

Submission to the High Level Panel on the Assessment of Key Legislation

Committee 1, Sub-topic, Spatial Inequality

Title: The legislative barriers to township economy micro-enterprise development

Introduction

The submission aims to highlight the prevailing legislative barriers that hinder the growth of micro-enterprises in the South African township context. The submission draws on primary research undertaken by the Sustainable Livelihoods Foundation and our research collaborator (Mr Denoon-Stevens, UFS) to investigate the spatial and legal-institutional obstacles that hinder economic growth and enterprise development.

Background Research

In support of the Foundation's work on the informal economy, the Sustainable Livelihood Foundation initiated the Formalising Informal Micro-Enterprises Project (FIME) in April 2011. This project's rationale is the pressing need to address the inadequacy of the legal-institutional framework which hinders entrepreneurship and business growth within the township informal economy. There is a strong case (both in scholarly literature and practitioner experience) for utilising enterprise formalisation as part of a broad development approach. Formalisation enables micro enterprises to expand in size, create jobs and foster additional commercial opportunities. These ideas have now received policy endorsement at the international level through International Labour Organisation resolution 204 which calls on governments to take an active role in facilitating a transition of informal workers into the formal economy.

Whilst international evidence provides valuable guidance to South African policies and programmes, there is a critical need to build a deeper understanding of the township informal economy and unregulated businesses, focusing on: i) the role of property rights and planning, ii) the micro-economic business environment, including local value chains, iii) the impact of over- / under- / ineffective- regulation, and iv) specific socio-economic and cultural contexts that aid and/or hinder business growth or sustain demand for very small and unregulated micro-enterprises.

In contributing towards addressing these gaps, the Foundation has undertaken primary research in nine townships economies: 5 in Cape Town, 1 in Johannesburg, 1 in Ehurhuleni, 1 in eThekweni and 1 in Matjhabeng. Our research thus encompasses a residential population of 321,174 persons and 96,396 households. The research identified 10,842 enterprises and 9,995 micro-entrepreneurs. This equates to 36 business per 1000 population on average. The highest levels of entrepreneurship per capita were found in settlements with a high degree of spatial informality. The data indicates that 46% of all township business activities centre on the sale of groceries, food and drink (including alcohol). Through mapping enterprise positions, the research provides an original insight into the spatial ordering of the township economy. We found that between 60-70% of micro-enterprises are situated in residential contexts, operated from homes, open ground or the street pavement. At the same time we identified the importance of the 'high street' (minor transport routes akin to local taxi routes) as a space for business, especially for service related businesses such as hair salons, repair services and traders selling fruit and vegetables and those selling fresh meat and / or prepared meals.

Core legal and institutional challenges

The collaborative research has identified a number of areas in which legislation provides a barrier to enterprise growth, development and formalisation.

- i) Exclusion from the regulatory environment. The challenge facing micro-enterprise who desire inclusion within the regulatory framework, but who cannot due to stringent compliance conditions, presents a case of 'enforced informalisation'. Two examples are liquor retailers and street traders. Shebeen owners are unable to comply with provincial liquor legislation either as a consequence of policy strategies to minimise liquor sales in residential areas or because the legislation is technically complex and the requirements inaccessible for resource poor micro-enterprises. Several municipalities require that liquor licences be restricted to spatial sites (land holdings) that are zoned for commercial use. But in most townships, there is a dearth of commercially zoned land (either it is not available and / or not accessible to small business owners). For shebeen owners, the requirement to obtain consent use (permission from a municipality to operate a specific land use on a parcel of land) can be costly, technically complex and prolonged in duration. As a consequence, shebeens continue to operate illegally, but seek to disguise their operations using Apartheid era tactics such as hiding liquor with neighbours or simply paying bribes. The illicit nature of shebeens

undermines the principles of liquor regulation and objectives of controlling the environment in which liquor is sold so as to minimise alcohol harms and societal impact. To put this in perspective, within the CBD of Cape Town there were 1232 liquor licence holders in 2011, including 437 restaurants, 323 bars with late night trading concession, 73 hotels, 36 nightclubs, 187 liquor stores and 64 grocery stores selling wine. By contrast, in the district of Mitchells Plain that encompasses the largest townships and a population of 1,112,650 there were a modest 177 licenced retailers with only 85 on-consumption venues or taverns. The enforced informalisation of shebeen has negative consequences for enterprise growth and dilutes the role of the liquor regulator to promote norms and standards so as to minimise liquor harms.

