



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

Report Back on Outcome of the CGE Investigation on Abuse of Informal Traders



**Presentation at Agenda Feminist Journal
12 April 2013**



Introduction

Powers and functions of the CGE are defined by Section 11 of the CGE Act No. 39 of 1996 as follows:

- Monitor and evaluate policies and practices
- Develop and manage educational programmes to foster understanding of gender equality
- Evaluate any Act of Parliament, system of personal law, custom, indigenous law or any other law that affects gender equality
- Investigate complaints and attempt to resolve same through mediation, conciliation or negotiation
- Monitor compliance with international obligations
- Conduct research that impacts on gender equality





The Inception of the Matter:

- Referral of the matter from the Safe Cities Dialogue hosted by Agenda on 25 November 2011. Mr. Nathi Mazibuko was invited but consequently failed to attend.
- Asiye Etafuleni representatives attending the dialogue expressed their disappointment as they would have like to have posed some pertinent issues for Mr. Mazibuko's response.
- In an endeavour to elicit a response the CGE offered to correspond with Safer Cities, Durban Metro Police and SAPS to take up some of the issues of concern identified by stakeholders being: confiscation of traders' goods by Durban Metro and SAPS officers, sexual favours being demanded to waive fines, allegations of gross police brutality, sexual and gender based violence, theft and robbery of female traders



Interventions by the CGE

- Correspondence was directed to the respective entities, Durban Metro Police, SAPS and Safer Cities: deadlines were 21 December 2011 and subsequently 10 February 2012
- The CGE met with a representative from Safer Cities, Ms. Thandi Nene on 31 January 2012. She requested clarity on the nature of the correspondence from the CGE and disputed that listed issues were within the scope and ambit of their Unit's handling
- The CGE directed written correspondence dated 7 February 2012 to the Head of the Business Support Unit, Mr. Phillip Sithole
- In response to the CGE correspondence, SAPS proceeded to conduct an internal investigation and apparently elicited the assistance of Durban Metro Police, Safer Cities and Ethekewini Business Support Unit. The SAPS report was forwarded to the CGE on 11 May 2012.



SAPS Investigation of the matter

SAPS' response was as follows:

- The Hawker Unit is attached to the Business Support Unit within Ethekewini Municipality. The latter is responsible for the approval of permits and the regulation and administration of the street trader industry
- There are concerted efforts by the Council to regulate, administrate and to control the industry. The enforcement arm is on a daily basis active in the CBD. In most instances SAPS do not act alone but provide support to the hawker unit when operations are undertaken. Therefore, actions and operations are instituted by the Hawker Unit which are supported by SAPS
- SAPS recommended that when traders feel aggrieved by actions taken by Metro and SAPS that avenues of communication be opened to them to report allegations. BSU has an appeal process and a complaint pertaining to Metro Police may be directed there
- Allegations of SAPS actions must be directed to the Provincial Commissioner and registration of criminal dockets if necessary

Further engagement on the SAPS Report

- As part of its investigation the CGE conducted an onsite inspection in Warwick Junction on 1 August 2012
- CGE listened to the concerns of the mielie traders. They requested secure sites to trade safely without being indiscriminately harassed as well as permits
- The CGE requested a meeting with SAPS, Durban Metro and BSU to facilitate further engagement on the contents of the SAPS report. We suggested 18 June 2012
- However, Major General Gibson leading the process was on leave and the CGE preferred to await his return. Therefore, the meeting only took place on 2 August 2012.



Way Forward from 2 August 2012 Roundtable

- Meet with the Municipal Manager and BSU: CGE to address correspondence to the Municipal Manager. CGE to convene briefing meeting with OPP and SAHRC, and propose jointly approaching the MM as C9s in the province
- CGE to draft letter to Senior Supt Van Heerden to solicit response in writing regarding outcome of reported cases, for Patrick from Asiye Etafuleni to report back to street traders.
- Asiye to provide CAS reference numbers of cases instituted at SAPS as well as instances of traders who were denied access to police stations to institute charges against Durban Metro. CGE to assist by channeling these complaints via Lieutenant Colonel Mvuyana and Brigadier Stokes at SAPS
- CGE to schedule a smaller follow up meeting with Brigadier Stokes and Asiye Etafuleni, once the meeting with the Municipal Manager has been convened.



Further progress

- The CGE met with the Office of the Municipal Manager on 10 October 2012. The CGE delivered a presentation to municipal stakeholders from BSU and Durban Metro Police on the position of the informal trade economy in Durban as well as confiscation of traders goods.
- Durban Metro Police stated that the possible practice of many of the allegations highlighted in the CGE's presentation could prove to hold true. He requested that in future all allegations concerning Metro Police officials be escalated and directed to his office. Also stated that he recognized the flaws in the process pertaining to confiscation of goods and proposed the following: Metro Police will continue to enforce however, there should be a civilian component to deal with administrative issues post confiscation and the lack of cold storage facilities for perishable goods needs to be addressed



