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Informal Economic Inclusivity and the Right to the City in Post-Apartheid South Africa: A Legislative Perspective

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This research examines the legislative framework for informal economic inclusivity and the right to the city in post-apartheid South Africa, focusing on laws that facilitate the inclusion of informal economic activities into urban spaces. Using a doctrinal methodology, the study analyses legal sources such as statutes, case law, and legal commentaries, supplemented by qualitative methods, including desktop research and secondary data analysis. Purposive sampling was employed to identify key legislative frameworks, principles, and case law, while thematic analysis was applied to explore connections between concepts, guided by Lefebvre's principles of the Right to Participation and the Right to Appropriate Urban Space. The research highlights significant progress through South African legislation, including the 1996 Constitution, the Business Act 71 of 1991, the Business Amendment Act 186 of 1993, the National Small Business Act 102 of 1996, the Local Government: Municipal Systems Act 32 of 2000, and the Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013. It assesses their effectiveness in protecting the rights of informal economic actors in the city. However, enforcement challenges persist, as demonstrated by the landmark case South African Informal Traders Forum and Others v City of Johannesburg and Others, revealing a gap between legal provisions and practical implementation. To enhance inclusivity, the study recommends that municipalities adopt more participatory urban planning practices, involve informal traders in decision-making, and strengthen enforcement mechanisms to better integrate informal traders into urban economies and promote spatial justice.

Keywords: *Informal economy, the right to the city, participation, legislation*

Introduction

The International Labour Organisation (ILO) defines the informal economy as encompassing both "employment in the informal sector" and "informal employment," referring to economic activities not regulated by formal laws or covered practically under existing frameworks (Maluleke 2020). In developed countries, the informal economy primarily supports poorer communities, while in developing nations, it serves as the main source of income for most people, excluding wealthier urban populations. For individuals in impoverished urban and rural areas, as well as women and farmers, the informal economy is a vital source of income and survival opportunities (Chambwera 2011). Globally, over 60 percent of the workforce operates within the informal economy. According to an ILO report, approximately 2 billion people work informally, with the majority in developing and emerging economies

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(Maluleke 2020). The informal economy plays a key role in job creation, income generation, and poverty reduction (Maluleke 2020). However, most workers lack social protection, labour rights, and decent working conditions (Maluleke 2020).

Both developed and developing nations have experienced growth in their informal economies due to the failure of formal labour markets to create sufficient jobs, particularly for unskilled workers (Flodman Becker 2004). For instance, in the European Union, informal employment increased from 25 percent to 33 percent between 1988 and 1998, while in the United States, it grew during the 1980s but stabilised between 1995 and 2001 (ILO 2002). In sub-Saharan Africa, informal employment increased from 21 percent of the labour force in 1990 to between 40 and 60 percent of urban employment by 1998 (Charmes 1998). Kenya experienced an annual growth rate of 9 percent in informal employment between 1985 and 1990 and 16.1 percent from 1991 to 1994, while the formal sector grew by only 1.6 percent during the same period (Xaba et al. 2002). Similarly, Swaziland's urban informal economy grew at an average annual rate of 15 percent in the 1990s, contributing 22 percent to national employment by the end of the decade, as formal wage employment declined (Chambwera 2011; Xaba et al. 2002).

In South Africa, the unemployment rate declined to 32.1 per cent in the third quarter of 2024, down from a two-year high of 33.5 percent in the previous quarter, marking the first drop since Q3 2023. The number of unemployed individuals fell by 354,000 to 8 million, the lowest level in nearly a year (Trading Economics 2024). Despite this improvement, unemployment remains a longstanding issue rooted in apartheid-era "separate development" policies, which stifled economic growth and restricted job opportunities (Altman 2003). Consequently, South Africa's informal economy is estimated to comprise 4.9 million people, with 3 million falling under the narrower statistical category of the informal sector (South African Local Government Association (SALGA) 2021). In 2017, the informal sector accounted for about 6 percent of the country's GDP. According to the Quarterly Labour Force Survey, 18.3 per cent of employed individuals worked in the informal sector, while 30 percent were engaged in informal employment by Q3 2019 (Maluleke 2020).

