

The Informal Trade Sector in SADC

Legal, Policy and Programmatic Support



A Desk Study by the Ecumenical Service for Socio-Economic Transformation (ESSET).



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ECUMENICAL SERVICE FOR SOCIO-ECUMENICAL TRANSFORMATION (ESSET)

Origins

Ecumenical Service for Socio-Ecumenical Transformation (ESSET) is an independent ecumenical organization that works against the systematic exclusion of poor people and marginalized social groups by advocating for social justice. ESSET is registered as a non-profit company in terms of South Africa's Companies Act 71 of 1998.

In 1996, the leaders of the South African Council of Churches (SACC) and a number of other ecumenical organizations decided to form ESSET. Among these founders were liberation theologians and activists such as Dr. Beyers Naude, Professor Barney Pityana, Dr. Brigalia Bam, Bishop Johannes Thomas Seoka, Dr. Wolfram Kister and other leaders who knew that:

Political freedom that was not going to be backed by economic justice would be meaningless to millions of vulnerable people who often do not have access to resources and are far from people of power.

MISSION

To advocate for social and economic justice by committing ourselves to being in solidarity with the poor in their struggles as they act in resistance to their marginalization and oppression.

VISION

A transformed society, free of socio-economic exclusion, exploitation, and discrimination.

VALUES

ESSET values and promotes:

- Integrity,
- Equality,
- Wholeness and fullness of life,
- Responsible stewardship for all creation.

Today ESSET collaborates with communities and partners in facilitating processes within churches and wider society to achieve pro-people development. Its work is organized in three programmes: 1) Theology and Social Justice; 2) Community-driven Development and 3) Informal Trade. A cross-cutting programme on gender justice provides specialized attention to women empowerment and gender justice.

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Sonto Magwaza, Executive director

FOREWORD

by ESSET's Executive Director

Since its formation in 1996, ESSET has striven to play its part in shaping South Africa and the region's socio-economic transformation agenda. As a result, addressing structural drivers of poverty has become a central element of its programmes. A particular approach in its work has been to strengthen the creative ways constantly used by poor and marginalized people in search of alternative livelihoods. In this search, it has become apparent that the involvement of women in informal trading has long been a coping mechanism for poor households at a time when governments are failing to address their welfare and economic needs.

In harnessing the informal economy for trade and development, ESSET is working with eight informal trade organizations from Lesotho, South Africa, Swaziland, Zambia and Zimbabwe. The primary purpose of the partnership is to enable these informal trade organizations to claim trade justice and the rights of their constituencies to ensure that they are set on a sustainable livelihoods path.

A dimension of this work has been attention to the challenges faced by women informal traders, in particular those plying their trade across Southern Africa's various borders. In the eight countries where it has programmes, ESSET has also paid due attention to the plight of local women informal traders, including vendors, small scale farmers in co-operative formations, sewing clubs, and so on.

In order to fully understand issues affecting the traders, in 2012 ESSET invested in a Participatory Action Research (PAR) study of informal trading conditions in Southern Africa. The PAR provided ESSET with baseline

information which, among other things, revealed constraints faced by informal traders. Apart from trade distortions and restrictions, it became apparent that social protection issues were taking a heavy toll from informal traders' productive capacity and social conditions. In particular, women informal traders were found to be vulnerable with regard to HIV/AIDS, gender violence, discrimination and sexual harassment. Sanitation, decent work conditions, and access to trade-related services and infrastructure were reported to be inadequate. It is in this context that ESSET conducted this desk study to focus on the legal and policy challenges which negatively affect women informal traders and, within this scope, to explore programmatic issues necessary to strengthen their advocacy role.

The findings of the desk study are telling. The legal and policy environment is lagging behind the needs of women informal traders. The informal trade sector is not adequately recognized at many levels of policy discourse and practice. Sexual harassment at border points is rampant. This increases vulnerability of women informal traders to HIV/AIDS transmission. Access to anti-retroviral treatment is not properly harmonized across borders and therefore cannot adequately cater for the ever migrating traders. The emerging trade regime within the Southern Africa region is developing in ways that are gender insensitive and inimical to the needs of women informal cross-border traders.

Even in cases where the law is clothed in good intentions, administrative practice still falls short of doing justice to good laws. It is in such cases that some informal traders have found assistance in litigation to affirm the rule of law. Access to courts, in essence to justice, has

proved to be an important recourse in the rights struggle facing informal traders.

More policy dialogue is therefore encouraged. Capacity building and programmatic support to the traders will enable them to engage various policy organs effectively. The study makes far-reaching recommendations in this regard.

At ESSET, our action agenda will be, to a large extent, shaped by the desk research recommendations. We are of the view that informal traders must be recognized for their contribution to alleviating poverty and the potential they have to empower women, girls and poor households out of poverty. It is apparent that the new United Nations Sustainable

Development Goals will not be felt in the informal economy should policy ambivalence remain a norm. Structured support is needed for the sector to play its part. Neo-liberal policies, as we now understand after decades of failure, have proved that these cannot address the plight of poor women, children and households.

Let me end by inviting you to join women informal traders in their struggle for socio-economic justice. We welcome your feed-back and solidarity.

