

## **Surviving the World Class African City: The Case of the Informal Traders of Inner City Johannesburg**

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### **Introduction**

Informal trading in the inner city of Johannesburg, South Africa, is a thriving enterprise. It, together with the constant sound of hooting mini-bus taxis, hundreds of hustling and bustling people moving about in all directions and the loud music that booms out of speakers from formal businesses give the city its distinctive buzz and character. The variety of items on sale at the various informal trading stalls spread across the inner city is also something to behold; from bright yellow bananas, to luminous green earrings, to the bright pink traditional fabric worn by Tsonga women, they all combine to create a kaleidoscope of colour that make the inner city a vibrant place to be in. It was therefore odd to walk through the inner city on the afternoon of the 10 November 2014 and see not one informal trader stall operating. Suddenly the pavements were wider and less congested but there was an awkwardness that overcame you as if you had just been suddenly exposed to a crowd of peering eyes.

Over the short course of a month all the informal traders were removed from their stalls in the inner city. This was all thanks to a campaign brought by the new-elected, youthful executive mayor of the City of Johannesburg Metropolitan Municipality, Councilor Parks Tau. The campaign was envisaged to sweep the inner city clean of all the grime, crime and attendant chaos that the City believed would place the inner city “on a slippery slope to potentially becoming a slum”<sup>1</sup>. However the brute force, harshness and arbitrariness with which the campaign was implemented drew criticisms from all quarters, with no less than the Constitutional Court describing the manner in which the campaign was implemented as “a flagrant disregard of the traders’ rights”<sup>2</sup>

This paper therefore discusses Operation Clean Sweep and the effect its implementation had on informal traders in the inner city. Firstly it will give a brief

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<sup>1</sup> N. Tolsi and M Nxumalo ‘Joburg’s Clean Sweep is a dirty affair’ Mail & Guardian (31 October 2013)

<sup>2</sup> *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC) (‘SAITF’) para 7

background of the evolution of informal trading in the inner city and the attitudes that City authorities had towards it. Secondly it will discuss the background of OCS, its operational mechanism and the attitudes and prejudices that underlay its conception and implementation. That will be followed by a discussion of the *SAITF* case and SERI's role in trying to protect the rights of the victims of OCS. Finally a brief discussion of what OCS meant for constitutionalism and the rule of law, and the strategies that will secure a genuine right to the city.

### **Informal trading in the inner City**

Tissington<sup>3</sup> divides the history of informal trading the inner city of Johannesburg into distinct eras of which the first era was between the founding of the city of Johannesburg in 1886, to the mid-1980s. That era was marked by harsh restrictions, repressions and prosecution of traders in the city.<sup>4</sup> She points out that during that period the City authorities, working with central government, created legislation and licensing to severely restrict the movements of non-white traders.<sup>5</sup> Through legislation such as the Urban Areas Act of 1923 and the City's restricted areas regulations, it was impossible for black traders to keep stalls in the lucrative high-pedestrian areas of the city or during normal business hours.<sup>6</sup> This unwittingly created informal, unlicensed enterprises such as coffee-carts which operated on the periphery of the restricted areas.<sup>7</sup> These carts were seized and destroyed by the City through a series of violent raids in the 1960s.<sup>8</sup> From as early as that period onwards we can see the sowing of the seeds of prejudice towards black informal traders in the city. We can also observe the violent manner with which City authorities enforced trading laws and regulations.

Fast forward to the period between the late 1980s and 2000s and the second era arrives. With the second era a new attitude is adopted: the restrictive and prohibitive trading laws and regulations that marked a great part of the history of inner city

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<sup>3</sup> K. Tissington 'The Business of Survival: Informal Trading in Inner City Johannesburg' CALS Research Report, December 2009 (Tissington)

<sup>4</sup>C. Rogerson and D Hart 'The struggle for the streets: deregulation and hawking in South Africa's major urban areas' *Social Dynamics* (1989) 15, 1 pg 32

<sup>5</sup> Tissington, pg 25

<sup>6</sup> Ibid. See also K. Beaven *Johannesburg: The Making and Shaping of the City* (2004) p. 188 ('Beaven')