Despite its contributions, the informal sector faces numerous obstacles, including unfavourable policies, restrictive regulations, limited access to financial resources, markets, skills, and technology, inadequate infrastructure, poor job quality, and a lack of social security (ILO 2022). The challenges confronting the informal sector are deeply rooted in a history of repression, harassment, and criminalisation. During apartheid (1948–1994), informal economic activities were closely associated with illegality and racialised discrimination. Informal trading, particularly in markets, was declared illegal and often treated as unlawful enterprises (Van der Heijden 2014). For instance, Skinner (2008) highlights how the apartheid state's complex web of national and local laws effectively banned street trading. However, the 1980s marked a turning point with the introduction of more progressive policies recognising the value of informal trading. This shift culminated in the Business Act 71 of 1991, which sought to regulate and support the sector. In the post-apartheid era, urban spaces have become central to addressing socioeconomic disparities caused by decades of racial segregation.

The "right to the city," popularised by French sociologist Henri Lefebvre,

advocates for the inclusion of all urban residents in shaping and participating in urban development (Fani 2021). The World Charter on the Right to the City underscores the centrality of cities in wealth creation, social and cultural diversity, political participation, and environmental preservation (UN-Habitat 2020). This concept is particularly relevant in South Africa, where efforts are underway to redress the exclusion of informal economic actors from metropolitan areas. Section 22 of the Constitution of the Republic of South Africa, 1996, guarantees the right to freedom of trade, occupation, and profession, ensuring all citizens can engage in lawful economic activities. Despite these constitutional protections, there is limited research on how South African laws and case law safeguard informal economic actors' rights to the city in the post-apartheid era. This study seeks to address this gap by examining the 1996 Constitution of South Africa, along with key legislation, including the Business Act 71 of 1991, the Business Amendment Act 186 of 1993, the National Small Business Act 102 of 1996, the Local Government: Municipal Systems Act 32 of 2000, and the Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013, to assess their effectiveness in protecting the rights of informal economic actors to the right to the city.

Research Methodology

This review examines South Africa's legislative frameworks aimed at fostering informal economic inclusivity and upholding the right to the city in the post-apartheid context. South Africa was selected for this study due to its legacy of institutional discrimination, defined as norms, policies, or practices that disadvantage marginalised groups and reinforce inequality (Escorihuela Ribera & Caicedo 2021). Under apartheid, such discriminatory practices were particularly directed at informal economic activities (Van der Heijden & Skinner 2012).

The study adopts a doctrinal methodology, which involves analysing legal sources such as statutes, case law, regulations, and legal commentaries to address legal questions and develop theoretical insights (Sepaha 2023). This traditional approach, often conducted in law libraries, prioritises the identification of authoritative decisions, legislative provisions, and secondary materials (Singhal & Malik 2014). Qualitative research methods underpin this study, with a focus on desktop research and secondary data analysis. The review relies on legislative documents from national and local government levels and case law obtained from South African government repositories. Supplementary materials include journal articles and books. The research was carried out between 15 September 2024 and 29 January 2025.

To achieve the research objectives, purposive sampling—a non-probability sampling technique—was employed to identify legislative frameworks, principles, and case law most relevant to the study. Etikan, Musa & Alkassim (2016) define non-probability sampling as a method where researchers deliberately select subjects based on their relevance to the research question. Key provisions of the selected legislation were organised and analysed using thematic analysis, guided by the two key principles of the right to the city: The right to Participation and the Right to

Appropriate Urban Space. According to Boyatzis (1998), thematic analysis, as a qualitative approach, facilitates the categorisation and presentation of themes within the data. Alhojailan (2012) highlights that this method enables researchers to identify connections between concepts.

The article begins by examining the concept of the right to the city within South Africa's informal economy. It explores the interaction between the right to the city and informal economic activities, followed by an analysis of South Africa's legal frameworks supporting informal economic rights in the post-apartheid era. The study then evaluates relevant legislation and case law to understand how these frameworks recognise and enforce informal economic actors' rights through legal provisions and judicial rulings. The analysis underscores key legal provisions in South Africa's legislative frameworks that support informal economic activities and their alignment with the principles of the right to the city. Ultimately, the review concludes that South African legislation is well-suited to protecting and advancing the right to the city for informal economic actors.

The Right to the City and the Informal Economy

The concept of the right to the city was introduced by Henri Lefebvre in his 1968 work *Le Droit à la Ville*. In this foundational text, Lefebvre critiques the growing commodification and privatisation of urban spaces, particularly in French cities, arguing that the use value of urban environments—such as land and communal spaces—is increasingly overshadowed by their exchange value. This, he contends, fractures the social fabric of urban centres (Isandla Institute 2011). The right to the city advocates for equitable access to urban resources, services, and goods, particularly for vulnerable and marginalised groups (UN-Habitat 2020). Lefebvre envisions the right to the city as a framework for urban social struggles, transcending traditional notions of class conflict and emphasising the collective right to shape urban life (Isandla Institute 2011).