Sonto Magwaza
ESSET Executive Director
Johannesburg, November 2015

EXECUTIVE SUMMARY

- This desktop study explores the extent of policy and programmatic support from government to the informal trade sector in Lesotho, South Africa, Swaziland, Zambia and Zimbabwe.
- Informal trade is a crucial coping measure for poor households, especially when unemployment is high.
- Informal cross-border trade (ICBT) constitutes a significant economic force in terms of the value of goods traded.
- The majority of cross-border traders are women.
- Trade has great potential to address mass poverty if the rules governing it take into consideration the interests of the poor and vulnerable groups in society, especially women.

But:

- The legal and policy environment lags behind the needs of women informal traders.
- Credit is mainly restricted to formal businesses and banking regulations are often too stringent for informal traders to operate foreign currency accounts.
- Women informal traders are rendered vulnerable to HIV/AIDS, sexual harassment and corrupt officials because of inadequate social protection, complex procedures at border posts, and poor access to health services while abroad.
- The emerging trade regime is developing in ways that are gender insensitive.
- Informal traders are often harassed by government operations designed to 'clean up' the streets.
- Broader aspects of the legal system not directly related to trade, such as marriage laws, may also affect traders' ability to trade.
- Administrative practice still falls short of doing justice to good laws, where these exist.

So:

- The role of the courts has become important in interpreting legislation in ways that must improve the realization of informal traders' rights.
- It is necessary to take a system-wide view whenever trade policy issues are discussed, which takes into account the multi-layered nature of trade regimes.
- The complex issues surrounding trade policy need to be decoded in ways that are understood by informal traders.

ESSET recommends:

- Facilitating the development of strong organization for informal traders and a strong role for women within these associations,
- Strategic leadership roles for women traders to strengthen their voice in informal trade organizations.
- Producing a programme strategy paper elaborating the policy concerns of women informal traders, to assist the sustenance of advocacy campaigns, engaging with governments and private sector actors.
- Pursuing public interest litigation to claim rights and promote access to justice and the upholding of the rule of law.
- Relevant legal reforms, and increased support in the development of jurisprudence favourable to informal traders and the deprived poor in general.
- Developing policy to help formalize informal traders must be encouraged, for example through promoting co-ops and increasing access to banking products.
- Encouraging the development of social protections, such as protections against sexual harassment.
- Sustained literacy programmes to assist women informal traders to understand the gender dimensions of emerging trade regimes impacting the region.
- Future research should consider race, class and xenophobia.



Cross border informal trade is a significant component in informal trade, which is in turn key in coping with poverty, and complementary to formal business. (Photo from <http://news.bbc.co.uk/2/hi/africa/7313076.stm>)

INTRODUCTION AND FOCUS OF STUDY

This desk study explores the informal trade sector in Southern Africa, with specific reference to Lesotho, South Africa, Swaziland, Zambia and Zimbabwe.* The focus is on providing an overview of legal, policy and programmatic support provided by governments to the informal trade sector, especially to women traders. It has been empirically proven that informal trade is a useful coping measure for poor households in a context of high unemployment and poverty, especially households headed by women, who generally bear the brunt of poverty.¹ However, informal traders' success is threatened by disabling and restrictive policies and by-laws.² These limiting factors are worsened by bad social practices such as sexual harassment and lack of social protection suffered by women entrepreneurs in the informal economy.

In Southern Africa, cross-border business activities form a significant component of informal trade. According to a workshop report on the informal economy in the Southern African Development Community (SADC) by the Southern Africa Trust (SAT) and the Economic Justice Network (EJN), informal cross-border trade (ICBT) is central to the reduction of poverty

and the creation of employment in the region.³ About 70 percent of informal cross-border traders are women who undertake this business to supplement household incomes.⁴ Informal traders constitute 30 percent to 40 percent of total intra-SADC trade⁵ with an estimated annual value of US\$17.6 billion.⁶ It is estimated that the regional average monthly value of goods traded is as high as US\$2 500 per person.⁷ In this sense, informal traders wield significant economic force and therefore deserve policy attention.

South Africa attracts a great number of 'temporary migrants' involved in cross-border trade. The traders buy merchandise for resale in their home countries.⁸ The range of commodities they import include textiles, hair accessories, electronics, clothing, cosmetics, vehicles and industrial goods. The goods vary in origin, with South Africa and Asia being main sources. Some of the products from South Africa or China are re-exported from Botswana, Zambia, Tanzania and Dubai.⁹ It can be said with a measure of certainty that informal cross border traders have demonstrated an adaptability and resilience that has contributed to the plugging of the incessant import crises that have visited countries such as

* The desk research was limited to these five countries because ESSET provides support to informal trader organizations in these countries.

Zimbabwe for a sustained period of more than fifteen years.

Informal traders are also exporters as they bring with them goods for resale. Swazi informal traders, for example, mainly export handicraft items to South Africa. In this respect, the traders are key drivers of export of goods from their countries of origin.

