

# **Contesting post-apartheid urban displacement: The struggle for the Warwick Market in Durban, South Africa**

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**People, Places and Infrastructure: Countering urban violence and promoting  
justice in Mumbai, Rio, and Durban**

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## Summary

In the urban literature on South Africa, considerable attention has focused on forced displacement, relocation and the destruction of integrated communities under apartheid. However, the Warwick Avenue Triangle (WAT), an inner city community, and one of the oldest mixed residential areas in Durban, defied the apartheid state's strategies to destroy it.

It would appear that in the post-apartheid era, the Durban Metro was attempting to succeed where apartheid failed. The public outcry against the Durban Metro's plans to destroy the historic Early Morning Market (EMM) and replace it with a mall; using different forms of violence to displace poor traders from the Warwick Avenue area; and denying them their livelihoods, reveal significant continuities between the apartheid and democratic eras, and is the focus of this paper.

While violence traditionally refers to the use of physical force to cause harm to others, in recent years this definition has been widened to include structural forces such as deprivation, poverty, inequality and forced displacement. Following Patkar (2009: xiii), a key argument in this paper is that such displacements "sacrifice human, social and cultural relations and destroy livelihoods".

More specifically, the following forms of violence will be illustrated: physical violence and brutality; racial stigmatization; loss of livelihoods; and forced removal and relocation. The Municipality presented the mall project as being in the public interest. However, the demolition of the EMM would have destroyed the livelihoods of thousands, who are directly and indirectly dependent on it for their survival, in an environment with high levels of poverty, inequality and unemployment.

The sustained opposition to the destruction of the iconic EMM and the forced displacement of traders has been unprecedented in democratic South Africa. It has also re-invigorated critical public debate and dissent in Durban. Traders, street vendors, unions, civics, NGOS, architects, planners, academics and researchers have been united in condemning the destruction and displacement as this would adversely affect the livelihoods and heritage of black communities in the city.

The spatial reconfiguration of the Warwick Junction, with the mall project and demolition of the EMM, was a neoliberal strategy to favour capital/big business, at the expense of the poor traders and consumers in the area. Traders inside and outside the EMM were able to organize, mobilise, resist and challenge their violent dispossession by the alliance between the local state and corporate mall developer, and together with legal recourse, were ultimately successful. A positive outcome in opposing displacement has been the emergence of non-racial solidarity, a bane to those who demonstrate a callous disregard for the needs of the poor, and who are used to defending mediocrity.

*Key words:* violence, displacement, livelihoods, resistance, traditional markets, malls, Durban

## 1. Introduction

Violence traditionally refers to the intentional use of physical force or power resulting in injury or harm, and can be categorised as social, economic political, institutional. In recent years, the definition of violence has been widened to include structural forces such as deprivation, poverty, inequality and forced displacement (Weinstein, 2013). There is a continuum from direct, physical violence (visible) to structural violence that is embedded over time and often made invisible by neoliberal hegemonies, and are justified by the state as being in the moral and material interests of society (Farmer, 2001).

Structural violence relates to the poverty and inequality stemming from political and economic systems, particularly neoliberalism (Springer, 2011). Violence from above e.g. state-supported displacement is legitimised while violence from below – social protests, mass demonstrations – is criminalised. The neoliberal turn has resulted in the violent restructuring of urban spaces, fragmentation of communities and groups, characterised by protests, displacements, and dislocations that may lead to further rounds of urban violence (Springer, 2008). A necessary corollary of this process is the amplification of already existing inequalities - embedded in different types of socio-spatial injustices for the urban poor.

In the 21<sup>st</sup> century, there has been increased scholarly focus on development-induced displacement (e.g. Drydyk, 2007; Mehta, 2009; Bennett and McDowell, 2012; Monteith and Lwasa, 2017). The principle perpetrators of development induced displacement the South have been central and local governments, which often is presented as being in the public interest. The consequences for the poor are predictable - landlessness, loss of livelihoods, vulnerability, and destitution. This was a major form of structural violence against black people under apartheid in South Africa, which is re-emerging in the democratic era. This paper examines the most recent such threat to the traders in, and adjacent to, the Early Morning Market (EMM) in the historic Warwick Avenue area, in the city of Durban (eThekweni).