<sup>7</sup> Beaven pg 190

<sup>8</sup> Beaven pg 190

trading were relaxed.<sup>9</sup> The influx control laws which regulated black urbanization were similarly relaxed.<sup>10</sup> The promulgation of the Business Act in 1991 also ushered the relaxation of the business licensing procedures, which meant that it became easier to establish a business in the city and immediately start trading. A combination of these factors plus the slowdown of the South African economy in the late 1980s and early 1990s meant that most people who lost their formal sector jobs quickly joined the informal sector.<sup>11</sup> Soon enough the rapid increase in both licensed and unlicensed traders made the situation very difficult for the police and other city officials to manage, and there was rapid decay.<sup>12</sup>

Several strategies were crafted to deal with this situation in the years that followed. The City produced several policy papers which it hoped would guide further development and renewal of the inner city. One such policy paper was the *Joburg 2030*, passed in 2002, which had as one of its aims the creation of a “world-class African City” through boosting investment, inner-city regeneration and economic development; and this the City believed it could do by attracting private sector investment.<sup>13</sup>

The City’s shift of focus towards attracting private investment also shifted the City’s attitude towards traders in the inner-city. The traders’ contribution would clearly never reach that of large businesses; therefore the vision of the world-class African City must not have been aimed at traders, but it was rather aimed at protecting the interests of large businesses and investors in the city. A reading of this attitude through the prism of past experience meant that what followed should have been expected. It was from the City’s insisted on private sector industry growth that the informal traders that.

### **Operation Clean Sweep**

Operation Clean Sweep (OCS) or the “Mayoral Clean Sweep” was a new initiative that was championed by the newly-elected, youthful executive mayor of the City of

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<sup>9</sup> Tissington, pg 27

<sup>10</sup> Tissington, pg 27

<sup>11</sup> City of Johannesburg ‘The Rise and Rise of Hawking in the Inner City’ 11 January 2007

<sup>12</sup> Tissington pg 27

<sup>13</sup> Tissington pg 29

Johannesburg Metropolitan Municipality, Councilor Mpho Parks Tau. This new initiative was intended to start the ground work towards another one of Mayor Tau's new projects, which was the City's growth and distribution strategy, *Joburg 2040*. OCS's objective is stated as being "the creation of a safe, clean, law-abiding and healthy inner city by 2040"<sup>14</sup> however this objective was subject to the achievement of the ultimate goal of a "world-class African city"<sup>15</sup>

Some other achiever challenges that OCS sought to overcome included: cleanliness, traffic congestion, vagrancy, migration and influx control, illegal trading, crime and poor property management, among others.<sup>16</sup> It was envisaged that OCS would achieve these objectives through the collective effort of various City departments who would work together in what can only be described as a 'crackdown'. The City states that for it to be "meaningful strides towards a resilient, sustainable and liveable city...a very strong emphasis needs to be placed on efforts that are *proactive, pre-emptive* and maintained sustainably."<sup>17</sup> In those word one can detect a great sense of urgency with which OCS must be implemented.

Indeed that is precisely how it was implemented. Officers of the Johannesburg Metropolitan Police Department (JMPD) were deployed in their numbers to summarily seize all traders' goods, tear down their trading stalls and confiscate all materials used to trade. Where there were any signs of resistance violent assaults will follow. Indeed by the end of the month in which OCS was implemented, the inner city was completely deserted. Which is why the case followed.

### **The SAITF case**

The SAITF Constitutional Court case was an urgent appeal brought by SERI on behalf of the South African Informal Traders Forum (SAITF). It was an appeal of a South Gauteng High Court decision dismissing an urgent application by SAITF for the return of Johannesburg inner-city informal traders back to their stalls after they were evicted as part of Operation Clean Sweep. The case was brought on an urgent

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<sup>14</sup> Office of the MMC: Development Planning 'Report on the Status of the Inner City (Region F): A Proposed Initiative and Programme to Address Current Challenges' (10 October 2012) ('OCS Report') pg 1

<sup>15</sup> OCS Report pg 2

<sup>16</sup> OCS Report pg 2

<sup>17</sup> OCS Report pg 2

basis to remedy a dire situation where hundreds of informal traders were summarily evicted from their stalls by the City of Johannesburg. The traders' eviction was based on the belief and attitude that their continued presence was causing crime, grime, and congestion and slum conditions in the inner-city. The Constitutional Court ultimately dismissed this attitude and ordered a return of the informal traders to their stalls, however it is important to understand the circumstances that lead to that case and also the constitutional rights that were at great risk of being violated with impunity.

