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Director-General
Department of Trade & Industry
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ATTENTION: Ms Baneka Dalasile

RE: Licensing of Businesses Bill 2013 – Notice 231 of 2013

We hereby submit preliminary comments on the Bill, and wish to notify you that the following organisations of street vendors and informal traders (with whom StreetNet International is working towards the establishment of a national alliance of street vendors and informal traders in May 2013) are currently in the process of discussing this Bill with their members and preparing their more detailed submissions:

1. **Eastern Cape** Street Vendors' Alliance
2. **Free State** – Mangaung Hawkers' Alliance (MAHA)
3. **Gauteng** – SA Informal Traders' Forum (Johannesburg) in collaboration with organisations of street vendors & informal traders in Tshwane, Marabastad, Hammanskraal, ekuRhuleni, Vaal region, and other Johannesburg organisation(s).
4. **KwaZulu-Natal** – Ubumbano Traders' Alliance (UBUTA)
5. **Limpopo** Small Medium Micro Enterprises and Hawkers' Association
6. **Mpumalanga** – Mbombela Traders' Association
7. **North West** – organisations of street vendors in Klerksdorp and Rustenburg.
8. **Northern Cape** – Kimberley Hawkers' Association
9. **Western Cape** – Cape Town Informal Traders' Coalition (CTITC)

In addition, we are liaising with WIEGO (Women in Informal Employment: Globalising and Organising) who are assisting StreetNet and the abovementioned organisation with technical support, as well as commissioning some more specialised work on (1) the legal implications of the Bill, and (2) the effects of the Bill in relation to informal cross-border traders and other foreign nationals trading in the South African informal economy.

International Council members: Oscar Silva (Argentina) (President) Ms Juliana Brown Afari (Ghana) (Vice President) Cesar Garcia Arnal (Spain) (Secretary) Ms Souley Zeinabou (Niger) (Treasurer) Ms Madeleine Tounkara (Guinee) Ms Dorothy Kalunde (Kenya) Ms Sandra Flores (Nicaragua) Ms Fatoumata Bintou (Senegal) Ms Gladya Mponda (Malawi) Ms Vilma Arevalo Cruz (Honduras) Mamadou Fall (Senegal) Narayan Neupane (Nepal) Pedro Ramirez (Colombia) Hardy Vallejos (Chile) Jean-Pierre Budik'he (Democratic Republic of Congo)

Preliminary comments by StreetNet International

1. The repeal of the Businesses Act of 1991, in particular Section 6 of the Businesses Act, has more consequences than merely a change in licensing requirements. What the Businesses Act added to the new South Africa was a developmental approach towards street vendors and informal traders, instead of the old abolitionist approach which characterised the Apartheid era. We believe that the repeal of the Businesses Act and replacement with this Bill (which does not in any way address the developmental element of informal trade) would take us back to the era of forced removals.
2. Instead of repealing the Businesses Act, legislation to facilitate the powers given to local government by Section 6 to manage the spatial regulation of informal trade in public space should be considered. A good international example which could assist in designing appropriate legislation to supplement licensing laws is the "Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill no.104 of 2012 currently under consideration by the *Lok Sabha* (Parliament of Federal State of India).
3. Accordingly, it is our considered view that this Licensing of Businesses Bill cannot be enacted and implemented in relation to own-account workers in the informal economy without such developmental legislation in place – or at least retaining the provisions of Section 6 of the Businesses Act of 1991 as an interim measure in order to protect the livelihoods of street vendors and informal traders in law.
4. With regard to cross-border traders and other foreign nationals, the lack of provision for work permits for foreign nationals working in the informal economy in the Immigration Act would further exacerbate injustices currently experienced by informal cross-border traders who are crossing the borders and paying customs duties (which are transparently declared on entry) but who are then issued with visitors' visas as there is no work permit in existence for informal traders – only formal contracts for foreign nationals with employment contracts, or the business permits referred to in your Bill which are completely inaccessible to informal traders at the bottom end of the economy. Then they are harassed at their workplaces for trading on a tourist visa!
5. More thorough examination needs to be done of the impact on both the economy and the social fabric of our country of such drastic measures of exclusion of foreign nationals, to avoid implementation of such legislation opening the way to xenophobic implementation by enforcement authorities and retaliation by desperate economic migrants. DTI is advised to study the impact of the strike by undocumented migrant workers organised by the CGT national trade union centre in France in 2006 – where the French government discovered to their surprise how dependent the French economy was on the labour of undocumented migrants. The South African government should study the national economic implications, the social and livelihood implications as well as the implications for regional integration in SADC and beyond (i.e. African Union).