Two core principles underpin Lefebvre's vision. The Right to Participation emphasises the active involvement of urban inhabitants in decision-making processes that shape their surroundings. This extends beyond liberal-democratic systems where voices are mediated through state mechanisms; Lefebvre's concept demands direct, unmediated involvement in the production and management of urban spaces (Isandla Institute 2011). The Right to Appropriate Urban Space calls for urban areas to be designed and used in ways that enable people to live, work, and interact freely. This principle rejects the commodification of urban spaces as private property or instruments of capitalist valorisation, advocating instead for their use to serve collective needs, reflect community identities, and foster cultural expression (Isandla Institute 2011).

In South Africa, local governments are constitutionally mandated to promote the right to the city, reflecting the country's broader developmental goals. The *Business Act* 71 of 1991 facilitated the deregulation of the informal economy, encouraging local governments to adopt policies that support informal economic activities. Municipalities are required to align their policies with national legislation

and pursue socially just approaches to address urban marginalisation. The right to the city offers a developmental urban framework to combat inequality and exclusion (SALGA 2021). As part of their developmental mandate, South African local governments must engage meaningfully with informal workers and economic units. The *White Paper on Local Government* of 1998 emphasises the role of developmental local governments in fostering economic growth, coordinating state and non-state developmental activities, promoting public participation in policy-making, and nurturing social networks tied to economic and cultural growth. This participatory governance approach compels municipalities to involve informal workers in planning and decision-making processes that directly affect their livelihoods (SALGA 2021).

However, practices that exclude informal workers from participating in cities remain prevalent worldwide: reports of slum and street vendor evictions, unreported harassment by local authorities, bribery, and confiscation of goods are common (Chen 2016). Horn (2018) notes that many cities struggle to establish effective policies for developing and regulating street trading, often resulting in inconsistent policy frameworks marked by high enforcement costs and global issues with policy implementation. Among the reasons for this lack of implementation are electoral strategies and a lack of political will. Similarly, Illy (1986) suggests that ambiguous policy objectives, decision-making without consultation, low compliance levels, and insufficient administrative capacity within implementing agencies contribute to the problem. This disconnect between policy formulation and implementation often deviates from the expectation that government policies should be executed effectively, yielding outcomes aligned with their intended goals.

From a legal perspective, Horn (2018) highlights that in countries with rights-based democratic constitutions, such as South Africa, trading is constitutionally protected regardless of its location. However, legislation and by-laws often conflict with constitutional provisions, especially when newer laws take precedence. Unless compelled by litigation or class actions, authorities frequently fail to align their enforcement practices with constitutional protections. Meneses-Reyes & Caballero-Juárez (2014) observe that this inconsistency between legal rights and the enforcement of street trading regulations often results in harassment and extortion, prompting informal traders to seek legal recourse.

In South Africa, various laws and regulations also limit participation in the informal economy. While the Business Act 71 of 1991 initially removed many restrictive business laws, it also introduced regulations around trading permits, licence appeals, and fines, complicating informal trade (Republic of South Africa 1991). The Business Amendment Act 186 of 1993 further empowered municipalities to enact by-laws, which often impose criminal penalties for non-compliance, including fines or imprisonment (Skinner 2018).

Zoning laws present additional challenges. Designed to manage land use for economic, environmental, and social purposes, zoning maps often conflict with the realities of informal trade. Restrictive zoning limits the spaces where informal traders can operate, pushing them to smaller, less affluent markets and creating significant barriers to entry (Scheba & Turok 2020). As a result, informal traders are frequently marginalised, despite the sector's critical role in sustaining livelihoods and contributing to the urban economy (Skinner 2018).

Discussion of Findings

The 1996 Constitution of South Africa

The 1996 Constitution of South Africa provides a robust legal framework for promoting informal economic inclusivity and the right to the city in post-apartheid South Africa. Firstly, section 9 upholds the right to equality and socioeconomic inclusivity by prohibiting discrimination based on race, gender, or socioeconomic status. This is particularly relevant to the informal economy, which is largely composed of historically disadvantaged groups, including Black South Africans, migrants, and women. Consequently, this provision supports policies that enable informal traders to access economic opportunities within urban areas without discrimination or harassment (Republic of South Africa 1996).