It is important to point out that prior to the *SAITF* case SERI had previously never directly dealt with cases of informal trading in the inner city. This was due to the fact that informal trading did not easily fall into any of SERI's thematic areas. Therefore as a consequence of this the organisation had not built up the capacity and resources necessary to take on such matters, even though some of SERI's staff had dealt with the issue of informal trading in various capacities previously. Regardless of that fact however, the injustice was compelling enough for SERI to act in some way.

This was borne by the realisation that many of the informal traders who were now facing eviction from their livelihood, formed part of the community of SERI's clients who also faced eviction from their homes.<sup>18</sup> Therefore if SERI did not step in, most of the traders would no longer be able to afford the monthly rentals for their homes and would most definitely face the prospect of eviction, which would obviously impact on their right to housing – a right which SERI has spent a considerable effort over a number of years in defending and protecting. Therefore the organisation had to act; and it did.

On 15 November 2013 SERI filed an urgent two-part application in the South Gauteng High Court (the "High Court") for interim order and interdict. In the first part of the application the traders sought an order: compelling the City to immediately permit registered traders to return and trade in the stalls they occupied before Operation Clean Sweep; compelling the City to re-erect trading stalls they were

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<sup>18</sup> M. Clark and K. Tissington 'Under Attack At Home and At Work: Operation Clean Sweep and the Dark Side of Urban Regeneration' (27 November 2013) Daily Maverick [www.dailymaverick.co.za/opinionista/2013-11-27-under-attack-at-home-and-at-work-operation-clean-sweep-and-the-dark-side-of-urban-regeneration/#.VDyKAVIdaK0](http://www.dailymaverick.co.za/opinionista/2013-11-27-under-attack-at-home-and-at-work-operation-clean-sweep-and-the-dark-side-of-urban-regeneration/#.VDyKAVIdaK0)

demolished as part of the Operation; and also an interdict restraining the City of Johannesburg and its functionaries from further continuing to demolish the stalls of registered informal traders and confiscating their goods. The second part of the application was a judicial review of a series of the City's decisions taken in the implementation of Operation Clean Sweep, which cumulatively led to the informal traders spending over a month without an income to live on.

The High Court application itself was an emergency measure to alleviate the plight in which the informal traders found themselves in. Their prohibition from trading meant that for as long as the prohibition was in place they could not earn an income and sustain their livelihoods. As mentioned above, the informal economy is survivalist by nature, and any breach in the flow of the stream of income caused immediate harm to the traders and their families. Therefore in launching the urgent application SERI sought to not only remedy the dire situation in which the informal traders found themselves in at the time, but it also wanted to remedy the unlawfulness of the City's long-term conduct in using Operation Clean Sweep as a tool to regulate informal trading in the inner city. SERI wanted the informal traders back on the streets trading and also wanted the City to comply with the law and its own policies.

There were 1211 applicants in the case, with the first applicant being the South African Informal Traders Forum ("SAITF") in its capacity as the representative body of the affected traders, and the rest of the applicants being the informal traders themselves. The first respondent was the City of Johannesburg Metropolitan Municipality ("the City"), second respondent was the Johannesburg Metropolitan Police Department ("JMPD"), the third respondent was the Mayor of the City, Councilor Parks Tau, in his official capacity as the executive head of the City; the fourth respondent was the City Manager, Mr. Trevor Fowler, in his capacity as the administrative head and chief executive officer of the City; and the fifth and last respondent was Brigadier Zwelibanzi Nyanda, the commander of the JMPD.

