

The state of informal workers' organisations in South Africa

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1. Overview of informal economy in South Africa (select sectors)

South Africa's informal workers in all sectors, remain largely unorganised and with limited state protection. The progressive labour laws that organised labour negotiated post-1994 only serve to protect those in full-time employment and not the majority who fall outside the scope of the legislation; those in the informal economy. The profile of informal workers is specific to each sector, in some sectors such as domestic work, street trading, and construction there are immigrant workers from neighbouring countries such as Lesotho, Zimbabwe and Mozambique as well as other countries such as China and Pakistan. In other sectors however, local South Africans are largely in the majority, such as in the taxi industry and manufacturing (clothing, textile and footwear).

The South African government definition of informal workers and the sector is broad. Informal workers are persons who are in precarious employment situations irrespective of whether or not the entity for which they work is in the formal or informal sector. Persons in informal employment therefore consist of all persons in the informal sector; employees in the formal sector; and persons working in private households who are not entitled to basic benefits such as pension or medical aid contributions from their employer, and who do not have a written contract of employment. Therefore, the informal sector has the following two components:

- Employees working in establishments that employ less than five employees, who do not deduct income tax from their salaries/wages; and
- Employers, own-account workers and persons helping unpaid in their household business who are not registered for either income tax or value-added tax.

Given the scope of definition of the informal economy by the South African Labour Force Survey, it is evident that despite its diversity, the informal economy can be usefully categorized by employment status into two broad groups. First, the *self-employed* who run small unregistered enterprises. Secondly, *wage workers* who work in insecure and unprotected jobs (although some informal workers – notably home-workers – do not fit neatly into one or other of these categories) all sharing one thing in common: the lack of adequate legal recognition, regulation and protection.¹

The informal economy has been growing over the years, and this growth has always been associated with the decline in the formal economy. The South African Labour Force Survey² estimates that the total workforce is over 12 million workers and that includes 2.1 million

¹ Chen, M.A., (2005), *Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment*, Research Paper, UNU-WIDER, United Nations University (UNU) No.2005/10.

² LFS is a household-based sample survey conducted by Statistics South Africa (Stats SA). It collects data on the labour market activities of individuals aged 15 years and above who live in South Africa. However, this report only covers labour market activities of persons aged 15 to 64 years.

informal workers, half of those workers (a million) are street vendors (LFS, 2011).³ Unofficial reports estimate the numbers of those working in the informal economy to be much higher, especially because some of the workers might be illegal immigrants from neighbouring countries and therefore not counted in the national statistics. In recent years though, South Africa has witnessed a decline in the informal economy. Between 2010 and 2011 (the recession years), all industries in the informal economy lost jobs, except Trade which gained 27 000 jobs and Mining which remained unchanged. Compared to 2010, the informal sector experienced a net loss of 12 000 jobs with most of the losses being in Transport (28 000). Labour Force Survey's 2012 results indicated that informal sector employment increased by 43 000 in the Community and social services, this would include work performed in private households such as domestic work.

The above statistics undoubtedly pose a serious challenge both for policy direction in terms of capacity to provide efficient and fitting legislative protection as well as for collective organising mechanisms to enforce of regulations and protection vulnerable workers. Numerous research studies have shown the highly precarious nature of the South African informal economy. Many have emphasised low wages, poor working conditions and lack of union representation.⁴ The role of the state has been minimal, inconsistent, and ambivalent in the ways it has tried to intervene to regulate and protect informal workers. In most of the sectors, the relationship between the state and informal workers is adversarial; exemplified by the use of force to regulate informal workers and enforcing local government by-laws. The power of employer associations in sectors such as transport (taxi) and constructions have impeded the state and organised labour to regulate and organise in these sectors. While organised labour has historically stated the need to organised informal workers, its actions have also been similar to the state's response. Organised labour's response has also been minimal and inconsistent.

Table 1: Labour Force Survey: Employment in the selected sectors (2011-12)

Sector	Employment Oct-Dec 2011 (Thousand)	Employment April-June 2012 (Thousand)
Private Households (domestic work)	1 118	1 153
Mining	1	1
Manufacturing	203	171
Construction	320	292
Transport	192	187
Trade	997	1 000

³ Labour Force Survey, Statistics South Africa. 2011. Pretoria.