In 2012, ESSET commissioned a participatory action research study. A key conclusion of the study was that governments of Lesotho, South Africa, Swaziland, Zambia and Zimbabwe lack adequate policy support for the benefit of informal traders. In particular, the study noted deficiencies in public health care such as poor sanitation facilities for street vendors or treatment challenges for cross-border traders living with, or affected by, HIV and AIDS.¹⁰

ESSET's study identified social protection issues as of major concern to informal traders. A major finding was that Decent Work Country Programmes (DWP) in Southern Africa usually emphasizes HIV and AIDS support for waged workers. Very little (if any) support is rendered to own-account workers engaged in survivalist economic activities.¹¹ Given their dominance in the informal economy, women traders carry the lion's share of the burden caused by the lack of social protection. Other issues noted relate to informal traders' exclusion from formal financial markets, inadequate business skills and, most worryingly, cases of gender discrimination and suppression of women informal traders' voices within informal trade organizations. Participants

in the action research also indicated that they lack information about the legal framework governing informal trade in their different countries. Where the traders are involved in consultative processes on informal trading by-laws or policies, this is being done in a tokenistic or patronizing ways.

Building on ESSET's participatory action study, this report focuses on legal and policy challenges affecting informal traders, especially women. The study relied on document analysis of secondary data sources, including research reports, case studies, journal articles, newspaper articles, and so on. A review of data from country situations – Lesotho, Swaziland, South Africa, Zambia and Zimbabwe - was used to draw areas needing policy, legal and programmatic support.

A regional workshop held in July 2015 involved representatives from eight informal trade organizations who reviewed the first draft of the report. Participants to the workshop were drawn from the five countries mentioned above.

Policy and programming recommendations identified in the report will be used to strengthen the capacity of informal trade organizations that ESSET supports, especially women empowerment oriented interventions. Scientific evidence will bolster claims and arguments concerning the lack of an enabling legal and policy framework for the sector. The particular interest is on using the study to increase advocacy work to improve the working conditions and livelihoods of women informal traders.



Informal trade has great potential to address poverty if the rules take into consideration the poor and vulnerable groups in society. Here, police are seizing informal traders' goods in Johannesburg. (Photos from joburg.co.za and iol.co.za).

THE LEGAL ENVIRONMENT

2.1. REGIONAL TRADE AGREEMENTS, POLICIES AND REGULATIONS AFFECTING ICBT

International and regional trade law and policies have great potential to address mass poverty. However, the rules regulating international trade are rigged in favour of powerful transnational firms. Trade negotiations and rules, especially under the World Trade Organization (WTO), are not adequately considering the interest of poor and vulnerable groups, especially women informal traders.

Closed rooms, highly technical and inaccessible terms characterize the current approach to transnational trade negotiations. Trade negotiations are a preserve of state parties who are active in endless dealing and economic diplomacy. Formal business enjoy a cozy relationship and bear considerable influence on negotiations outcome.

On the contrary, informal trade organizations are ill-informed, sidelined and therefore not adequately engaged in defining or influencing

global and regional trade negotiations, even if the rules have devastating results on their business activities and livelihoods.

The SADC Trade Protocol of 1996, and the tripartite Free Trade Area (FTA) launched in Egypt on 10 June 2015, are some of the significant regional integration processes affecting informal cross-border economic activities.* The mega-tripartite FTA is a 26-country market integration initiative. Its combined population is 625 million people and its gross domestic product is estimated at more than US\$1 trillion.

Two other trade policies of interest are the United States' Africa Growth and Opportunity Act (AGOA) and the European Union's Economic Partnership Agreements (EPAs). The detail of these policies are not detailed within the scope of this study.

The issue of concern is that African states are advancing trade liberalization, and therefore free

*The FTA agreement to initiate negotiations for the new bloc was signed on 12 June 2011 at a summit in Johannesburg. The process, which is viewed as part of the search for an Africa Economic Community (AEC) in line with the Abuja Treaty of 1991, is being achieved through the promotion of Regional Economic Communities. The negotiations appear complex, and informal traders need to create strong associations to facilitate their inclusion in these negotiations.

movement of goods and services * without attracting customs duty,¹² slower than they are embracing the free movement of people. In Southern Africa, border policies and practices are still restrictive, in particular for traders sourcing goods and services from South Africa and outside the Southern African Customs Union (SACU). ESSET's informal cross-border traders' partner organizations have consistently registered a number of issues amounting to Non-Tariff Barriers.

Traders face other trade barriers such as visa control, refusal of entry in countries that may not require visas, excessive customs duties, and unwarranted impounding of goods.¹³

Informal traders are therefore justified in raising concerns related to regional trade policy. There is inadequate public policy attention to supporting the informal economy.¹⁴ This is in spite of high-level policy commitments to promote intra-regional trade through the SADC Trade Protocol, or gender equality goals in the SADC Gender Protocol.¹⁵

The case of ZCBTA's Informal Trader Cash Service Card

The Zimbabwe Cross-Border Traders Association (ZCBTA) has been innovative in addressing cross border informal traders' lack of access to financial market products. The ZCBTA have introduced a co-branded plastic card which works both as a ZCBTA membership and bank card. The card's features are similar to commercial banking plastic product. With it, traders are able to pay for services using the card. They do not have to carry cash with them. The risk of theft or robbery is significantly reduced.

Negotiations with financial institutions are pending to include a cross-border transacting functionality on the card. Traders will be able to load money onto their card in one country and transact in another.

