



Commission for Gender Equality  
A society free from gender oppression and inequality

## **DRAFT BY-LAWS FOR TOWNSHIP ECONOMIES**

*Commission for Gender Equality Comments*

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For queries, contact:

Adv Nthabiseng Sepanya-Mogale

**Chairperson for the Commission for Gender Equality**

**Email: [Thabom@cge.org.za](mailto:Thabom@cge.org.za)**

**Tel: 011 403 7182**



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## **1. Introduction**

The Commission for Gender Equality ('CGE') wishes to express its gratitude for the opportunity to make written submissions on the publication of the Draft By-laws for Township Economies.

The CGE, as an independent statutory body created in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 (the Constitution), is mandated to protect gender equality and the protection, development, and attainment of gender equality.

The Commission for Gender Equality Act 39 of 1996 ('the CGE Act'), gives the CGE the power to:

- Monitor and evaluate policies and practices of organs of State at any level.
- Monitor and evaluate statutory bodies and functionaries.
- Monitor public bodies and authorities and private businesses, enterprises, and institutions to promote gender equality.
- Make any recommendations that the CGE deems necessary.

The CGE welcomes the opportunity to make inputs into the draft by-laws and shall reiterate the proposed sections under review in the draft and respond thereto.



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## 2. Background

During South Africa's constitutional era, the South African state has been committed to enacting laws that promote human rights, influenced by the ideal of transformation of South African society, including gender transformation and empowerment.<sup>1</sup> This has created much hope for South Africans that they would be able to find decent employment along with employment security, adequate wages, and fair treatment at work, in order to live decent lives. Instead, South Africa faces ever increasing levels of unemployment, which in turn has led to increasing rates of self-employment. This trend has contributed significantly to the rise of the informal economic sector in South Africa, with Gauteng having the highest proportion of informal employment amongst the provinces.<sup>2</sup>

The informal sector refers to economic activities that are not registered with the government, and includes self-employed individuals, small business owners, and street vendors who operate without formal licenses or permits. The sector is so classified due to its flexibility, low barriers of entry, and reliance on cash transactions.

During the apartheid era, the informal trade was regulated by municipalities by way of by-laws and issuing of licences. However, the 1980s brought about a large influx of people to South African cities. This led to growth in the informal sector, which has become a critical component of South Africa's development agenda and a source of employment opportunities for over 2.5

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<sup>1</sup> Department: Statistics SA *Gender Series Vol IX: Women Empowerment 2017 -2022* at 1.

<sup>2</sup> Department: Statistics SA *Gender Series Vol VII: Informal Economy* at 8-9.



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million people, or 20% of South Africa's total employment,<sup>3</sup> many of whom are women.<sup>4</sup> Additionally, it contributes an estimated 10-15% of South Africa's Gross Domestic Product (GDP), which is a substantial percentage considering the informal nature of the sector. The informal sector is therefore an important driver of economic growth.

However, workers in the informal sector face many challenges, such as earning wages that are lower than the cost of living, lack of job security, and working conditions that are not conducive or safe. They also have limited access to social protections such as healthcare, retirement benefits, and availability of sector-specific financial support, skills development including enterprise development.

Given that the high unemployment rate in South Africa has caused many people to turn to the informal sector for sources of income, and the nature of the informal sector environment and the challenges borne from this, the risk that these aspects of the sector aggravate the vulnerability of certain groups like women, persons with disabilities (PWDs), and members of the LGBTQIA+ community within the labour markets is very high. In regard to women, this is particularly so given that the sector tends to reproduce gender-based segmentations and inequalities in income, social security, and work-related benefits.<sup>5</sup>

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<sup>3</sup> B Masuku and O Nzewi 'The South African informal sector's socio-economic exclusion from basic service provisions: A critique of Buffalo City Metropolitan Municipality's approach to the informal sector' *Journal of Energy in South Africa* *Journal of Energy in Southern Africa* 32(2): 59–71 at 60.

<sup>4</sup> M Mabilo (2018) 'Women in the informal economy: Precarious labour in South Africa' Master's Thesis University of Stellenbosch at 16. Available at <https://scholar.sun.ac.za/server/api/core/bitstreams/db084f1e-39cc-4001-9255-9df0a7596f7d/content> [Accessed 13 June 2024].

<sup>5</sup> Women in the informal economy: The face of precariousness in South Africa (sun.ac.za)



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Municipalities, together with relevant government departments, are mandated to ensure that socio-economic development of women and men in the informal sector economy is realised and accelerated. Notwithstanding this, while municipal by-laws are intended to regulate and manage informal trading, they can inadvertently reinforce existing gender inequalities and significantly impact on women's ability to earn a livelihood and support their families.<sup>6</sup> It is therefore important to consider how the informal economy affects women and men differently for effective labour market policy formulation, enforcement, and socio-economic development interventions.

### **3 The Commission for Gender Equality's Submissions on Aspects of the draft by-law**

Considering the above, the CGE's submissions regarding the draft by-law are set out hereunder.