In the High Court SERI brought the full facts of matter before the Court. These facts included that most of the traders had recognised legal rights to trade at their designated stalls; that all of them were summarily removed by officers of the Johannesburg Metropolitan Police Department ("JMPD"); that the traders had made

several attempts to meaningfully engage the City on ways for them to return to their trading stalls; and that the traders, notwithstanding their long-held permits legalising them to trade, subjected themselves to a re-registration and verification process by the City.<sup>19</sup> These facts were therefore to support the traders' contention that their removal from their stalls had absolutely no lawful basis, but was rather a tool the City was using to appear to be taking steps to halt the further decay and stimulate regeneration of the inner-city.

In the first part of the application the traders sought their immediate return to their former trading stalls and to be left undisturbed by the City while whatever plans the City had for the inner city would be implemented. The traders had sought this relief on the basis that prior to the urgent application being launched, they had first engaged the City on Operation Clean Sweep and its effects on their livelihoods. Indeed SERI had written several letters to the City seeking clarity and requesting more information about the City's plans and what effect they would have on the informal traders. The traders themselves complied with the City's request that they re-register and verify themselves on the City's systems, regardless of the fact that almost all of them held legal instruments permitting them to trade. However this all seemed to have amounted to naught when the City made it clear on 13 November 2013, a few days before the application was launched, that the City will not be permitting the traders back to their stalls, even though they were now fully re-registered and lawful.<sup>20</sup>

In the second part of the application the traders sought the judicial review and setting aside of three separate but inextricably linked decisions of the City, taken in implementation of Operation Clean Sweep. These decisions were: firstly, the September 2013 decision to conduct a verification and re-registration process which entailed removing all of the informal traders and suspending the rights to trade. Secondly, the 4 November 2013 decision not to allow the traders back to their stalls even after they had subjected themselves to the unnecessary verification and re-registration process. Lastly, the 13 November decision to permanently relocate the traders from their trading stalls to other "designated trading areas" which had not yet

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<sup>19</sup> Founding Affidavit

<sup>20</sup> Founding Affidavit Annexure O: Letter from Mchunu Attorney 13 November 2013

been disclosed to the traders nor even been determined by the City itself, it seemed at the time.

The judicial review of all three decisions was sought on the main ground that they were all in breach of the principle of legality, a foundational value of the post-apartheid constitutional order,<sup>21</sup> enshrined in the section 1(c) of the Constitution. The principle of legality in its simplest form provides that all exercises of public power is only legitimate where it is lawful.<sup>22</sup> There were other grounds on which the decisions were to be reviewed, such as their violation of constitutional rights and ultimately the right to just administrative action in terms of PAJA. Each decision is discussed in turn below.

### **The September 2013 Decision to Remove the Traders**

On 30 September 2013 a meeting was called between the informal traders and the JMPD, also present at that meeting was its spokesperson, Mr Wayne Minaar.<sup>23</sup> Not all the informal traders were present at that meeting and no agenda was given beforehand. At that meeting the informal traders were told that some of them had fake trading permits or smartcards,<sup>24</sup> that the City was about to implement Operation Clean Sweep,<sup>25</sup> and that they would no longer be permitted to trade at the 24 city blocks that their stalls were stationed until they had been verified and/or re-registered.<sup>26</sup>

The mass evictions of traders promptly commenced on 30 September and the 30 days thereafter until 31 October,<sup>27</sup> with every eviction on every block being for a variety of inconsistent reasons. The evictions were accompanied by a confiscation of all the trading stock the traders had in their possession. This meant that by the end

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<sup>21</sup> Cora Hoexter *Administrative Law in South Africa* (2012) 2ed at 121

<sup>22</sup> *Fedsure Life Assurance Limited v Greater Johannesburg Transitional Metropolitan Council* 199(1) SA 374 (CC) (“Fedsure”) at para 56. See more generally C. Hoexter ‘The Rule of Law and the Principle of Legality in South Africa Administrative Law Today’ in M. Carnelly and S. Hoctor (eds) *Law, Order and Liberty: Essays in Honour of Tony Mathews* (2011) 55

<sup>23</sup> Founding Affidavit para 72,

<sup>24</sup> Founding Affidavit para 104

<sup>25</sup> Founding Affidavit para 99

<sup>26</sup> Founding Affidavit para 109

<sup>27</sup> Founding Affidavit para 104

of the entire process, the traders were left with neither a stall to sell their wares, nor the wares themselves to sell elsewhere.