⁴ See for example: Bennett, M. 2003. "Organizing in the Informal Economy: A Case Study of the Clothing Industry in South Africa", *SEED Working Paper No. 37.*; Mosoetsa, S. 2001. "The Manchester Road": Women and the informalisation of work in South Africa's footwear industry" in *Labour, Capital and Society*, vol. 34. no. 2 pp. 184-207; Matjomane, M. 2011. Spaza Shop keepers, the inner city and the local 'community'- The case of Yeoville. Wits University. Honours Research Report.

2. Relation to the state: National and Local government

National labour laws (through the national Department of Labour) and the various local by-laws (local government jurisdiction) mediate the relationship between the state and informal workers. At national level, South Africa's informal economy is primarily governed by two pieces of legislation namely the Labour Relations Act of 1995 (LRA) and the Basic Conditions of Employment Act of 1995 (BCEA) which were amended in August 2002 to introduce a more concrete basis for organising informal workers. The legislative amendments sought to deal specifically with issues of definition of employee and self-employees that previously excluded certain sectors of informal workers.⁵ Furthermore, these amendments equally served to create a centralized bargaining council for informal workers looking into issues such as payment, retirement funding, medical schemes, hours of work, safety and other conditions of employment for informal employees. Other policy provisions such as the National Economic Development and Labour Council (NEDLAC) was set up as a forum in which different interest groups could interact and acts as a potentially influential forum for representation of informal economy workers.⁶

The two sectors that have benefitted from government legislation include the domestic sector and taxi industry. The Department of labour set basic working conditions and minimum wage standards for domestic workers through the Sectoral Determination for the Domestic Worker and 2002, and later the Domestic Workers Act of 2008. Compliance has been very low and implementation of the legislation limited. The nature of the sector (private homes) and the profile (largely legal and illegal immigrants) are the main reasons why legal protection of domestic workers has been impossible. For the taxi industry, in the taxi recapitalisation programme was launched by national government as an attempt to regulating the taxi industry and create space for organised labour to organised taxi drivers. The initiative has been challenged by lack of implementation and especially employers (taxi associations) refusing to comply.

Despite the growth of street trading and informal recycling, the two sectors have had mixed reaction from the local state. There are a few cases where the state has been attempting to promote informal workers and their businesses. These have mostly been in township with the setting up of stalls and a general tolerance by the local state and positive relationship with the state. However, in major towns (municipalities), the relationship between the state and informal workers and their organisations has mostly been adversarial. For example, the Johannesburg Inner-city rejuvenation programme displaced street vendors before and after

⁵ Goldman, T., (2003), *Organising in South Africa's Informal Economy: An Overview of Four Sectoral Case Studies*, InFocus Programme on Boosting Employment through Small Enterprise Development, Geneva, International Labour Organisation .

⁶ Skinner, C., and Lund, F., (1999), *Promoting the Interests of Women in the Informal Economy: An Analysis of Street Trader Organisations in South Africa*, http://wiego.org/sites/wiego.org/files/publications/files/LundSkinner_Promoting_interests_women_IE_1999.pdf

Valodia, I., Skinner, C., and Devey, R., (2006), *Second Best? Trends and Linkages in the Informal Economy in South Africa*, Accelerated and Shared Growth in South Africa: Determinants, Constraints and Opportunities, Johannesburg South Africa: Development Policy Research Unit Conference [Available at]:

the 2010 FIFA soccer world cup, with the state arguing that it was good to have a clean city and important to attract investment back in the area. The assumption often from government is that street trading is associated with litter, grime and crime and thus not good for business. Municipal by-laws have often been developed and enforced to limit the activities of street vendors. While the city of Durban has a history of a positive relationship with street vendors with positive policies that respect the right of informal workers to trade in the city, there are also moments where the city has often contradicted its own policies and thus also wanted to displace workers during the 2010 FIFA soccer world cup, in South Africa.

Therefore, despite labour stipulations, most informal workers in South Africa remain largely unprotected due to insufficient enforcement mechanism and the general invisibility of some sectors. For example, those working in private households predominantly women are not protected. It is not only the relationship with the state that has been problematic; the relationship with communities has also been a problem as highlighted by the recent spate of attacks on small township businesses (spaza shop). Some of the issues raised by community members are related to the profile of these spaza shops. The majority of those who own these businesses in many communities are said to be non-South Africans but the workers are often South Africans. The issues are often about unfair competition.