Source: Interview with Augustine Tawanda, Secretary General of the Zimbabwe Cross-border Traders' Association 14 July 2015.

Access to export credit schemes is almost exclusively enjoyed by formal businesses. When it comes to accessing credit, informal traders are considered risky by financial services firms. It is estimated that about 80 percent of the informal traders' finance is obtained from informal sources or their own savings. Donations and support from family and friends are particularly important sources of finance for women.¹⁶

Banking regulations remain too stringent for the traders to operate foreign currency accounts in destination countries.¹⁷ This forces them to carry cash across borders, making them vulnerable to demands for cash from customs officials. In recent times, buses ferrying cross-border traders from Zimbabwe to South Africa have been targeted by armed criminals who have robbed them of cash and other valuables.¹⁸

Lack of reliable and secure transport is a supply-side constraint that inhibits the viability of informal businesses and increases the cost of doing business.¹⁹ This is compounded by complex border clearance procedures.

The more simplified customs clearance processes are, the fewer chances there will be for customs officials to abuse their power against women traders. The Simplified Customs Document and a Simplified Certificate of Origin launched by the Common Market for Eastern and Southern Africa (COMESA) in 2007 was heralded as a step in the right direction.²⁰ Under this scheme, goods originating from member countries, whose value does not exceed US\$2 000 per consignment, qualify automatically for duty-free entry into the markets concerned.²¹ The certificate is issued at border posts so that traders located in remote areas can benefit from the regime.²² However, informal traders have complained that the common list of goods is limited. Traders would like the list to be expanded to include industrial products obtained mainly from outside the region.²³

While encouraging women informal cross-border traders to lobby for a more favorable regional trade policy framework, it is important not to lose sight of the real structural source of informality, in particular cross-border traders' problems: the present failure of the capitalist system of production. Under the neo-liberal ideology, trade policy is being used as a sharp instrument to

* Negotiations on goods had been concluded by the time of the launch and those on services and trade related aspects are in the pipeline.

prise open developing economies' markets.

Informal traders must therefore understand, and meaningfully engage, the emerging regional and multilateral trade system. Instead of being reduced to accomplices to, or by standers in, the

deindustrialization of their national economies - for example in circumstances where they become conduits of cheap imports - traders should be assisted to integrate into high-value and high-income regional and global chains of production, marketing and distribution.

2.2. INFORMAL TRADE POLICIES AND BY-LAWS

A regional policy scan indicates growing calls for the creation of an enabling trade policy and legal environment in which small and medium enterprises are enabled to contribute to economic development. The overarching approach is one that views the promotion of informal trade as a strategy to combat unemployment, inequality and poverty.

In South Africa, the regulatory environment for small business development is of interest. In its Bill of Rights, the Constitution of the Republic of South Africa, 1996 guarantees the right of every citizen to freely choose his or her trade or occupation in s 22.²⁴ This constitutional provision is given effect through a number of trade policies, legislation or local by-laws. Relevant to the informal trade sector are policies such as the multi-million rand National Informal Business Upliftment Strategy (launched in March 2014), National Small Business (NSB) Act of 1996 and the Co-operatives Act No. 14 of 2005 (as amended by Act No. 6 of 2013).

At local level, national policies and legislation are expressed through informal trade policies and by-laws. In the main, local authorities (municipalities and councils) use by-laws to regulate informal trade. It is at the local level that trade policy and by-laws directly impact on informal trade activities. A concern for traders, therefore, is the nature and extent to which by-laws may facilitate or obstruct informal trade activities. This may be through trade licenses and permits, rent, trading stalls, health and sanitary facilities, etc.

The City of Johannesburg provides an example of a local government policy that recognizes the role of informal traders in urban economic activity. The city's Informal Trading Policy of 2006 is anchored in the following six principles: the proactive absorption of the poor; balanced and shared growth; facilitation of social security and mobility; settlement restructuring; sustainable environmental justice; and innovative governance. The policy commits the city to create jobs and entrepreneurial opportunities in the informal trade sector, to facilitate the migration

of informal enterprises into the formal economy, and to build a positive relationship between formal and informal enterprises. The city's focus on spatial development is on upgrading blighted and poorly serviced urban informal trading spaces. In addition, the policy provides for the issuing of a smart card that identifies individual traders as legal informal traders, names their designated trading locations and specifies the amount of rent payable to the city.

To these ends, Johannesburg's informal trade policy recommends the creation of a holistic and integrated environment for informal trade, including recognition, access and support. Thus far, the policy offers good proposals that must be implemented if the trading condition of informal traders is to improve.

In respect of good local governance, the Informal Trading Policy commits the city to consult with the Metropolitan Trading Council on infrastructure development interventions. Moreover, it calls for the establishment of an Informal Trading Chamber as a platform for dialogue between formal and informal traders and the city. Informal trade organizations are therefore expected to effectively lobby for the implementation of these policy proposals.