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6. In terms of the Refugee Act and the Immigration Act, registered refugees and asylum-seekers legally enjoy the same constitutional rights as South African citizens, including the right to work in the Republic of South Africa (specifically stated on asylum-seekers' permit documents). As it is usually very difficult for refugees and asylum-seekers to find formal employment, they are forced to exercise this right in the informal economy. If they were to be denied this right as well, the South African government may then be obliged to pay them allowances – a potentially very costly unintended consequence of this proposed Bill.
7. The International Coordinator of StreetNet International is a member of a Reference Group of the DTI charged with working on a "National Informal Business Development Strategic Framework". This Reference Group was launched on 2 November 2012, after which members of the concerned DIT unit conducted provincial consultations with stakeholders in the informal business sector, including street vendors and informal traders, local government officials, etc. The report-back on these consultations was given to the Reference Group at its second meeting on 28 February 2013. Imagine our surprise to see on the national news that, without incorporating any content emerging from this DTI process, the same DTI has already tabled a Licensing of Businesses Bill!
8. At the very least, the Bill process needs to take a step back to incorporate the work on the National Informal Business Development Strategy. Some of the initial recommendations that have been developed even at this early stage are precisely around appropriate and accessible methods of registration and licensing in respect of informal businesses and workers in the informal economy – and we strongly recommend that these have to be incorporated into any new legislation on business registration and/or licensing. This would make for smoother implementation as a result of more informed legislation and, consequently, better buy-in from affected stakeholders.
9. We assume that one of the reasons for the rush to pass this legislation is to try to increase the tax base. However, while we are fully in support of workers in the informal economy being part of the tax base on the basis of the principle of progressive taxation, we believe that this is the wrong way to go about this. The DTI only needs to look at many West African countries with thriving informal economies, where tax is collected from informal traders (through absolute necessity, where workers in the informal economy constitute from 70 – 99% of the workforce) using very simple and inexpensive (largely manual, but advancing) technologies of collecting small amounts from a large amount of people – resulting in this revenue being a considerable proportion of local government revenue, and even a (smaller) proportion of national government revenue.
10. StreetNet International is more than willing to engage with the DTI and the Treasury on innovating appropriate ways of including the workers in the informal economy in the tax base on the basis of the principles of progressive taxation, with participation and buy-in from workers in the informal economy. It is our experience that it is not the informal economy workers, but the informal businesses, who resist being part of the tax base. On the contrary, it is in the interests of informal workers to pay their proportional contribution if it means they will be recognised, can be part of social security schemes, and see an end to daily harassment.

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11. The proposed bill is wide open to abuses of power by municipalities authorised to be "licensing authorities" – in the absence of knowledge about, or consideration for, the different economic situation of workers in the informal economy – without the counterbalancing effect of developmental legislation for the regulation of the different sectors of work in the informal economy, such as street vendors and informal traders, home-based workers, waste pickers, etc. We believe that you will receive many submissions regarding the potential for abuse of power in this proposed Bill from stakeholders who have good reason (based on past and current experiences) to fear bearing the brunt of such. Such fears will make it difficult for this Bill to be smoothly implemented, and it is therefore important to thoroughly address this issue before attempting to enact and implement it.
12. The proposed bill is also wide open to becoming a camouflage for the implementation of other legislation which is not being effectively implemented in its own right, such as customs, traffic, food and cosmetic, intellectual property, and criminal procedures legislation. It is NOT appropriate to use Businesses Licensing legislation as a proxy for other legislation which, for various reasons, is failing to be effectively implemented.

Further consultation process needed

There has clearly not been sufficient consultation with the various stakeholders in the informal economy for this Bill to be able to be enacted and implemented with respect to workers in the informal economy. We therefore propose that the Minister afford a **6-month extension of time for consultation with the stakeholders** in these sectors, including the following:

1. Meeting with the Reference Group charged with developing a National Business Development Framework, for purposes of integrating the work done this far in the legislative process;
2. Provincial visits for consultations on the proposed Bill with affected stakeholders in these sectors;
3. Portfolio Committee Public hearing(s) where further submissions are invited – particularly regarding the areas of effective implementation prospects, the legal implications in relation to other legislation, the impact with regard to foreign nationals (cross-border traders as well as refugees and asylum-seekers).

We thank you in anticipation for your serious consideration of all the issues raised in this preliminary submission.

Yours
Pat Horn
International Coordinator

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