Moreover, section 10 reinforces the right to human dignity, ensuring that informal traders are not marginalised, criminalised, or evicted in a manner that undermines their dignity. Regulations governing informal trading must, therefore, prioritise fair treatment and protect traders from unjust displacement (Republic of South Africa 1996). Additionally, section 22 guarantees the right to freely engage in a trade, occupation, or profession. This is crucial for recognising informal economic activities as legitimate contributors to urban economies. As a result, any restrictions on informal trading must be carefully assessed to prevent unnecessary limitations on economic participation (Republic of South Africa 1996).

In addition, section 33 safeguards the right to just administrative action, ensuring that informal traders are not subjected to arbitrary evictions, confiscation of goods, or exclusion without due process. This section mandates that government decisions affecting informal traders be lawful, reasonable, and procedurally fair, thereby ensuring their voices are heard in urban governance (Republic of South Africa 1996).

Similarly, section 26 affirms the right to housing and the right to the city, which is particularly relevant for informal traders who often reside in informal settlements. Given the risk of displacement due to urban renewal or exclusionary zoning policies, the state is obligated to take reasonable measures to progressively realise the right to adequate housing, while integrating informal traders into urban spaces rather than excluding them (Republic of South Africa 1996).

Furthermore, section 152 underscores the developmental duties of local government, mandating municipalities to promote economic development and democratic governance. This provision compels local authorities to incorporate informal trading into urban planning frameworks, fostering participatory decision-making and economic inclusivity (Republic of South Africa 1996).

Additionally, sections 25 and 24 address land use and spatial justice, challenging the persistence of spatial apartheid in urban planning, which often limits informal traders' access to prime economic spaces. These sections affirm the constitutional mandate for equitable access to land and resources, supporting policies that facilitate inclusive urban economies rather than perpetuating exclusionary practices (Republic of South Africa 1996).

The Businesses Act, 71 of 1991

The Businesses Act, 71 of 1991 plays a pivotal role in shaping the informal economy and fostering inclusivity within the framework of the "right to the city" in post-apartheid South Africa. By regulating businesses, including informal traders, the Act aims to create a balanced and structured economic environment. Section 2 of the Act addresses the prohibition of unlicensed businesses, mandating that all businesses, including informal traders, must obtain a license or permit to operate legally. This provision is fundamental in ensuring that businesses, regardless of their formality, are subject to certain legal standards. However, this regulation also introduces challenges, as the requirement for licenses or permits can be a barrier for informal traders, particularly those from marginalised communities, who may lack the resources or knowledge to navigate the licensing process. As such, while the Act aims to regulate the sector, it also risks excluding certain groups from participating in the urban economy (Republic of South Africa 1991).

Moving on, section 6 outlines the procedures for licensing and appeals, detailing the application process, refusal of applications, and the appeals process. This section is particularly significant because its simplified and inclusive procedures can help reduce some of the barriers that informal traders face. The ability to appeal decisions ensures that informal traders have a chance to contest refusals, which is crucial for maintaining their access to economic opportunities (Republic of South Africa 1991).

Section 8 of the Act grants local authorities the power to regulate businesses and enact by-laws that affect informal traders. These by-laws can include the designation of trading areas, regulation of public spaces, and the creation of an environment that supports informal economic activities. This section plays a critical role in the spatial integration of informal traders, as it allows local authorities to make decisions about where informal traders can operate. However, by regulating trading spaces, local authorities can either promote or hinder the accessibility of prime urban locations for informal traders, which directly impacts their ability to integrate into the formal economy (Republic of South Africa 1991).

Furthermore, section 9 allows local authorities to designate specific areas for informal trading. This provision is vital for spatial inclusivity, as it directly influences the opportunities available to informal traders to operate in high-traffic or high-value urban areas. Such designations can either foster or limit informal traders' participation in the broader urban economy, depending on how local authorities choose to allocate trading spaces. Consequently, section 9's provisions highlight the importance of ensuring that informal traders have access to spaces that enable them to thrive and contribute to the urban economy (Republic of South Africa 1991). Section 10 provides for exemptions from licensing requirements, allowing authorities to exempt certain businesses or traders from the standard licensing process. This flexibility is essential in promoting inclusivity, as it reduces the administrative burdens that may otherwise prevent small-scale or resource-constrained traders from participating in the economy (Republic of South Africa 1991).