#### **3.1 General Comments**

The CGE welcomes the Draft Regulations on By-laws for Township Economies but is concerned about the lack of a provision referring to the applicability to various business categories of township economies. Instead, it merely makes a generic reference to the informal or formal sector.

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<sup>6</sup> [A Rights-Based Approach to Informal Street-Trading Challenges in Tshwane Metropolitan Municipality \(journals.co.za\)](http://journals.co.za)



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### 3.2 Preamble

The preamble to the draft by-law states that 'government acknowledges that townships must be vibrant [and sustainable] economic centres'. The CGE is of the view that it is important that the state acknowledge that township economies must also be sustainable. It therefore would recommend that the preamble include a provision to the following effect:

'And whereas government acknowledges that townships must be vibrant and sustainable economic centres.' [our emphasis]

### 3.3 Section 2: Objectives

Section 2 of the proposed by-law states as follows:

'The objects of these by-law are to –

- (a) facilitate inclusive spatial and economic development in townships;
- (b) harmonise the township ecosystem and provide norms and standards for the establishment and management of township-based enterprises both formal and informal;
- (c) raise awareness of applicable laws and regulations affecting township businesses; and
- (d) support small businesses to grow and participate in mainstream economic activities.'



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While the provision is aimed at managing business activities within a municipality's townships, it does not expressly provide for the economic advancement of previously disadvantaged persons, such as women, PWDs, and the LGBTQIA+ community. Given the state's overall commitment to enacting laws realising the ideal of transformation, the CGE is of the view that this should be expressly stated as an objective of the draft by-law. The omission also increases difficulties relating to effective monitoring and facilitation of inclusive spatial as well as economic development in townships against relevant laws that ensure economic transformation of previously disadvantaged persons. As a result, the effect of this is the undermining of the importance of transformation at this level as a constitutional goal. The CGE therefore recommends that the section include a provision in which the advancement of previously disadvantaged persons is included as an objective of the by-law.

### 3.4 *Section 3: Freedom to engage in business activities*

Section 3 of the draft by-law states as follows:

- '(1) Subject to subsection (2) a South African citizen, permanent resident or foreign nationals that has a business licence, may engage in business activities within the area of jurisdiction of a municipality.
- (2) A municipality may, based on its developmental objectives, determine quotas on the proportion of businesses within specific categories of business, to be owned and operated by foreign nationals.
- (3) In determining the quotas municipalities must ensure amongst others that at least 60% of the total staff complement employed in the business operations





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are South African citizens or permanent residents in line with Regulation 14(2) (b) of the Immigration Regulations of 2014.

(4) A business activity referred to in subsections (1) and (2), is subject to the provisions of —

(a) legislation in the Republic of South Africa;

(b) any applicable permits or licencing requirements;

(c) other applicable municipal by-laws and policies; and

(d) this standard draft by-law.'

Section 3 attempts to balance the right to engage in business activities with the developmental objectives of municipalities in South Africa. However, the provision does not stipulate what those development objectives are and does not reference relevant municipality policies or frameworks that are currently in place and appears to assume that such policies exist. Furthermore, it empowers the municipalities to determine a quota system for the proportion of businesses within specific business categories to be owned and operated by foreign nationals, without guidelines as to how these quotas systems will be determined. This leaves such a discretion open-ended and at risk of abuse by the municipalities and possible exclusions of the minority (i.e. black women and persons with disabilities).

Section 3(2) of the draft by-law states that a municipality 'may, based on its development objective, determine quotas'. However, the CGE is of the view that for township economies to be vibrant and sustainable, municipalities must be legally obliged to determine quotas. Therefore, the word 'may' in the



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subsection should be altered to 'must'. Municipalities ought to include township economies as one of their developmental objectives as well as in their Local Economy Development Plans.

It is important to note that the use of the quotas system was challenged in the matter of *South African Police Service v Solidarity obo Barnard*,<sup>7</sup> albeit in the context of employment equity within the workplace. Nevertheless, the use of the quotas system in the context of creating inclusivity in the economy should take this judgment into account.

The CGE is of the view that the 60% restriction should be raised to 80% in order to properly and effectively alleviate the high levels of poverty and unemployment that exists in South Africa generally, and amongst township residents specifically. It is also imperative that the words 'in possession of a valid working permit' be inserted after the words 'foreign nationals' in order to fully give effect to the section.

Furthermore, the 60% restriction placed on the total staff complement employed in the business operations being South African citizens or permanent residents in line with Regulation 14(2) (b) of the Immigration Regulations of 2014, does not guarantee the inclusion of the previously disadvantaged persons. This is because there is no directive as to how this 60% minimum must be constituted and has the potential to undermine the transformation objective in line with the Employment Equity Act 55 of 1998. Moreover, there is no directive as to which employers will be obligated to comply with the aforementioned restriction.

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<sup>7</sup> *South African Police Service v Solidarity obo Barnard* (CCT 01/14) [2014] ZACC 23 (2 September 2014)



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Finally, the requirement that a certain percentage of staff must be South African citizens or permanent residents could lead to challenges in hiring, especially in sectors where there is a shortage of local skills or experience.