The September 2013 decision to remove the traders was therefore attacked on the ground that it violated the constitutional principle of legality for a number of reasons, including that: firstly the decision was not authorised by any law, the City officials themselves cited none during the Operation. Secondly the decision was taken without giving notice or granting a hearing to the persons affected by it. By the time the JMPD called the meeting, it was a forgone conclusion and the traders simply had to accept it. Thirdly that the decision was implemented arbitrarily, without separating those trading lawfully and those trading unlawfully; and there was also no rational connection between the City wanting to stop illegal trading and crime and removing the traders *en masse*. Lastly, that the decision furthermore violated the rule against self-help.<sup>28</sup> Other grounds on which the decision was challenged were that it violated the constitutional right to human dignity;<sup>29</sup> the rights to freedom of trade, occupation and profession;<sup>30</sup> and furthermore that it violated the traders' right not to be arbitrarily deprived of property.<sup>31</sup>

The decision was furthermore attacked on the grounds set out in the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") in that it was procedurally unfair;<sup>32</sup> it was taken for reasons not authorised by any empowering provision in law;<sup>33</sup> that is was furthermore taken for an unlawful ulterior motive or purpose;<sup>34</sup> that relevant considerations were not taken into account in taking and implementing the decision;<sup>35</sup> and ultimately because the decision was unreasonable and otherwise unconstitutional and unlawful.<sup>36</sup>

#### **The 4 November Decision Not To Allow the Traders Back To Their Trading Areas**

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<sup>28</sup> Founding Affidavit paras 185.1.1 – 3.

<sup>29</sup> In terms of section 10 of the Constitution.

<sup>30</sup> In terms of section 22 of the Constitution.

<sup>31</sup> In terms of section 25(1) of the Constitution.

<sup>32</sup> in terms of section 6(2)(c) of PAJA

<sup>33</sup> in terms of section 6 (2)(e)(i) of PAJA

<sup>34</sup> PAJA section 6(2)(e)(ii)

<sup>35</sup> PAJA section 6(2)(e)(iii)

<sup>36</sup> PAJA sections 6(2)(h)-(i)

It its implementation Operation Clean Sweep was indiscriminate, it removed every one of the informal traders who were stationed in the 24 inner-city blocks. Initially the City had said to all informal traders that they would be removed on the basis that they were trading unlawfully in the inner-city, and the City needed to verify and re-register all those who were trading legally. The City proposed that this verification process would only take a few weeks and the traders would be permitted to return to their stalls. Many of the informal traders disputed this reasons because most of them did have some of legal permit authorising them to trade. Indeed some of them had recently paid their monthly or annual subscription fees and had been issued with fresh permits. It therefore did not make sense that the City would deem even those people to be trading unlawfully and evict them as part of.

The effects of Operation Clean Sweep were severe on almost every one of the informal traders, especially to those who had children who needed to go to school. Therefore the prospect of a drawn-out legal battle with the City over who was trading legally and who was not did not seem appealing. With that in mind, the informal traders came to a negotiated agreement with the City that they would all subject themselves to the City's verification process in order for them to quickly return to regular trade. Therefore during the first week of November all affected informal traders attended to the City's offices and registered themselves. By the end of that week all of them were issued with new permits.

However when the traders returned to their stalls to commence trade JMPD officers evicted them again. While this was on going, high-level officials in the City began issuing media statements that the traders will not be permitted to return after all. They would be moved to other designated trading areas which would be announced after a review of all areas in the inner-city which were designated for trading. The entire verification process therefore seemed to be a sham. It seemed that the real purpose was simply to remove all traders to ensure an inner-city where only formal businesses would exists, free from competition with informal traders.