It was therefore not surprising when the African National Congress (ANC), the governing political party in South Africa, issued its recent policy discussion document as it pondered on the rights of non-South Africans' involvement in the informal economy:

In many townships and rural areas some asylum seekers have been involved in informal trading – an activity that might contravene municipal by-laws and should not be legal under the Refugees act given that asylum seekers are persons whose status has not been determined. This informal trading is mainly in the form of hiring *Spaza* shops and houses from South African. Non-South Africans should not be allowed to buy or run *Spaza* shops or larger businesses without having to comply with certain legislated prescripts. By-laws need to be strengthened in this regard. Should a regulatory framework for small and larger businesses be developed in terms of municipal by-laws and provincial and national legislation? This would have to be done in a way that does impacts positively rather than negatively on the informal economic sector. Should bylaws apply equally to both asylum seekers and citizens? (ANC, 2012:6)⁷

3. Relation to formal trade unions

Various organisations both formal and informal are actively organising informal workers in South Africa even though much effort still remains, to integrate these organising efforts to mainstream trade unions. This is partly because trade unions in South Africa have had to face many internal and external challenges. While the Congress of South African Trade

⁷ African National Congress (ANC) 2012. Policy discussion document: Peace and Stability.

Unions' (COSATU)⁸, has shown commitment towards organising informal workers, its efforts are hampered by increased labour brokering and sub-contracting of workers in sectors such as manufacturing, mining and construction. Additionally, the crisis of extending trade union organising to the growing informal sector for the trade unions in South Africa are hampered by employers engaging in processes of undermining the labour movement, using a variety of mechanisms to divide workers, weaken unions and reduce labour costs. For example, depending on the requirements of the production process and the conditions of product markets, employers can externalise specific activities to labour brokers, externalise sections of production to sweatshops.⁹

Given South Africa's labour movement history of linking community and workplace struggles and argument on uniting the broader working class (employment, unemployed, and poor), it is not problematic to expect the trade union movement to take on the issues of informal workers. However, the labour movement, like the state has often been ambivalent towards organizing or linking with informal workers. This is despite the Congress of South African Trade Unions' (COSATU) congress resolution of 2000 to organise informal workers.¹⁰ Only a few trade unions, affiliated to COSATU took on the challenge of organising these workers. These include the National Union of Mineworkers (NUM), South African Textile Workers Union (SACTWU) and South African Transport and Allied Workers Union (SATAWU). For instance in the transport sector where SATAWU has made considerable progress in recruiting minibus taxi drivers through a piloted organising strategy which has been implemented. The strategy however was unsustainable and failed because of intimidation by employers. Similarly, NUM has started a process of developing a strategy for organising construction workers. SACCAWU demonstrated that it was possible to mobilise casual and permanent workers together in collective action to improve the conditions of casual workers. Other efforts have been noted in the street trading sector where traders who are dependent on a single supplier or who sell similar goods may come together to increase their power in negotiating with suppliers, for example through cooperative buying arrangements. In the construction sector notably, organisation was especially difficult owing to the nature of short-term projects.

SACTWU organising home-workers

In 2010, SACTWU resolved to start organising retrenched workers and designers.¹¹ A number of specific programmes and benefits have been initiated over the years to attract these workers to become union members. The union's representation states that "We recognised that these categories of workers need different levels of organisation and benefits tailored to their needs in order to get them into the fold of the union. In the case of home-workers the aim is to set up a special unit that would give home-workers benefits, for

⁸ the largest of the three federation with a membership with an estimate of 2million

⁹ See for example: Bennett, M. 2003. "Organizing in the Informal Economy: A Case Study of the Clothing Industry in South Africa", *SEED Working Paper No. 37.*; Mosoetsa, S. 2001. "The Manchester Road": Women and the informalisation of work in South Africa's footwear industry" in *Labour, Capital and Society*, vol. 34. no. 2 pp. 184-207

¹⁰ Congress of South African Trade Unions (COSATU) National Congress, September 2000.

¹¹ South African Clothing and textile Workers (SACTWU), National Congress, 2010.

example, not having to pay subscriptions, which would usually be 1% per week with a minimum and a maximum amount”¹²

COSATU in Johannesburg: Coalition of street vendors in Johannesburg, facilitated by COSATU (2012)

Recently, COSATU has taken on the role of facilitating a coalition of street vendors in Johannesburg. This is a Coalition established to respond to the local government’s policy document of street vendors. The policy document is intended to guide municipalities on how to “adopt a more developmental approach towards the informal economy.” (SALGA, 2011) The Coalition demands include full participation, joint decision making in policy decisions and by-laws amendments, joint management of street trading, etc.