More specifically, this paper analyses the decision by the Durban Municipality to demolish the century old EMM and replace it with a mall. Markets have formed an important part of cities throughout history, often acting as magnets of commercial activity. In an era of rapid urbanization, globalization and homogeneity, markets are important markers of local identities. The EMM is no exception. It is suitably located for low-income residents and workers, being contiguous to public transport facilities. The paper analyses the main forms of violence, and illustrates how poor communities mobilised to oppose, resist, challenge, stall and ultimately stop the mall project.

This research report is divided into ten sections. Following the introduction, the methodology is explained in the second section. The third section presents a background to the EMM in Warwick Avenue. This is followed by a discussion of the mall project. The fifth section analyses the flawed participation process. The different forms of violence experienced by the traders – threats to their livelihoods; fear of forced removals and relocations; violence and brutality; and racial stigmatisation – is analysed in the sixth section. The developers' defence of the mall project is the theme of the seventh section. This is followed by an analysis of the nature of protest and resistance. The recommendations Provincial Task Team (PTT) are assessed in the ninth section. The legal

recourse and associated outcomes is the theme of the tenth section. The policy implications of the study is presented in the next section, followed by the conclusion.

## **2. A Methodological Note**

My participation in this project was as an activist scholar or public intellectual, committed to advocating for progressive transformation and social justice, and challenging oppression, exploitation and inequality (Pain and Kindon, 2007; Ward, 2007; Hale, 2008; Lugar, 2016).

This was partly in response to a call for geographers to “expand into public spaces - spaces where public discourse and social action can occur” (Lees 1999:382). Moreover, this was linked to a trend in critical human geography, which shared a “commitment to emancipatory politics within and beyond the discipline, to the promotion of progressive social change and to the development of a broad range of critical theories and their application in geographical research and political practice” (Painter, 2000:126). In order to promote and bring about progressive social change, and influence public agendas, activist scholars have to participate in the struggles and campaigns of local communities, rather than providing

technical expertise to those already in power ... Activist scholarship puts new issues on the research agenda as well as the public agenda. It encourages creativity and forces confrontation between different perspectives, explanations, and statements of fact. Such creativity and confrontation advance social science (Calhoun, 2008: xxv).

A key issue was building trust with the affected community (Martinez, 2008). I was not a passive observer, but participated actively in the different campaigns, protests, and marches; helped to draft memorandums and media statements; and presented affidavits for legal action. Consequently, the Warwick market community began to trust me.

I was effectively engaged in ‘participatory geographies’ in order to understand the lived experiences of the different categories of traders, and their allied associates (e.g. barrow pushers). Hence, the data were “collected in the dual roles of researcher and participant, where one is involved in the process of social change while simultaneously describing the world of the participants through their eyes” (Calderón, 2004:81).

The data collected for this study emerged from various participatory activities: public meetings, workshops, consultations with legal advisors, media statements, memoranda, and various documentary information. The Durban Municipality refused to give me access to information in their records about the mall project because of my public advocacy role on behalf of disadvantaged traders. However, this problem was overcome because I had access to the court records, which is in the public domain. There were several courts interdicts in which the Durban Municipality was the respondent, and the Executive had to file their documents, which included minutes of meetings, correspondence and other related information pertaining to the mall project.

## **3. The Early Morning Market in Warwick Avenue**

In the urban literature on South Africa, considerable attention has focused on the forced relocation and the destruction of integrated communities under apartheid. The best known examples are the destruction of Sophiatown in Johannesburg (Lodge, 1983), the razing of District Six in Cape Town

(Hart, 1988) and the annihilation of Cato Manor in Durban (Maharaj, 1994). Such displacements “sacrifice human, social and cultural relations and destroy livelihoods” (Patkar, 2009: xiii).