In most instances, municipalities' control of street trade seem to have a dominant motive of preventing street traders from interfering with the running of formal businesses in cities or to reduce the obstruction of public facilities.²⁵ The result has been an adversarial relationship between local authorities and informal traders. The plight faced by informal traders was succinctly captured by one blogger who noted: 'We see running battles between police, other forms of law enforcement and touts, car guards, commercial sex workers, taxi drivers, airtime vendors, tuck-shop owners etc. all the time. Hardly anyone speaks about it. We have come to accept this as normal.'²⁶ Such is the situation, be it in Harare, Mbabane, Lusaka or Johannesburg.

Informal traders have often faced harassment in various 'operations' by local authorities designed to 'sweep' cities clean of street traders. Between 30 September and 31 October 2013, the City of Johannesburg executed what it called *Operation Fiela* (Operation Clean Sweep), which forcibly removed more than 1 200 informal traders from their trading sites.

The Johannesburg traders, with the assistance of the Socio-Economic Rights Institute (SERI) and the South African Informal Traders Forum (SAITF), launched an urgent court application that they be granted permission to trade in a manner consistent with ss 9 and 10 of the Street Trading By-laws for the City of Johannesburg. They sought a court order to be reinstated at the locations they had occupied immediately before their removal.²⁷

A series of court cases that ended in South Africa's Constitutional Court culminated in a landmark ruling. In his ruling, the then acting Chief Justice condemned *Operation Fiela* as 'indiscriminate' and 'flawed,' finding that the city had 'gone about achieving its objective in flagrant disregard of the traders' rights' and suggesting that the conduct of the city 'may border on the cynical.'²⁸ Understandably, a court victory at this level of the justice delivery system is a positive signal for violations against informal traders to be reviewed and claimed this way.

In Zimbabwe, in addition to the United Nations condemning *Operation Murambatsvina* (Operation Drive Rubbish) which targeted so-called illegal housing and commercial activities in 2005, informal traders still contend with the overbearing might of the state and municipal authorities. In a disproportional way, the Zimbabwe government recently contemplated the use of the military to evict vendors from the streets of Harare.²⁹ The threat had to be stopped through an interdict application brought by the Zimbabwe Informal Economy Organization (ZISO). In the court order obtained, the use of the military force against civilians was stopped. The court held that the military should not interfere with the civic duties of the Ministry of Local

Government and National Housing.³⁰



Informal traders protesting outside the High Court in Johannesburg (Photo from <http://drum.co.za/wp-content/uploads/2013/11/Traders.jpg>).

Strategic litigation has therefore placed courts at the center of informal traders' struggle for socio-economic rights. In the same realm, judicial decisions in respect of various laws impacting on informal trade are contributing to the development of a jurisprudence of significance to informal traders' rights. With increasing awareness and organization, informal traders have partnered with human rights NGOs to challenge arbitrary actions by municipal authorities, and other public officials, in courts. Where local authorities continue to act unreasonably and outside the rule of law, the use of the judiciary has been novel. Through courts, a legitimate judicial pathway is growing for the review of administrative actions negatively affecting informal traders.

It is apparent that trade regimes are complex. The implementation of trade policies is certainly not gender neutral. There is a common thread of injustice meted against women traders. The dignity of women traders is trumped. Inequality, and indeed discrimination on grounds of gender, is evident. Informal trade organizations can mobilize to get rid of the negative systemic effects of trade regimes, but only if they develop the necessary institutional capabilities required to mount such a challenge.



Susceptibility to HIV/Aids is one of the risks for women cross-border informal traders (photo from <http://www.developmentafrica.com/AIDS.html>)

LACK OF SOCIAL PROTECTION FOR INFORMAL TRADERS

In today's understanding, social protection has come to include all that used to be under the term 'social security'.³¹ The term refers to a wide variety of instruments designed to ensure that human beings are adequately protected against social, economic and other risks.³² In this section, particular attention is paid to the lack of social protection for women informal traders.

In Southern Africa, the tragedy is that issues of decent work and decent wages have not been applicable in the informal economy until recently.³³ Central tenets of decent work such as social security, medical schemes and insurance cover the formal sector almost exclusively. As a result, the majority of own-account or waged workers in the informal economy are working under deplorable employment conditions.

In extreme circumstances, these conditions are akin to the infamous sweat shops characterized by, amongst other negatives, long hours, low irregular remuneration, serious health and safety

risks and gender-based violence with increased susceptibility to HIV/AIDS.³⁴

Workers in these conditions have a limited ability to ensure the enforcement of international labour standards and human rights.³⁵ This has led labour relations scholars such as Van Niekerk and Smith to conclude that in today's workforce, decent work deficits in the informal economy abound and must be addressed as a matter of importance and urgency.³⁶ It is in this situation that the concept of decent work or a decent job has gained prominence and attracted intervention from various social partners and stakeholders. Trade unions, with the active support of the International Labour Organisation (ILO), have led the way with programmes that are increasing awareness as well as addressing the deplorable conditions in the sector.*

The case of Swaziland is instructive. The country has one of the highest HIV prevalence rates in the

* In the field of decent work programs, the ILO has led the way, resulting in the adoption of recommendations for a new international labour standard to tackle the informal economy on 12 June 2015. In Southern Africa. The ILO has championed its informal economy work through the decent work program operating out of Pretoria.

world, reversing hard-earned health, social and economic development gains.³⁷

The country's Decent Work Program (DWP) has constituted the main response involving social partners with a specific goal to address HIV/AIDS in the informal economy. As noted in its DWP for 2010 to 2014, the impact of HIV and AIDS in the world of work is devastating, reducing the productivity of the productive segment of the population through a high dependency ratio.³⁸

The DWP identified and trained informal economy associations on HIV and AIDS. This involved the implementation of simplified education and awareness programmes and behavior change interventions using methods such as peer education.³⁹

Such programmes targeting the informal economy are important in reducing the impact of HIV/AIDS, especially among women traders who dominate the sector.