Furthermore, many informal workers are represented by various organisations. Some of these organisations are in the Women in Informal Employment: Globalizing and Organizing (WIEGO) database, which includes about 29 membership based organisations in South Africa.¹³ As it would be expected, the majority of organisations are street vendor organisations. Some of these organisations such as Self Employed Workers Union (SEWU, based on the Indian model informal workers organisation), have closed down due to internal administration challenges.¹⁴ A number of domestic workers union were deregistered in 2011 for failing to comply with the requirements (audited financial statements) as stated by the registrar of labour; including the National Domestic and Allied Workers Union (NADAWU) and Domestic Workers Union of South Africa (DWUSA). New organisations have also been established such as the South African Self-Employed Women’s Association (SASEWA), affiliated to Streetnet.

There are also many organisations that exist and operate informally, most are issue based. Some of these informal networks operate primarily because workers are illegal immigrants and do not want to form formal organisation out of fear of being identified and deported. For example, most of the street vendors in the city of Johannesburg, have formed street based networks and informal associations. Some of these organisations are also affiliated to international organisations such as StreetNet.

¹² Joynt, C. and Webster, E. 2011. The growth and organisation of a precariat: Working in the clothing industry in Johannesburg inner city. Paper presented at the GLU Conference, Johannesburg. September 2011.

¹³ WIEGO Organization and Representation Data Base. Internet sourced: <http://www.wiegodatabase.org/> 2 February 2012

¹⁴ Devenish, A. and Skinner, C. 2004. Organising Workers in the Informal Economy: The Experience of the Self Employed Women’s Union, 1994-2004. School of Development Studies, University of KwaZulu-Natal.

APPENDIX I: Experiences Organising Informal Workers in South Africa (2012)

SECTOR	RELATION TO STATE, POLITICAL, PARTIES, POLICY	RELATION TO FORMAL UNIONS	IDENTITIES (RACE, GENDER, MIGRATION STATUS, ETHNICITY)
1. DOMESTIC WORKERS	LEGISLATION TO PROTECT WORKERS - MINIMUM WAGE & BASIC WORKING NO IMPLEMENTATION	LIMITED FORMAL UNION NUMEROUS TRADE UNIONS DEREGISTERED	LOCAL (SA) AND LARGE IMMIGRANT FEMALE WORKERS (LESOTHO, ZIMBABWE)
2. STREET VENDORS	AMBIVALENT RELATION MOSTLY TENUOUS – ENFORCEMENT OF BY- LAWS	NO FORMAL UNIONS STRONG INFORMAL AND FORMAL ASSOCIATIONS	LOCAL (SA) AND LARGE IMMIGRANT WORKERS (ZIMBABWE, PAKISTAN, MALAWI, MOZAMBIQUE)
3. RECYCLERS	AMBIVALENT ROLE OF THE STATE (Recycling vs. by-laws) Close relationship with formal business	NO FORMAL UNIONS / INFORMAL ASSOCIATIONS	MAINLY LOCAL (SA)
4. TRANSPORT (TAXI)	ENCOURAGED TO FLOURISH CONFRONTATIONS WITH LOCAL STATE (TRAFFIC REGULATIONS/ BY-LAWS)	FAILING / WEAK FORMAL UNIONS (e.g. SATAWU)	MAINLY LOCAL (SA)
5. MANUFACTURING (CLOTHING, TEXTILE AND FOOTWEAR)	NO REGULATION / NO LABOUR LAW PROTECTION	INFORMAL ASSOCIATIONS / LIMITED FORMAL UNIONS (e.g. SACTWU)	MAINLY LOCAL (SA)
6. CONSTRUCTION (MINING “ILLEGAL MINING”)	TENUOUS – DEFINED AS ILLEGAL AND MONITORED BY LOCAL STATE POLICE	INFORMAL ASSOCIATIONS / NO FORMAL UNIONS	LOCAL (SA) AND IMMIGRANT MALE WORKERS (LESOTHO, ZIMBABWE)
7. CONSTRUCTION	NO REGULATION / NO LABOUR LAW PROTECTION	ORGANISED THROUGH LABOUR BROKERS / LIMITED FORMAL UNIONS	LOCAL (SA) AND LARGE IMMIGRANT MALE WORKERS (LESOTHO, ZIMBABWE)