In addition, section 12 requires that written reasons be provided when a business license is denied or revoked. This provision enhances transparency and accountability in the licensing process, as it ensures that informal traders are not

subject to arbitrary decisions or biases. By offering reasons for refusals or revocations, section 12 creates an opportunity for informal traders to understand the rationale behind decisions and seek remedies if necessary. This transparency is crucial in promoting fairness and reducing discrimination against informal traders, which ultimately contributes to a more inclusive economy (Republic of South Africa 1991). Section 15 establishes penalties for non-compliance with the Act's provisions. While penalties serve to enforce regulation, they also create tension between the desire for regulation and the goal of inclusivity. Informal traders, who may face systemic inequalities and practical barriers to compliance, could be disproportionately affected by these penalties. Consequently, it is essential to balance enforcement with efforts to address the underlying causes of non-compliance, such as limited access to resources or information (Republic of South Africa 1991).

Finally, section 16 offers a mechanism for businesses to appeal decisions made by local authorities. This appeals process provides informal traders with an avenue to challenge decisions that may exclude them from economic participation. The ability to appeal decisions is an essential tool for ensuring that informal traders have a fair chance to contest outcomes that might otherwise prevent them from operating legally. In this way, section 16 contributes to maintaining a degree of fairness and accessibility in the regulatory environment, reinforcing the goal of inclusivity within the urban economy (Republic of South Africa 1991).

The Businesses Amendment Act, 186 of 1993

The Businesses Amendment Act, 186 of 1993, which amends the Businesses Act of 1991, introduces significant provisions that influence informal economic inclusivity. To begin with, one of the primary changes introduced by the Amendment Act is found in section 1, which expands the definitions of businesses and trading activities to explicitly include informal traders, street vendors, and hawkers. This expanded scope is critical in recognising the economic contributions of informal traders and ensuring that they are subject to legal protections and regulations (Republic of South Africa 1993).

A key addition to the Act is section 6A, which empowers municipalities to regulate informal trading through designated trading areas, permits, and by-laws. This provision is essential for creating legal avenues for informal traders to operate within urban spaces, thus promoting their right to participate in the urban economy (Republic of South Africa 1993). Furthermore, section 6A(2) requires municipalities to consult with relevant stakeholders, including informal traders, before designating or restricting trading areas. This requirement fosters participatory governance by encouraging municipalities to engage with informal traders during the spatial planning process. By involving traders in decision-making, this provision enhances the inclusivity of urban planning and ensures that the needs of marginalised groups are considered (Republic of South Africa 1993).

In contrast, section 6A(3) grants municipalities the authority to prohibit informal trading in specific areas. While this power aims to maintain urban order, it also underscores the challenge of balancing regulation with equitable access to trading opportunities. Municipalities must carefully navigate this tension to ensure that

prohibitions do not disproportionately exclude marginalised traders from prime urban spaces. To mitigate potential harms, section 6A(4) permits the removal of informal traders from prohibited areas but mandates adherence to fair procedures. This ensures that the enforcement of by-laws does not unduly infringe on the rights of informal traders or unjustly exclude them from urban spaces (Republic of South Africa 1993).

Moreover, section 6A(5) highlights the developmental role of local authorities by encouraging municipalities to support informal traders through the provision of infrastructure such as market facilities and storage areas. This provision demonstrates the importance of creating an enabling environment for informal economic activities. By investing in infrastructure and services, municipalities can enhance the productivity and sustainability of informal trading, thus contributing to economic inclusivity (Republic of South Africa 1993).

In addition to these measures, section 6B introduces an appeals process for informal traders aggrieved by municipal decisions. This provision offers a critical platform for informal traders to challenge exclusionary practices and seek redress, thereby promoting fairness and accountability (Republic of South Africa 1993). Furthermore, section 6C prohibits discriminatory practices in the enforcement of regulations. By protecting informal traders from unfair treatment based on socio-economic status, race, or gender, this section reinforces the principles of equality and non-discrimination, which are central to fostering an inclusive urban economy (Republic of South Africa 1993).

Another noteworthy provision is section 6D, which requires municipalities to integrate informal trading into urban economic development plans. This integration reflects a commitment to recognising informal traders as vital contributors to the urban economy and aligns with the broader goal of economic inclusivity. By incorporating informal trading into development plans, municipalities can better support informal traders and ensure that they have access to opportunities that enable their growth and sustainability (Republic of South Africa 1993).