Zambia's cross-border traders take the initiative to improve access to public health infrastructure at border points

Zambian cross-border traders have abandoned a by-stander's approach and are taking matters into their stride. Led by the Copperbelt Cross-border Traders and Integrated Business Association (CCBTIBA), the traders approached local authorities and applied for two pieces of land to develop public health infrastructure. Their application was successful. At Kasumbalesa, one of the busiest border points between Zambia-Democratic Republic of Congo (DRC), the traders association's land is about a hectare in measurement. The second piece is at Mokambo, Mufulira, Zambia-DRC Border post. The CCBTIBA is now desperately mobilizing partners and investors to assist with the building of health, sanitation and accommodation infrastructure.

A public policy concern is the slow pace that the Zambian government is taking to improve public health infrastructure, accommodation and reduction of customs clearance delays at border points such as Kasumbalesa. These are issues at the core of trade and investment facilitation. Lack of progress is increasing the cost of doing business for informal cross border traders. Informal trade organizations such as CCBTIBA are therefore running out of patience and stepping in to alleviate the situation.

Interview with Patrick Fwalanga, Secretary General for Copper Belt Cross-border traders and Integrated Business Association (14 July 2015).

3.1. SEXUAL HARASSMENT AND HIV/AIDS

A discussion of social protection in the informal economy would not be complete without specific reference to public health and HIV/AIDS. HIV/AIDS presents a serious challenge to the well-being of women traders and the productivity of their enterprises.

The migrant nature of informal cross-border trade has brought with it social stresses negatively affecting women informal traders. The epidemiological relationship between HIV and migration in Southern Africa has been tackled in many studies, among which are those undertaken by the Southern African Migration Project (SAMP) and the International Organization for Migration (IOM).⁴⁰ According to a photo project by the IOM, women cross-border traders' vulnerability to HIV/AIDS is attributable to the nature of their occupation as well as the

social and economic structures prevailing in the region.

Social structures have not been fully supportive of women informal traders' activities. At household level, long absences from home by either partner or spouse often result in instability. A lot is being done by gender justice organizations to raise awareness and behavior change to combat gender-based violence. This study did not explore this dimension due to scope limitation.

In 2010, the then UNIFEM surveyed 700 informal traders at their homes, workplaces and markets in Zimbabwe and Swaziland, as well as at the border posts with South Africa.⁴¹ The study noted that informal traders are harassed by South African police, soldiers and customs officials,

especially when they fail to pay bribes.⁴² Trapped in these circumstances, women traders may then be forced to pay for bribes in kind, through transactional sex. In some cases, those who control economic resources - for example moneychangers or taxi drivers - use their economic advantage to force women traders into transactional sex.⁴³

Strategies for achieving gender justice with respect to informality must thus address 'the pervasive gendered constructs, roles and power relations which structure the wider social context', in which different forms of work arise.

Lack of affordable basic necessities during their business trips complicates matters. Difficulties in accessing decent accommodation, transport and meals are some of the logistical realities faced by traders on a daily basis.⁴⁴ In order to make ends meet, for example, where the problem is either lack of transport or accommodation, women traders are reported to enter into sexual relationships with strangers in exchange for free transport or an opportunity to sleep in the trucks.⁴⁵

A workshop for women informal cross-border traders held by ESSET, in collaboration with Doctors Without Borders (MSF), in Swaziland between March 16 and 19, 2015, confirmed the existence of transactional sex. The risk posed by sexual abuse or transactional sex is that border posts are high HIV/AIDS or other sexual diseases transmission zones. Exposure to HIV is increased in these circumstances as the women are often in a weak position to bargain for safe sex.

In the most desperate cases, women traders take the risk of sleeping in open or dangerous spaces, exposing them to crime and sexual assaults.⁴⁶ At the Swaziland workshop, participants narrated the danger of sleeping in the open.⁴⁷ The fear of violence alone, some participants note, is unsettling and traumatic.

The indignity that women informal traders face is deplorable. It constitutes a violation of their constitutionally protected rights to equality, dignity and bodily integrity.*

There remains an information gap with respect to HIV/AIDS knowledge and behavior change. This is in spite of years of investment by governments and development partners. At the workshop in Swaziland women informal traders noted that they do not have adequate spaces to talk about HIV/AIDS prevention, treatment[†] and care in Swaziland. Workshop participants noted that men in communities and families are generally against the provision of HIV and AIDS education due to conservative cultural and religious beliefs.

The traders also noted the prevalence of gender-based violence, coerced sexual intercourse or marital rape all of which make women vulnerable to HIV infection.