Therefore this decision was reviewed on similar grounds to those of the September 2013 decision. These grounds were that firstly the decision violated the principle of legality as it was irrational. Secondly it breached constitutional rights, which include

the right to freedom of trade, professional and occupation. Thirdly, it also fell foul of the rights to administrative justice in terms of PAJA in that it was taken in bad faith, for an ulterior purpose, without reason and without taking relevant factors into consideration.<sup>37</sup>

### **The 13 November decision to Permanently Relocate the Informal Traders to An Undisclosed location**

The final decision that was also taken on review is closely linked to the second decision in that it followed the obstruction of the informal traders from accessing their stalls even after going through the verification process. However this decision is peculiar because in this instance there already existed laws which governed the process of designating which areas should informal trading be stopped or limited and in which areas it should be permitted. However the City chose to ignore these and proceed to remove informal traders and re-designate their former trading stalls as places where trade is not permitted. In so doing, the City was openly flouting existing law for the sake of expedience.

Section 6A of the Business Act 71 of 1991 provides for a consultative process that a municipal council must follow after passing a resolution to restrict or prohibit trading in a particular are. Certain factors must be considered in the consultative process such as the effect of the restriction or prohibition, whether more efficient supervision can be employed, and whether the restriction or prohibition will have the effect of driving out business in the area. There must be constant communication, discussion and negotiation between the council and the affected businesses around these factors.<sup>38</sup> The council is even obliged to publish its plan beforehand.<sup>39</sup> This was never done in this instance. So the conduct of the City throughout the implementation of OCS was flagrantly in disregard of the applicable law.

The matter was finally set down on the urgent roll of the South Gauteng High Court and proceeded to argument. Counsel on both sides argued their points strongly; SERI, on behalf of the informal traders, argued the point about the City's unlawful

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<sup>37</sup> PAJA section 6(2)(e)(iii)

<sup>38</sup> Business Act s 6A (2)(c)(i)

<sup>39</sup> Business Act s 6A (2)(d)

conduct and the prejudice that this conduct is having on the livelihoods of the informal traders and the City argued the point about this prejudice not being a ground for urgency. In the end the Court found that there were no grounds for urgency and struck it off the urgent roll without giving full reasons. This therefore meant that the second part of the application (the review proceedings) will proceed in the normal course of events and be heard in the ordinary roll. At that stage the alternatives were either to set the matter down on the normal roll or to appeal to a higher court. The appeal was therefore made to the highest court, the Constitutional Court.

### **Before the Constitutional Court**

On 5 December 2013 argument was heard by the Constitutional Court on behalf the informal traders and on behalf of the City. The Constitutional Court does not ordinarily hear appeals on urgent basis and in less than a year prior to the *SAITF* case it had dismissed two urgent appeals on finding that it was not urgent.<sup>40</sup> Therefore there had to be strong grounds for the Court to uphold the appeal.

Indeed the informal traders argued that it was in the interests of justice for the appeal to be upheld on the basis of the irreparable harm the traders would suffer due to their loss of income; the significance of the constitutional issues before the court – such as the traders' right to human dignity and that of trade and occupation– and that they have a strong case for interim relief.<sup>41</sup>

The Court considered these grounds and found that it was indeed in the interests of justice to hear the appeal on an urgent basis.<sup>42</sup> It furthermore found that granting interim relief would not interfere with the review proceedings that were in the second part of the traders' application; the Court pointed out the fact that if interim relief was not granted at that stage, there would hardly be any relief to claim from the second part of the application.<sup>43</sup> Therefore the Court felt obliged to hear the appeal as the

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<sup>40</sup> *Magidiwana v President of the Republic of South Africa* 2013 (11) BCLR 1251 (CC) and *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC)

<sup>41</sup> Appellants Heads of Argument paras 22-5 and 29-53

<sup>42</sup> *SAITF* para 21

<sup>43</sup> *SAITF* para 22

High Court's order was final in effect and would result in substantial prejudice to the traders.<sup>44</sup>

In finding whether the traders had entitlement to urgent relief the court went into the inquiry of whether the traders had a *prima facie* right, which would suffer irreparable harm and that the balance of convenience test favoured that it be preserved by a grant of the relief sought. The Court found that the traders did have a *prima facie* right as they were licensed to trade and the City had no lawful grounds to frustrate the enjoyment of these rights.<sup>45</sup> The Court also found that the traders would be suffer ruinous and irreparable harm if the interim order was not granted,<sup>46</sup> they simply could not wait on the review proceedings to conclude while they were left destitute.