Finally, section 15 outlines penalties for violations of trading regulations. However, it emphasises the importance of proportionate enforcement to avoid criminalising poverty or exacerbating the marginalisation of informal traders. This balance between enforcement and compassion is crucial in addressing the systemic challenges faced by informal traders while maintaining urban order (Republic of South Africa 1993).

The National Small Business Act, 102 of 1996

The preamble of the Act underscores the pivotal role of small businesses in driving economic growth, generating employment, and reducing inequality. It further highlights the necessity of implementing targeted policies and support mechanisms to empower informal traders and ensure their seamless integration into urban economic development. To begin with, section 2 articulates the objectives of the Act, which include creating an environment conducive to small business growth and promoting economic opportunities for individuals historically disadvantaged by systemic inequalities. This focus on inclusivity is essential in addressing the socio-

economic disparities in post-apartheid South Africa and ensuring that informal traders have access to the resources and opportunities required to thrive. By prioritising the needs of marginalised groups, the Act demonstrates a commitment to inclusive urban economic development (Republic of South Africa 1996).

Additionally, section 5 establishes the National Small Business Council (NSBC), an advisory body that represents the interests of small businesses, including informal traders. The NSBC plays a crucial role in ensuring that the perspectives and needs of informal traders are considered in policymaking and urban economic planning. This provision promotes participatory governance, enabling informal traders to influence decisions that directly affect their livelihoods and access to urban economic spaces (Republic of South Africa 1996). In a similar vein, section 8 mandates the government to create a supportive environment for small businesses by reducing regulatory burdens and improving access to essential resources. For informal traders, this includes streamlining processes for obtaining trading permits and providing affordable trading infrastructure (Republic of South Africa 1996).

Moreover, section 10 encourages partnerships between the government and the private sector to provide both financial and non-financial support to small businesses. These partnerships foster initiatives such as informal market spaces, training programs, and urban economic inclusion projects. Through such collaborations, informal traders gain access to critical resources and skills development opportunities that enhance their productivity and integration into the urban economy (Republic of South Africa 1996). Equally important is section 12, which categorises micro and survivalist enterprises within the small business sector. By explicitly recognising informal businesses as integral components of urban economies, this section ensures that they are included in policy frameworks and benefit from tailored support measures. This recognition is vital in addressing the unique challenges faced by informal traders and fostering their economic empowerment (Republic of South Africa 1996).

Furthermore, section 14 requires the government to monitor and report on small business support programs. This accountability mechanism ensures that initiatives aimed at promoting informal economic inclusivity are effectively evaluated and adjusted to meet the evolving needs of informal traders. In addition, section 17 mandates coordination between national, provincial, and municipal governments to promote small business development. This provision ensures that urban planning policies align with the needs of informal traders and foster their right to equitable access to urban spaces (Republic of South Africa 1996). Finally, the schedule in the Act provides a detailed classification of small business sectors, including informal businesses. By tailoring interventions to suit different categories, the Act acknowledges that informal traders require specific support to transition into formal urban economic systems. This classification ensures that policies and programs are designed to address the distinct needs of various small business sectors, thereby promoting inclusivity and economic growth (Republic of South Africa 1996).

The Local Government: Municipal Systems Act, 32 of 2000

The Local Government: Municipal Systems Act, 32 of 2000, establishes a detailed framework for municipal governance and service delivery, emphasising inclusivity, economic development, and the empowerment of marginalized groups. It provides essential guidelines for municipalities to ensure equitable access to urban resources and economic opportunities, with specific provisions that address the inclusion of informal traders and other vulnerable groups (Republic of South Africa 2000). Section 4 of the Act outlines the rights and duties of municipal councils. It mandates councils to promote social and economic development while considering the needs of marginalised groups, such as informal traders. This provision is significant as it ensures that decision-making processes regarding urban spaces and economic opportunities are inclusive and equitable, fostering a more just urban environment (Republic of South Africa 2000).

In addition, section 5 reinforces the rights of community members to participate in local governance and decision-making. By empowering informal traders and other marginalised groups to engage in the planning and development of urban areas, this section promotes inclusivity in governance processes. It encourages municipalities to actively involve diverse community stakeholders, ensuring that the voices of the disadvantaged are heard and considered (Republic of South Africa 2000). Moreover, section 16 obligates municipalities to cultivate a culture of public participation by encouraging communities to contribute to municipal planning, budgeting, and decision-making. This section creates a critical platform for informal traders to express their concerns and priorities, ensuring their inclusion in the development of urban economic policies and plans (Republic of South Africa 2000). Building on this, section 17 mandates municipalities to establish clear and accessible mechanisms for community participation. By prioritising inclusivity, this provision ensures that marginalized groups, including informal traders, can engage meaningfully in governance processes (Republic of South Africa 2000).