Meeting with Ethekwini Municipality

- The CGE met with Municipality stakeholders on the instruction of the Municipal Manager on 15 November 2012 for a joint dialogue and for the purposes of crafting a way forward for all the stakeholders to deal with these issues collaboratively:



Way Forward

Issues and challenges	Proposed action
<p>1. Infrastructure and resource challenges</p> <ul style="list-style-type: none"> - Ageing infrastructure - Need for management and maintenance–refuse removal - Vagrancy and damage - Resources for cold storage facilities - Appropriate sites for Metro police 	<p>Metro Police to take up with Municipal Manager and Treasurer – facilities and cold storage issue</p> <p>Immediate health and safety issues – Asiyeh Etafuleni to provide list to BSU</p> <p>Dialogue to generate details of where interventions are required, for costing and budgeting</p> <p>TOR for EMIEF to include deliberation on infrastructure issues – to feed into broader IDP and budgeting processes</p> <p>Awareness programme of BSU and Asiyeh Etafuleni to address waste management by traders</p>
<p>2. Traders registration:</p> <ul style="list-style-type: none"> - Demand versus available sites - Fronting - Regulation of “Illegal” traders - Database of traders to be completed 	<p>EMIEF to take up this issue</p> <p>Policy review on administrative processes to address</p> <p>Street Net to assist BSU with database</p>



Way Forward Cont.

<p>3. Roles and relationships:</p> <ul style="list-style-type: none">- Stakeholder recognition and clarity of roles – representative structures – recognition agreements – trader representative structures, service providers, ILO- Disputes between committees and internal structures- Discordant sector relationships and parallel structures	<p>EMIEF and TOR to address representation Ethekewini Municipality recognition agreement with Ubumbano – others? Code of conduct?</p>
<p>4. Enforcement:</p> <ul style="list-style-type: none">- Excessive force and corruption- Allegations and investigation of cases- Resolving outstanding cases (esp. sexual harassment case)– evidence and follow-up- intimidation of witnesses and need for protection- Disciplinary measures- Feedback to complainants- Limited mediation and appeal measures – unresponsive EThekewini Ombudsman	<p>Asiye Etafuleni to compile list of outstanding cases to take up with SAPS/Metro Police Reporting protocols established with SAPS and Metro Police Albert Park Metro Police to receive any specific complaints By-law review process to address appeal mechanism CGE to take up policy and code of conduct issue regarding sexual harassment with EThekewini Municipality and contracted agencies/service providers</p>



Way Forward Cont.

<p>5. Policy and administration gaps</p> <ul style="list-style-type: none">- Permit to cook versus sell - clarity- Business licence versus permits- Payment of fees- Coordination of services and awareness- Informal Economy Policy review process to be taken forward- By-law review, development and implementation	<p>Asiye Etafuleni to present proposal to BSU on mielie sellers ILO to assist with review of by-laws—ensure stakeholder/partner participation in process. Street Net to facilitate community participation and input Awareness information on business licences and permits to be included in BSU programmes BSU to assist with current individual case – Asiye Etafuleni to provide details</p>
<p>6. Stakeholder Forum</p> <ul style="list-style-type: none">- Need for greater social dialogue- Consultation and information processes- Buy-in, information and awareness- EMIEF representation and functioning – regularity of meetings, TOR to be updated	<p>ILO to assist with review of EMIEF TOR, and engage with stakeholders Dialogue to address strengthening of EMIEF</p>

Way Forward Cont.

7. **Confiscation and evidence processes**

- Selective bagging and “disappearing” of goods
- Quality of bags used and sealing
- Recording and sign-off processes
- Inadequate storage of goods – esp. for perishable goods
- Disposal of perishable goods
- Implementation of standard protocol – fining and confiscation
- Policy gap for reimbursement for damaged/disappeared goods

Metro Police to take up with Regional Commander issue of confiscation and bagging of goods, esp. in outer areas

Metro Police to examine quality of bags and seals; recording and documenting issue

Storage facility being established
Implementation challenges to be reported to Metro Police

Awareness programme around confiscation to be implemented by BSU – for traders and officials

Appeal/remedy measure to be considered – Metro Police to take up with City leadership, and issue to be incorporated in by-law review process;

Municipal courts processes available as existing appeal mechanism – Metro Police to take up issue of availability of court processes in outer areas

Way Forward Cont.

8. **Protocol for festive season**

- BSU advertising spaces available, and receiving applications and complaints
- Metro police intention to increase enforcement – confiscation and fines
- Normal non-permitted vs. influx
- Space constraints and unemployment pressures

BSU and by-law review process to consider categories of permits – permanent/annual, and seasonal permits; temporary flea markets and spatial arrangements, and extended trading hours
To be taken up in debate in EMIEF
Emergency measures – contact list – CGE to facilitate

9. **Consultative dialogue**

- Opportunity to report back on progress
- Accountability and transparency regarding processes
- Opportunity for traders to surface additional challenges
- Feed into EMIEF process
- Feb/March 2012

Working group to convene to address planning for dialogue - representation of trader groups; programme; facilitation. BSU, Metro Police, Ubumbano, Asiye Etafuleni, ILO – to be convened by CGE mid-January 2013