises that though the issue of securing the right to trade is important to appropriate regulation, getting a plot to trade allows one to exercise that right. Moreover there is a general feeling that policy-making has been undoubtedly progressive while the regulation regime is being sullied by solvable implementation vagaries.

#### **4.5 Recommendations**

- For statistical purposes and other reasons, the city needs to institute a form of identification system of all traders -whether legal or not.
- The city needs to revisit allocations criteria to make sure that genuine cases of poverty are not excluded
- Spatial allocation procedures need to be simplified. The promotion of a one-stop permit provisions need to be treated as urgent.
- The issue of waiting list needs to be spelt out in black and white -that it does not exist, and needs to be eliminated from the street committee arena.
- The Metro Police should work out a program of guidelines for the policemen on the beat as to how to deal effectively with street trade, and the legality of fines needs to be sorted out and be made more transparent.
- The methodology used here should be expanded and replicated in other areas to see the gap between official and non –official versions of regulation.
- City officials need to be capacitated in terms of more staff allocations so as to free up more time to liaise with street traders.
- City officials and traders representatives need to be further capacitated to enable sustainable negotiation and genuine agreements.
- There should be less political interference in implementation to allow standardization of the regulatory regime across the city.

- Relatedly, area programmes should be bolstered to deal with coordination problems of various field agents.
- Partnerships of all forms, Metro Police-street traders; street traders-officials, and others need to be nurtured to encourage timely problem-solving and policy revision.
- All stakeholders need to deliver. There is still a lot to be done before the system as recommended in the Informal Economy Policy can work.

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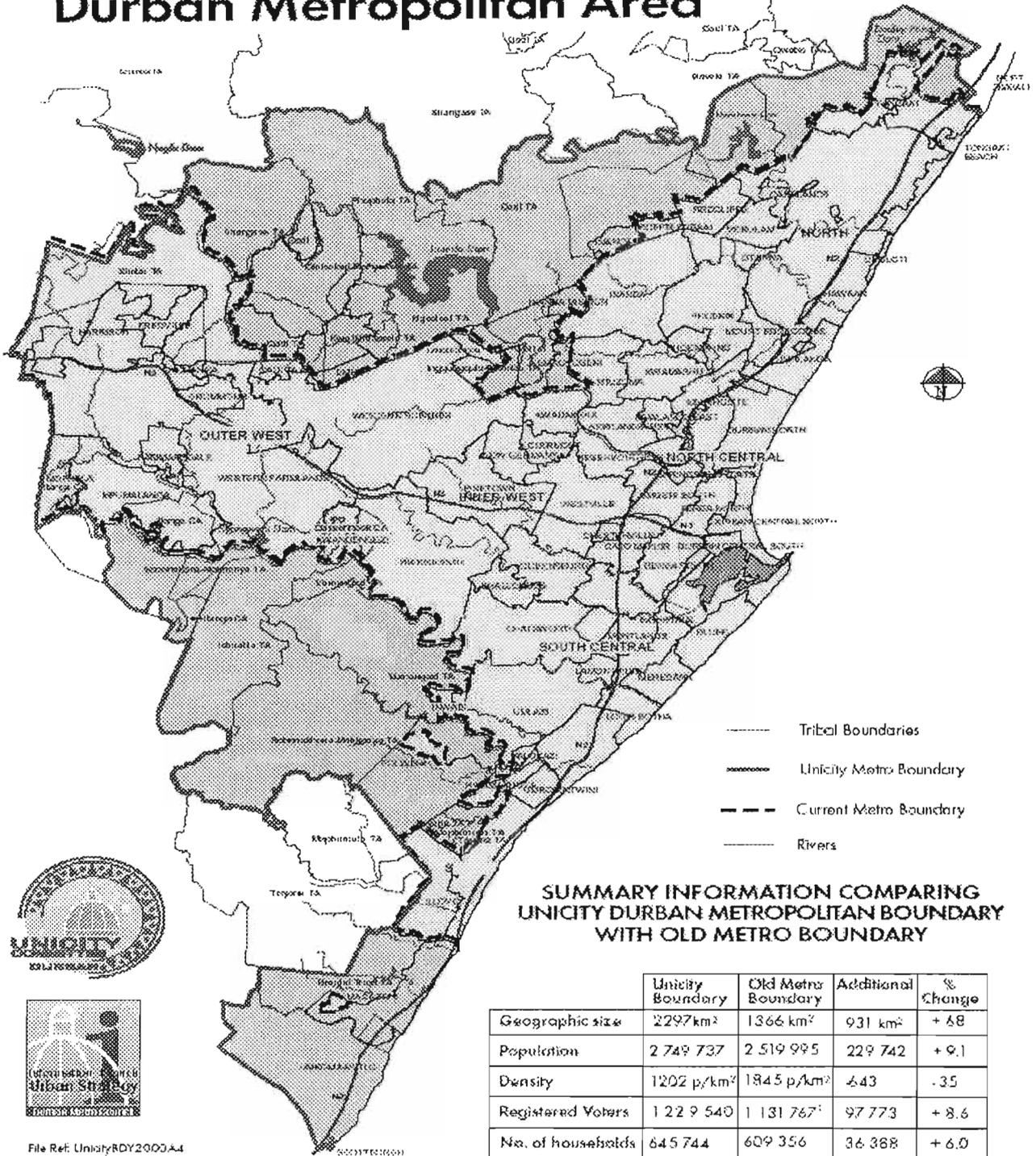
**Websites**