Another pivotal aspect of the Act is outlined in section 23, which requires municipalities to develop Integrated Development Plans (IDPs) that reflect the socio-economic needs of their communities. This provision recognises the importance of strategic planning to address the challenges faced by marginalised groups. Section 26 complements this by stipulating that the IDPs must include measures to promote local economic development and spatial planning. This enables municipalities to designate trading zones, provide infrastructure for informal traders, and foster economic inclusivity in urban areas (Republic of South Africa 2000). Equally important is section 34, which mandates the annual review and amendment of the IDP. This ensures that informal traders and other community members have an opportunity to advocate for their inclusion and address emerging challenges (Republic of South Africa 2000).

The responsibilities of municipal managers, as outlined in section 55, further reinforce the importance of implementing policies and plans that promote local economic development. This section emphasises the need to create an enabling environment for informal traders by ensuring that municipal initiatives align with their needs and contributions to the urban economy (Republic of South Africa

2000). Additionally, section 78 highlights the provision of municipal services, with a focus on improving infrastructure and support systems for informal economic activities. This includes the development of market facilities, sanitation, and other resources essential for informal traders (Republic of South Africa 2000). Lastly, section 99 empowers municipalities to promote local economic development by directly supporting initiatives that include informal traders in urban economic opportunities. This provision reinforces the role of municipalities as facilitators of economic inclusivity and sustainable development (Republic of South Africa 2000).

The Spatial Planning and Land Use Management Act, 16 of 2013

The SPLUMA, 16 of 2013, is a pivotal piece of legislation in South Africa, aimed at rectifying the spatial imbalances created during apartheid and promoting equitable land use across both urban and rural areas. Several key sections of SPLUMA directly contribute to advancing informal economic inclusivity and securing the right to the city for marginalised communities (Republic of South Africa 2013). To begin with, section 2 of SPLUMA outlines the primary objectives of the Act, which include the promotion of sustainable and inclusive urban development. This section emphasises the necessity of spatial planning that fosters economic growth, social development, and environmental sustainability. Importantly, it highlights the significance of equitable land use and spatial justice, which directly relate to the integration of informal economic activities within formal urban systems (Republic of South Africa 2013).

Moreover, section 5, which sets out several guiding principles for land use and spatial planning, supports this vision by promoting equitable access to land, social integration, and economically productive land use. The principle of equitable access is particularly crucial as it addresses the need for informal economic inclusivity by ensuring that informal businesses and traders are not excluded from prime urban spaces. Through these principles, SPLUMA encourages the development of mixed-use spaces, where both formal and informal businesses can coexist (Republic of South Africa 2013).

In line with this, section 7 of SPLUMA provides specific guidance on land use management, advocating for the integration of diverse land uses to enhance spatial inclusion. This section calls for land use policies that encourage mixed-use zoning, a crucial element for the inclusion of informal economic activities within urban areas. Additionally, section 8 outlines the establishment of land use management systems at various levels of government, aiming to facilitate the management of land in a manner that promotes spatial justice. The section stresses the importance of developing and implementing land use policies that respond to the needs of marginalised communities, including informal traders (Republic of South Africa 2013). Section 10 further emphasises the importance of public participation in spatial planning processes. It makes it clear that urban planning decisions should involve consultation with local communities, a provision that is especially crucial for informal economic inclusivity (Republic of South Africa 2013).

Furthermore, section 11 outlines the responsibilities of municipalities in implementing SPLUMA's provisions, including creating municipal spatial

development frameworks (SDFs) that guide land use and development at the local level. This section is significant for informal economic inclusivity as it mandates that municipalities consider the needs of informal traders when drafting their SDFs. The principle of spatial justice, articulated in section 17, also plays a crucial role in ensuring that informal traders are included in urban development. This section seeks to rectify the injustices of apartheid-era spatial planning that disproportionately marginalised certain communities, including informal traders. SPLUMA calls for creating urban environments that provide equal access to land and resources for all citizens. This principle of spatial justice is key to ensuring that informal traders are not left out of urban development and can exercise their right to the city, promoting equality in the distribution of economic opportunities (Republic of South Africa 2013). Lastly, section 26 grants municipalities the authority to develop and implement land use management policies that reflect local needs and priorities. This section is of great significance for informal economic inclusivity as it allows municipalities the flexibility to create policies that support the formalisation and integration of informal businesses into the urban economy (Republic of South Africa 2013).