It is interesting to note that in all of these circumstance the City was adamant that the harm suffered by the traders is only temporary, since they would be permitted to trade at new trading areas which the City had yet to identify.<sup>47</sup> In the interim, the City argued, the traders could not be allowed to return to their stalls as the inner city would be "chaotic, uncontrolled and the illegal trading that would follow will allow a return of the crime and grime that existed prior to OCS."<sup>48</sup> The Court found that the City was conflating illegal traders with illegal traders, and in the process of it combating illegal trading it was causing harm to legal traders, and this it was not permitted to do.<sup>49</sup> The Court further summed up the matter by pointing out that the balance of convenience favoured the informal traders as the prejudice that they would suffer outweighed that of the City and the residents the City sought to protect from the effects of illegal trade. In the end the Court upheld the traders' appeal and granted them interim relief. The traders returned to their trading stalls immediately after the judgment.

## Conclusion

The *SAITF* case is as yet incomplete as the review proceedings are still ongoing and are currently pending in the High Court. However there a few lessons we can draw

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<sup>44</sup> *SAITF* para 22-3

<sup>45</sup> *SAITF* para 28

<sup>46</sup> *SAITF* para 30

<sup>47</sup> *SAITF* para 32

<sup>48</sup> Para 32

<sup>49</sup> Para 33

from the Constitutional Court case. Firstly, that constitutional principles such as the rule of law and administrative justice are only useful in as far as they are observed. Where powerful bodies such as the City choose to ignore them, they become of very little value or use to ordinary people who are the victims of the excesses of power. That the City felt entitled to swoop in and evict licensed persons without notice or any basis in law shows that there might be a disconnect in the way the City understands itself to be bound by the same constitutional principles.

There is also the question of the attitude the City has towards the informal traders themselves. On numerous occasions it was shown to the city that there is suffering on not only the about 1 500 traders that were evicted, but also the about 32 000 other people who rely on them. The City was aware that many of those informal traders were sole bread winners in their families and therefore a cut in the flow of income would undoubtedly have harsh consequences on people's ability to feed, clothe and house themselves, send their children to school and also maintain a decent standard of living. The City chose to ignore all of that on the basis that the informal traders were responsible for crime and grime in the inner city. This attitude we saw from the City authorities of the 1920s, we also saw it in their violent removal of the coffee-cart traders in the 1960s and we still see it now, in what is supposed to be a free and democratic society, based on the values of human dignity, equality and freedom.

With that being said, the Constitutional Court judgment did inspire a change in the manner the City has approached the question of informal traders and urban renewal. It has commenced anew the process of engagement on the designation and prohibition of certain areas as trading areas. The court victory has also emboldened the traders themselves to engage more robustly on the process with the City, so as to better protect their interests. SERI is assisting in that regard by providing advice and information on what the process entails in terms of the Business Act and the City's Informal Trade By-laws. Because the Business Act itself is a pre-constitutional piece of legislation, there are certain aspect of it that would not withstand constitutional scrutiny and therefore there is ongoing research by SERI on how those aspects can be remedied.

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In all these endeavours the ultimate goal is to ensure that urban poor people like the informal traders are secured space to participate in an economy that still excludes a large majority of the population. As we have seen above, the City is happy to create space for large businesses to invest in the inner city, yet that same courtesy is not extended to small, survivalist businesses that the applicants in the *SAITF* can be described as. Therefore there is a need for them to actively secure their right to the city. Through initiatives such as training workshops and legal advice sessions that assist the traders in engaging the City better, SERI is making a small contribution in enabling them to do so.

DRAFT 7/10/2014