[www.durban.gov.za](http://www.durban.gov.za)

[www.wiego.org](http://www.wiego.org)

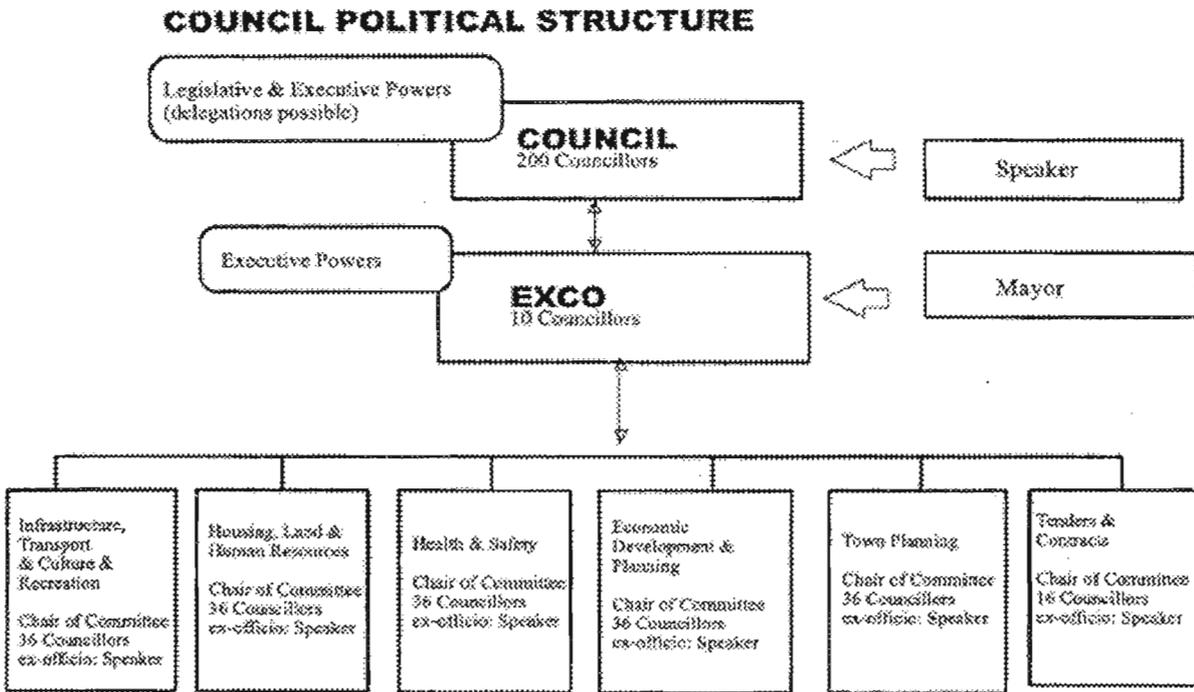
5.2 Appendix 1: Map of eThekweni Municipal area