It is, however, important to acknowledge that organizations such as UN Women and the International Labour Organization (ILO) have increased their focus on HIV/AIDS and social protection interventions in the informal sector, with programmes specifically targeting women.

Governments in the region are ultimately responsible for ensuring HIV/AIDS programmes in the informal economy, but it is apparent that public health systems are struggling to provide HIV/AIDS protection and social security more broadly.⁴⁸ The issue may as well be that the social expenditure priorities of these states are misplaced. A focus on resource allocation and budgeting frameworks is needed. The discussion will be incomplete without understanding the political economy that informs taxation and resource distribution by public authorities.

The problem may be that the social expenditure priorities of these states are misplaced. A focus on resource allocation and budgeting frameworks is needed.

The lack of social protection cited above reveals a negative side of informality. ESSET's work seeks to contribute to the elimination or management of these negative aspects and to ensure that decent work is promoted in the interest of own account workers and the sustainability of their enterprises and livelihoods. In this regard, the role of governments is primary in ensuring that social protection reaches all

* Constitutions and legal regimes in Southern Africa promote these inalienable human rights. Further, all SADC countries are signatories to the Universal Declaration of Human Rights; the Africa Charter on People's Rights, and so on.

† The workshop also discussed the different HIV and TB treatments.

members of society, especially vulnerable women and children.

The manner in which informality affects women traders require an analysis premised on gender justice. Such an analysis will ensure that attention is paid to gendered relations of power

which position and affect different groups of women and men in different ways.⁴⁹ Strategies for achieving gender justice with respect to informality must thus address 'the pervasive gendered constructs, roles and power relations which structure the wider social context', in which different forms of work arise.⁵⁰



The rule of law imperative: Strategic public interest litigation has become an important advocacy practice against arbitrary conduct by public officials. Informal traders are using courts to claim their socio-economic rights.



Active participation of women informal traders must be the compass for programmatic support in the sector. (Photo from <https://agenda.weforum.org/2014/08/africa-cross-border-traders/>)

RECOMMENDATIONS

ESSET, whose mission is one of fighting poverty and marginalization of poor people, is of the view that an active women informal traders' voice will protect them from social exclusion and the devastating impact of material poverty. Increased capacity to informal trade organization is therefore an important step in addressing gender concerns affecting the informal economy. It must also be noted that this study is not exhaustive. The sector is by no means homogeneous. ESSET will therefore continue to be informed by all relevant factors affecting the traders on a case by case basis to the extent that

its resources and capacity permits.

The programming recommendations in this section aim to strengthen the cohesion of ESSET's existing collaboration with informal trade organizations. In implementing the recommendations, ESSET will leverage on its partnerships with the following: Open Society Initiative for Southern Africa (OSISA), Norwegian Aid (NORAD), Bread for the World; Oxfam, Karibu Foundation and UNWomen. Policy engagement with relevant public sector authorities across governance multi-layers will be prioritized.

4.1. INSTITUTIONAL STRENGTHENING: FOCUS ON WOMEN INFORMAL TRADERS

To strengthen the voice of women informal traders, it is important that the traders are aware of the need to develop strong organizational mechanisms to coordinate their activities. Women informal traders need to be encouraged to join such associations and contest for strategic and influential leadership positions in the entities. These efforts should be supported by government and development partners with a view to strengthening the emergence of an independent and articulate women traders'

voice. In the context of this study, a priority is the development and consolidation of credible associations of women informal cross-border traders. The broader process of institutional strengthening and technical assistance to informal trade organizations should aim at developing internal democracy within the associations in ways that is gender sensitive.

Given the impact of informal trade on communities, ESSET support to informal trade

groups is based on principles of Solidarity Economy. These principles place emphasis on mutual help and democratic decision-making. Under Solidarity Economy, emphasis is on social, economic and environmental justice.

This approach is in contrast to cut-throat competitive individualism represented by the capitalist system.

4.2. LEGAL PROGRAMMES: PROMOTING RIGHTS AND RULE OF LAW

Laws on their own are inadequate in addressing rights deprivation and dignity. However, they constitute an important dimension in enforcing rights. Laws, policies and practices that seek to exclude the poor must therefore be challenged. Strategic public interest litigation in the area of informal trade must be supported. Litigation will contribute to the development of socio-economic rights jurisprudence.

Sexual assaults are a violation of the integrity of women informal traders. These must be addressed through bringing perpetrators to justice within reasonable time. States must meet their constitutional obligations, inclusive of obligations under international law, to protect any form of violence against women. Progressive international ideals enshrined in conventions and

treaties are important. Some of these are enshrined in the UN's Convention on Socio-Economic and Cultural Rights (ECOSOC); the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the Declaration on the Elimination of Violence Against Women, SADC Gender Protocol, and so on.

Approaching the harassment of traders within a human rights framework and promotion of the rule of law is of strategic importance. A starting point is the hosting of a working group on the state of informal trade case law focusing on human rights and strategic litigation in Southern Africa. Such a convening will lend an expert view to the design of legal programmatic interventions.