Table 1. *Relational Key Constitutional and Legislative Provisions, and the Rights of Informal Economic Actors to the City in South Africa*

Constitution/ Legislation	Key Sections	Right to Participation	Right to Appropriate Urban Space
The 1996 Constitution of South Africa	Section 9	Ensures equality and non-discrimination in urban spaces.	Supports inclusion in urban economic activities.
	Section 10	Protects informal traders from marginalisation.	Mandates fair treatment in urban spaces.
	Section 22	Guarantees freedom to trade.	Recognises informal trade as legitimate.
	Section 33	Ensures fair administrative action.	Protects against unjust displacement.
	Section 152	Encourages municipal involvement of traders.	Promotes economic inclusivity.
The Businesses Act, 71 of 1991	Section 2	Regulates business licensing.	Impacts traders' access to urban spaces.
	Section 9	Allows designated trading areas.	Supports spatial integration of traders.
The Businesses Amendment Act, 186 of 1993	Section 6A	Requires municipal consultation with traders.	Allows municipalities to designate trading spaces.
The National Small Business Act, 102 of 1996	Section 2	Promotes inclusive policies for traders.	Supports access to urban resources.
The Local Government: Municipal Systems Act, 32 of 2000	Section 5	Mandates participatory governance.	Ensures traders are involved in urban planning.
	Section 23	Encourages integration of traders in development plans.	Provides frameworks for inclusion.
SPLUMA, 16 of 2013	Section 2	Promotes equitable land access.	Supports integrated land use policies.
	Section 10	Requires public participation in planning.	Ensures spatial justice for traders.

Source: Author's construction (2024).

Case Law

The case of *South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* 2014 (6) BCLR 726 (CC); 2014 (4) SA 371 (CC) addresses the rights of informal traders and the obligations of municipalities to engage lawfully with them. The case arose in response to the City of Johannesburg's 2013 "Operation Clean Sweep," which resulted in the forcible removal of thousands of informal traders under the pretext of maintaining order and cleanliness. The traders contended that their removal contravened their constitutional rights, including dignity, the right to work, and just administrative action, as they were neither consulted nor provided with proper notice or alternatives. The Constitutional Court held that the City's actions were unlawful, lacking legal justification and failing to comply with procedural fairness. The Court underscored the necessity of meaningful engagement with informal traders and acknowledged the economic harm caused by their arbitrary removal. Consequently, it ordered the reinstatement of the traders and mandated the city to engage with them in future urban planning processes.

Table 2. *Relational Case Law, Informal Economic Actors, and the Right to the City in South Africa*

Case Law	Right to Participation	Right to Appropriate Urban Space
South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others (CCT 173/13; CCT 174/14) [2014] ZACC 8	The City of Johannesburg failed to engage meaningfully with traders before their removal, violating procedural fairness.	Informal traders had the right to use public spaces for economic activities, and their forced removal was unjust.

Source: Author's construction (2025).

Conclusions

This research has highlighted the significant strides made by South Africa in promoting informal economic inclusivity through legislative frameworks that reflect Lefebvre's principles of the Right to Participation and the Right to Appropriate Urban Space. The adoption of these principles in key pieces of legislation, such as the 1996 Constitution, the Business Act, SPLUMA, and the Municipal Systems Act, signifies a clear commitment to integrating informal economic activities within the urban space. However, the enforcement of these rights remains a challenge, as demonstrated in the landmark case *South African Informal Traders Forum and Others v City of Johannesburg and Others*. This case highlights the ongoing tension between legal frameworks and practical implementation, revealing the need for greater efforts in ensuring the protection and integration of informal traders within the urban economy. To enhance informal economic inclusivity and the right to the city in South Africa, it is recommended that municipalities adopt more inclusive and

participatory urban planning practices that involve informal traders in decision-making processes. Furthermore, there is a need for stronger enforcement mechanisms to ensure that the rights of informal traders are protected and that policies promoting spatial justice are effectively implemented. Continuous capacity building for local authorities in the enforcement of these frameworks, as well as the establishment of clear guidelines for integrating informal traders into urban development, will contribute to more inclusive and equitable urban spaces.

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