# Durban Metropolitan Area



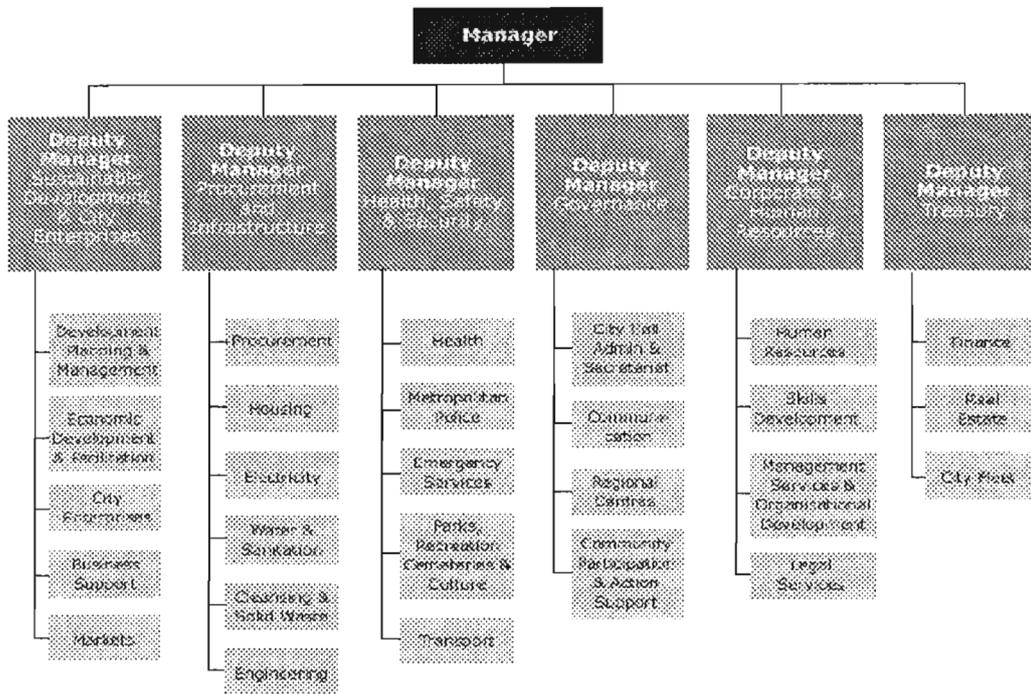
Source: <http://www.urbstrat.org.za/>

5.3 Appendix 2: Structure of eThekweni Municipal Council



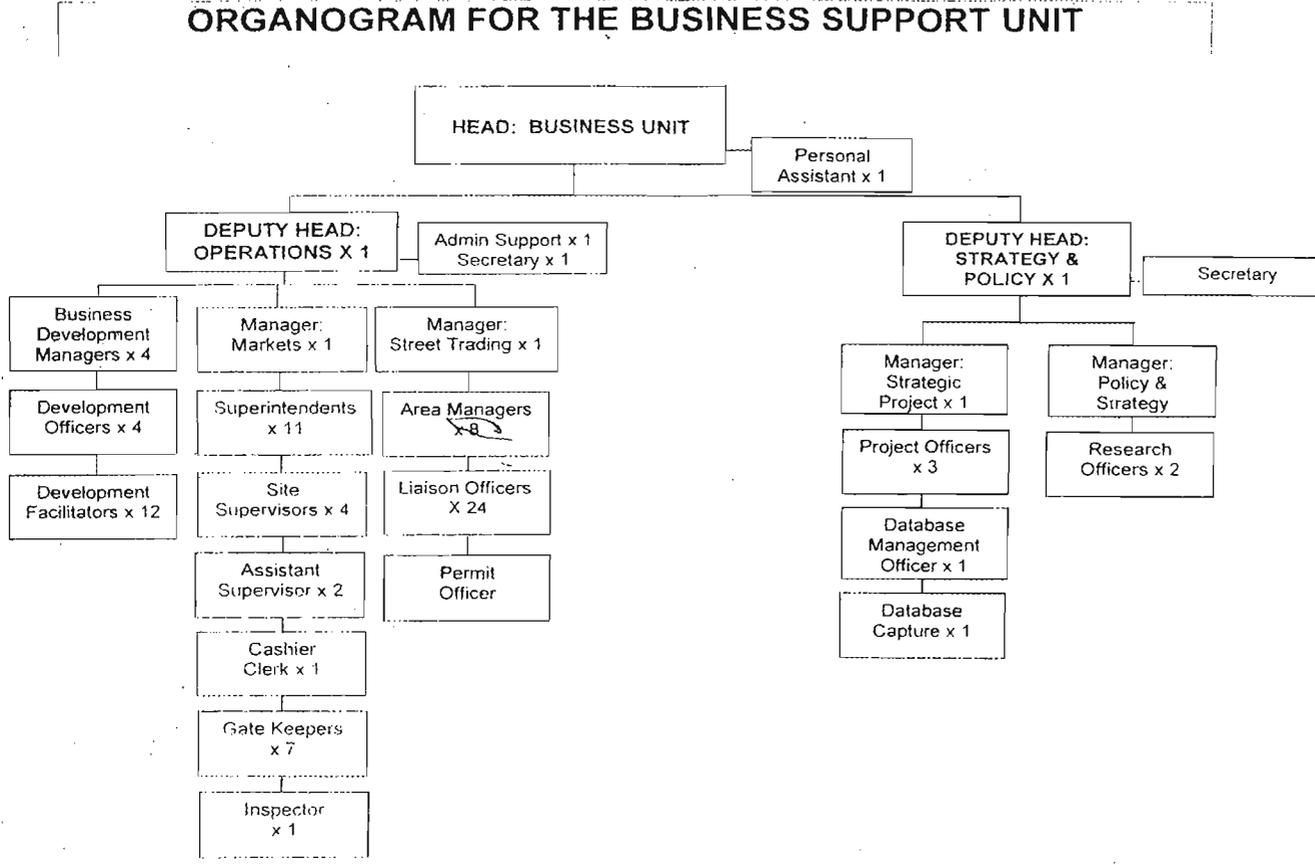
Source: <http://http://www.durban.gov.za/council/index.htm> [15/06/03]