4.3. BUSINESS SKILLS DEVELOPMENT, ACCESS TO FINANCE AND SUSTAINABLE LIVELIHOODS APPROACHES

ESSET is of the view that women informal traders should be assisted to reach a sustainable level of income security. This means that the traders must operate viable enterprises. As such a number of business models and approaches should be considered. Assisting the enterprises to transition from informal to collective formal forms of enterprises may be one such approach. However, this must depend on a consideration of all relevant factors for each enterprise as formalization may not be the best way in some circumstances. The underlying values must, however, be those that are linked to the ethos of Solidarity Economy.

ESSET is currently assisting women informal traders to form and register co-operatives in Lesotho, Swaziland and South Africa. Within this formulation, legal and business skills training and development support is being offered. The training modules are covering basic accounting,

financial, leadership and marketing literacy. Discussions on structural barriers that obstruct women entrepreneurs' access to credit and the need for financial inclusion are widely acknowledged. However, formal banking is yet to adequately respond to the call to redress entrenched financial barriers preventing informal traders from accessing credit. Alternative approaches such as increased use of financial co-operatives and micro-finance institutions are being proposed.

The use of Sustainable Livelihoods Approaches (SLA), among other tools, may be important in assessing the traders' vulnerability context and development of appropriate responses to the multiple factors affecting women and marginalized communities.

4.4. INCREASED FOCUS ON SOCIAL PROTECTION OF OWN-ACCOUNT WORKERS

The focus on the social protection aspects of own

account workers must be a key advocacy priority.

Cases of sexual harassment must be addressed in the broader context of gender-based violence. Increased engagement with law enforcement agents, and the entire criminal justice system, will be strategic in contributing to fights against sexual violation of women traders.

The role of trade unions in addressing decent work issues negatively affecting own-account workers must be strengthened.

Informal traders' associations must ensure that

programmes which protect the interests of own-account workers, in particular, the rights of women and children are addressed. Protection of health, sexual and reproductive rights, especially HIV/AIDS support programmes, must be institutionalized. The participation of informal trade organizations in social dialogue platform needs to be backed by well-prepared policy briefs and articulation of outlined advocacy issues.

4.5. REGIONAL INTEGRATION, TRADE NEGOTIATIONS AND DEVELOPMENT

Developments in trade negotiations and implementation of trade policy are of interest to women informal traders. With a share of close to 40 percent of SADC intra-trade informal traders are a major factor in the region's socio-economic development. Appreciation of trade and investment trends will assist the traders to meaningfully participate in beneficial trade activities.

Informal trade organizations, assisted by development partners, need to form a powerful trade policy lobby in order to collectively influence trade negotiations. The policy concerns affecting women informal traders are immense. There is a need to produce a regional integration,

trade negotiations and development programme strategy paper that elaborates on the complex nature of trade regimes.

Informal trade organizations' strategies for private sector engagement are not well developed. The harmful effects of formal businesses and particular aspects of competition law regimes are presently not fully grasped in informal trade lobby and advocacy positions. There is need for robust trade policy debates to ensure that all actors, private sector, public sector and NGOs are mobilized to give prominence to the trade policy concerns of informal traders, including the gender concerns.

4.6. FUTURE RESEARCH SHOULD CONSIDER RACE, CLASS AND XENOPHOBIA

In a workshop to discuss the draft version of this report held on 16 July 2015, representatives of informal traders recommended that follow-up studies should consider the impact of race, class

and xenophobia on informal trade. These fundamental issues are central to understanding the full picture of the informal trade in Southern Africa.

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ESSET PROGRAMMES

THEOLOGY AND SOCIAL JUSTICE

The objective of the Theology and Social Justice Programme is to bring church leaders, church organizations and ecumenical activists into solidarity with the struggles of workers, poor communities and vulnerable social groups. Through this programme, ESSET provides capacity-building support to church leaders and ecumenical activists in three provinces South Africa, namely Gauteng, Eastern Cape and Limpopo. Our interventions aim to foster solidarity among churches with the social struggles of the poor and vulnerable social groups.

COMMUNITY DRIVEN DEVELOPMENT

The objective of the Community-driven Development Programme is to increase community participation in local governance, to support struggles for social change in poor communities, and to mobilize men and women against gender-based violence. Through this programme, ESSET provides capacity building, advocacy and lobbying support to two poor communities, namely, Maila Mapitsane in the Limpopo Province and Duncan Village in the Eastern Cape Province of South Africa. Our interventions in these two communities aim to deepen local democracy through increasing community participation in local governance. They also aim to mobilize the youth for social change, and to mobilize women to take an active stance against gender-based violence with the support of progressive men.

INFORMAL TRADE

The objective of the Informal Trade Programme is to improve the livelihoods of informal traders, especially women informal traders, and to increase political consciousness concerning the intersection of gender, class and racial inequalities among informal traders. Through this programme, ESSET provides capacity-building, research, advocacy and lobbying support to informal traders in five SADC countries, namely, South Africa, Zimbabwe, Lesotho, Swaziland and Zambia. Our interventions aim to create an enabling, gender-sensitive environment for informal traders, especially female informal traders, to engage in economic activity in order to protect their livelihoods.

GENDER

Gender issues and perspectives are being mainstreamed in all three of the above-mentioned programmes.

The Informal Trade Sector in SADC

Legal, Policy and Programmatic Support



Brot
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