- ii) Exclusion from spatial opportunities for trade and mobility. The case of street traders highlights a further example of exclusion from spatial opportunities. The rights to trade from street localities is subject to numerous restrictive controls, including municipal by-laws on street trading, restrictions on the use of non-motorised transport (affecting street trader mobility), and road use restrictions, especially within transport corridors (roads and reserves). In some municipalities street trader by-laws are applied without differentiating between central business districts and township residential localities. Across cities, the spaces and places where street trading can be conducted is severely limited, thus minimising opportunities for new entrants to enter into the urban retail and service economies. These policies impact on the most marginal sectors of society and on the micro-entrepreneurs who look to street trade as a result of the low entry barriers within the sector and favourable opportunities, especially in inner city markets.
- iii) Under-regulation. The South African spaza shop sector has undergone a significant transition over the past 10 years with immigrant shop-keepers becoming numerically dominant, having either acquired South African run businesses or set-up shops in competition. These new spaza entrepreneurs benefit from 'free trade' opportunities in some townships and / or the lax implementation of municipal by-laws. Whilst it is important to foster residential businesses, the regulatory environment does not differentiate between residents operating micro-enterprises and investors taking advantage of the commercial opportunities of informality. The environment of informality has stimulated the retail of non-standardised products (such as bread) and grey market goods (such as contraband tobacco).
- iv) Archaic and non-appropriate building and land regulations. One of the largest hurdles faced by township entrepreneurs who wish to formalize their business is the issue of land ownership; specifically, only the owner of the land parcel on which the business is located is able to apply for building plan approval and business use permission (e.g. liquor licence approval). Noting that at least 2,193 million people live in informal dwellings in South Africa, and an estimated 1.1-1.4 million households do not have title deeds to their property, this means that at least 21% of households in South Africa are not able to formalize their houses, let alone formalize a home-based business. Even when the property is formally owned, the National Building Regulations (NBR) and the associated standards only permit structures to be built out of brick or timber, with the exception of building systems that have a relevant Agrément certificate (and NBHRC approval) or are proved to be of a 'fit for purpose' design. This makes it extremely difficult for any individual to formalize his/her business if the house or business premises is constructed out of corrugated iron, earth materials, or other non-standardised building materials. Finally, even if the entrepreneur can prove ownership of the portion of land on which the business runs, or permission from the owner, and the structure is able to comply with the stringent requirements of the NBR, the entrepreneur may still not be able to get land use approval owing to questionable land use policies (see point i) which prevent businesses operating in residential areas. In effect, this results in most home-based businesses running illegally, and thus depriving their customers and surrounding community from the benefits of appropriate regulation, such as fire and safety controls, control of nuisance, and so forth; and conversely placing the entrepreneur at risk of facing legal and police action against them.

Conclusion

The aim of formalisation cannot be achieved in the township economy. There are a myriad of laws at each tier of government (municipal by-laws, provincial business regulation and land-use laws, national standards etc.) that conspire to hinder businesses from entering the regulated economy and / or growing in size.

Recommendation

National government should provide framework guidance to ensure that municipal and provincial legislation aligns with objectives of formalisation and enterprise growth. The township economy needs to be recognised as a special site, taking into consideration its historical formation and development challenges. It should be recognised as a mixed zone locality with business and residence coterminous and symbiotic. Procedures for land use must be simplified. Use rights should be acknowledged for business registration and planning procedures. Trading spaces and places need to be liberalised, recognising the importance of the street environment and open land. Land must be made available for commercial activities and security of use provided through licencing, access to title deeds (where appropriate) and recognition of social tenure.

Evidence leaders contact details:

Dr Andrew Charman and Dr Leif Petersen
Directors
Sustainable Livelihoods Foundation
35 Ebor Road, Wynberg
Cape Town
7800
27 21 7625177
Andrew.Charman@livelihoods.org.za

Dr Stuart Denoon-Stevens
Urban and Regional Planning
Faculty Natural and Agricultural Sciences
University of the Free State,
PO Box 339, Bloemfontein
27514017136
DenoonStevensSP@ufs.ac.za

Organisation Details

Name: **Sustainable Livelihoods Foundation**

Website: www.livelihoods.org.za

The Sustainable Livelihoods Foundation is a think tank that seeks to contribute towards eliminating poverty through undertaking original research and engaging with communities to develop and advance innovative policies & development interventions to strengthen livelihoods within poor communities. The Foundation is a non-profit organisation and registered Section 21 (not-for-gain) company under South African law.

The vision of SLF is to support the emergence of sustainable livelihoods amongst marginalized communities, especially in South Africa. Our work seeks to empower communities as well as individuals through creating new opportunities for economic activities, imparting knowledge and promoting self-belief. We seek to influence government policies and promote practical and meaningful programmes for benefit of local communities at the grassroots. Our aim is to support social protection for vulnerable persons, whilst fostering opportunities for individual advancement and community upliftment.

Send To:

Leanne Morrison at Highlevelpanel@parliament.gov.za by no later than **20 August 2016**.