5.4 Appendix 3: Bureaucratic Structure of the eThekweni Municipality



Source: <http://http://www.durban.gov.za/council/index.htm> [15/06/03]

5.5 Appendix 4: Organogram for Business Support Unit



Source: Informal Trade and Small Business Opportunities

## 5.6 Appendix 5: List of Key Informants

Busi Mlotswa	Area Manager, North Durban
Samson Chiya	Area Manager, South Durban
Sipho Muthwa	Area Manager, CBD
O. T. Nzama	Area Manager, Beachfront
Pat Mncube	Area Manager, Warwick Junction
Phillip Sithole	Manager, Informal Trade and Small Business Opportunities
Snele Ntsele	Head, Business Support
Pat Horn	Coordinator, StreetNet International
Thandiwe Xulu	Self Employed Women's Union
Emmanuel Dlamini	Chairman, Informal Traders Management Board
Caroline Skinner	Researcher, School of Development Studies, University of Natal
Prof. Francie Lund	Researcher, School of Development Studies, University of Natal

## 5.7 Appendix 6 Generic Interview schedule used in the study

*Interview schedule for the impact of the new Informal Economy Policy on trading conditions of women street traders.*<sup>11</sup>

*Informants: SEWU, ITMB, StreetNet and DITSBO.*

### **Regulating and registering the right to trade: Licensing**

1. Are there enough licences for a number of different categories/types of street traders needing them?
2. How does the department go about calculating the cost of licence procurement?
3. Are the rates blanket or variable?
4. Are the survivalist women able to keep up with licence payments?
5. How does one go about procuring a licence
6. Are the procedures for obtaining licences user friendly [one stop dept for everything]?
7. Approximately, how long does it take to obtain a licence?
8. Are there other channels of procuring a license besides the official channel?
9. Are there accessible ways of exposing/prosecuting unlawful financial gains from licence procurement?

### **Spatial Regulation: Permits**

1. How much does the department charge a street trader for a spatial permit? Is the cost tied to facilities provided?
2. How does one go about procuring a permit? What are the requirements?
3. How long does it take to procure a permit?
4. Is the present system of allocating space satisfactory?
5. Allocation of space is identified as a difficult process, are there enough spaces?
6. If the space is not enough to meet the demand, what is done to deal with this situation?
7. Are there established criteria for priority in space? [Such as common-law rights of prior occupation *versus* new entrants, or opportunities for survivalist traders vs. fronts for syndicates or large business interests]

### **Enforcement of regulations**

1. Who is responsible for enforcing regulations that have to do with street traders in the city?
2. Some people argue that the enforcement agency often criminalize traders economic activity?
3. What is the procedure in terms of removal and impoundment of goods?

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<sup>11</sup> This has been formulated by using Horn (2001), WIEGO policy response document and Chen et al (2001)

4. What is the role of traders' organisations such as ITMB in enforcement of street trading regulations?
5. Is the enforcement agency aware of the practical reality of women survivalists when imposing fines?
6. Are there internal appeals procedures to deal with aggrieved traders, besides courts of law?
7. If there how does it work out?
8. Is the present system of enforcement satisfactory?

**Regulation system: capacity**

1. Do you think the city administration is capable, in terms of frontline staff and resources to engage/regulate street traders?
2. In discussions that the department has had with the traders, what has been a general feeling about department's regulatory operations?
3. Are there those traders who seek to deliberately avoid regulation, besides those dealing with illegal goods? If it is the case what does the department do to encourage legalisation?
4. How does the department deal with competition for the desirable locations?
5. Looking at the costs of staying legal are there incentives for those who do well?
6. In view of the Informal Economy Policy (2001), is there capacity at the municipal level to implement the proposed laws effectively and efficiently?
7. I heard that the department is presently engaged in the process of drawing new developmental street trading bylaws, how true is this?
8. What is the progress so far? How soon can they be ready for public consumption?