However, where this is not an issue, it would be imperative that municipalities confirm the status of any non-South African with Department of Home Affairs before they issue a licence to such persons, and the draft should include a provision obligating it to do so. Furthermore, if such a person makes any misrepresentation regarding their status, they ought to be automatically disqualified from being granted any licences.

### 3.5 *Section 5: Proactive Steps to be undertaken by the municipality*

Section 5 provides as follows:

‘A municipality must exercise its functions and powers to —

- (a) build the operational and management capacity of entrepreneurs and small businesses in townships through workshops, training or mentoring;
- (b) conduct business compliance and awareness workshops;
- (c) facilitate skills development and business development support services for township businesses;
- (d) facilitate access to infrastructure for township businesses; and
- (e) facilitate access to markets for township businesses.’



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The CGE notes the above provision and is in support thereof. However, the CGE is concerned that subparagraph (c) speaks to support services for township businesses, without explicitly indicating what these support services will be, such as financial aid, specific procurement initiatives, workshops or other programmatic support that would facilitate trade between township enterprises and government and/or the private sector.

### 3.6 *Registration and permitting of business activities*

Section 6(4)(g) requires a municipal manager to establish and maintain a database of registered businesses, which database must contain information regarding any foreign citizen. Here it is imperative to ensure that asylum seeker conditions are in line with sections 22 and 24 of the relevant provisions.

Subsection 6(8)(a) provides that a delegated official of the municipality must give a written notice and a verbal instruction in one of the official languages. The CGE is of the view that it would be prudent for the subsection to expressly limit such language to only South African official languages, otherwise the content of the provisions becomes an untenable red tape can be easily ignored, as is currently occurring regarding bail in South Africa courts.

Furthermore, in the event that a municipality does not have the services of an interpreter, then the officials will unfairly grant the license instead of erring on the side of caution. This then defeats the purpose of the by-law.



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### 3.7 *Transferability of permits*

Section 7 provides for the transfer of a permit in the event of the death of the permit holder. It is imperative that when doing so, consideration is given to the existing laws regarding administration of deceased estates. Furthermore, the section does fully deal with what happens in circumstances where there are minors who are dependent on the income generated by business holding such a permit. The draft by-law needs to fully set out how will this is to be monitored by the department.

### 3.8 *Hygiene and waste removal*

Section 9 refers to hygiene and waste removal, and subsection 9(2) states as follows:

'the owner of the property where business activities take place must ensure that there is appropriate infrastructure including ablution facilities.'

The impression this provision creates is that informal traders can only trade on properties where appropriate infrastructure is present. This in turn suggests the existence of a lease agreement between the trader and the property owner, for the parties to be complying with the provision. The provision therefore appears to ignore the precariousness and flexibility of the informal sector, as well as informal traders' ability to afford such facilities required by the provision.

It is vital to note that most vendors and informal traders are trading in close proximity to public transport hubs, e.g. taxi ranks, train stations, and bus depots and that especially at these transport hubs, it remains the responsibility of the



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Municipality to ensure that there are adequate water supplies and sanitation facilities. Such a responsibility must find expression in the draft-by laws.

The risk of informal traders being unable to comply with this implicit obligation is high and has the potential to place them in a prejudicial position and empower a municipality to invoke the offences and penalties provision. This will then perpetuate challenges already faced by already vulnerable informal traders, such as impoundment of goods, wherein enforcement actions of this nature can disproportionately affect them because such persons are already operating with limited resources and capital.<sup>8</sup>

Furthermore, such restrictive practices can further push women in particular below the poverty line, which will consequently have a negative impact on their ability to earn a livelihood and support their families. This in essence affects socio-economic development at large, given that the majority of households in South Africa are led by women.

### 3.9 *Other necessary measures*

By-laws dealing with economic inclusion must provide for:

- Identification of factors that hinder the economic participation of women, PWDs, and members of the LGBTQIA+ community and provide for measures that addressed the identified factors.

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<sup>8</sup> Socio-Economic Rights Institute of South Africa (SERI) (2018) "INFORMAL TRADE IN SOUTH AFRICA Legislation, Case Law and Recommendations for Local Government" [SERI-SALGA Informal Trade Jurisprudence.pdf](#), accessed on 30 April 2024.



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- Provide protections for women from gender-based violence and harassment in the market-place.
- Establish a monitoring and evaluation framework to track the impact of the revised by-laws on the economic inclusion of vulnerable groups and identify areas for further improvement.
- Provide training and capacity-building programs for officials, businesses, and communities to ensure effective implementation and understanding of the revised by-laws.
- Establish a grievance mechanism for vulnerable groups to report any discrimination or barriers faced in the economy, ensuring effective redressal and accountability.

By adopting these, a more inclusive economy that empowers women, PWDs, and members of the LGBTQIA+ community to fully participate and contribute to the community's growth and development.

#### 4. Conclusion

For purposes of ensuring strengthened monitoring and effective implementation of economic transformation, it is important that the draft by-law has clear and explicit transformation objectives and measurements in place. This will strengthen the South African state's overall transformation objectives. Furthermore, more detail is required in the by-law relating to development objectives, guidelines relating to quotas, and support services to be offered.