There is a constitutional commitment to stopping such violation of human rights in the democratic era, at least in theory. In practice, there have been several prominent cases of forced removals across the country since 1994. A common theme is for poor, black communities to be forcibly uprooted in order to make way for formal housing, infrastructure, commercial/industrial and mega-projects (Newton, 2009).

However, the Warwick Avenue Triangle (WAT), an inner city community, and one of the oldest mixed residential areas in Durban, defied the state's strategies to destroy it in the apartheid and post-apartheid eras. Slum clearance laws, the Group Areas Act, and urban renewal programs were used to try to destroy the community (Maharaj, 1999). Ironically, it would appear that in the post-apartheid era, the Durban Metro was attempting to succeed where apartheid failed.

The public outcry against the Durban Metro’s plans to destroy the historic market, displace poor traders from the Warwick Avenue area and deny them their livelihoods reveal significant continuities between the apartheid and democratic eras, and is the focus of this research report. A key argument is that such displacements “sacrifice human, social and cultural relations and destroy livelihoods” (Patkar, 2009: xiii).

Markets have formed an important part of cities throughout history, often acting as magnets of commercial activity. In an era of rapid urbanization, globalization and homogeneity, markets are important markers of local identities, and

...condense the strata of society into a single space and single social condition: vendors of the rural peasantry, urban migrants, the growing middle class; patrons of peri-urban farmers, squatters, and the wealthy urban elite all take part in urban condition at and surrounding the market buildings ... produce[ing] some of the most vibrant, complex, and most locally identifiable spaces experienced in urban Africa (Gantner, 2009: 2).

The EMM in Warwick Avenue in Durban is no exception. Durban, located on the east coast, is the third largest city in South Africa, and is well known for the beaches and its multi-cultural diversity. This is also manifested in the ‘many informal markets around the city that provide economic opportunities for the poor ... and for entrepreneurs to develop their creativity’ (UN-Habitat, 2015:20). The EMM has an ‘umbilical’ connection with Indian indentured labourers.

### *History of Early Morning Market<sup>1</sup>*

There were originally four distinct markets, the City Market (Warwick Avenue), a whites-only trading area; the "Native" Meat Market (Victoria Street); an enclosed Indian Market called the Victoria Street Market and a street market in Victoria Street known as the Squatters' or Early Morning Market. About 153 000 Indians arrived between 1860 and 1911 to work as indentured sugarcane cutters. By 1885, there were about 2 000 market gardeners. They began to supply local markets, but initially encountered a series of

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<sup>1</sup> Source: Attwood, V. 2009. Malls are not for the poor. [Sunday Tribune](#), 7 June 2009, p. 10.

difficulties at the fresh produce market, which was run by the Durban Town Council. These included high fees and being forced to ask lower prices for their produce than their white counterparts. In 1908 a Hindu priest, Swami Shankevanand, formed the Indian Farmers' Association, and subsequently founded the Indian Market Committee to oversee the welfare of Indian traders. It wasn't long before the town council flexed its muscles again, insisting on August 1, 1910, that the traders move to a new site in Victoria Street. The farmers protested that the site was too small, and too close to the Catholic Church and "native" market. They boycotted, but the protest was soon quashed. The town council divided the market into stalls selling fruit, vegetables, ice-cream, sweetmeats, birds and curios, and organised a street market in Victoria Street for Hindu farmers. The traders lined both sides of the street with stalls and horse-drawn carts, leading to protests from colonialists. In July 1930 the town allocated £15 000 for a proper enclosure for the Warwick Street traders, and the Early Morning Market, comprising 618 stalls, opened on January 31, 1934.

The EMM was suitably located for low-income residents and workers, being contiguous to public transport facilities and the major road routes included the Western Freeway, Berea Road and Warwick Avenue (Figure 1).

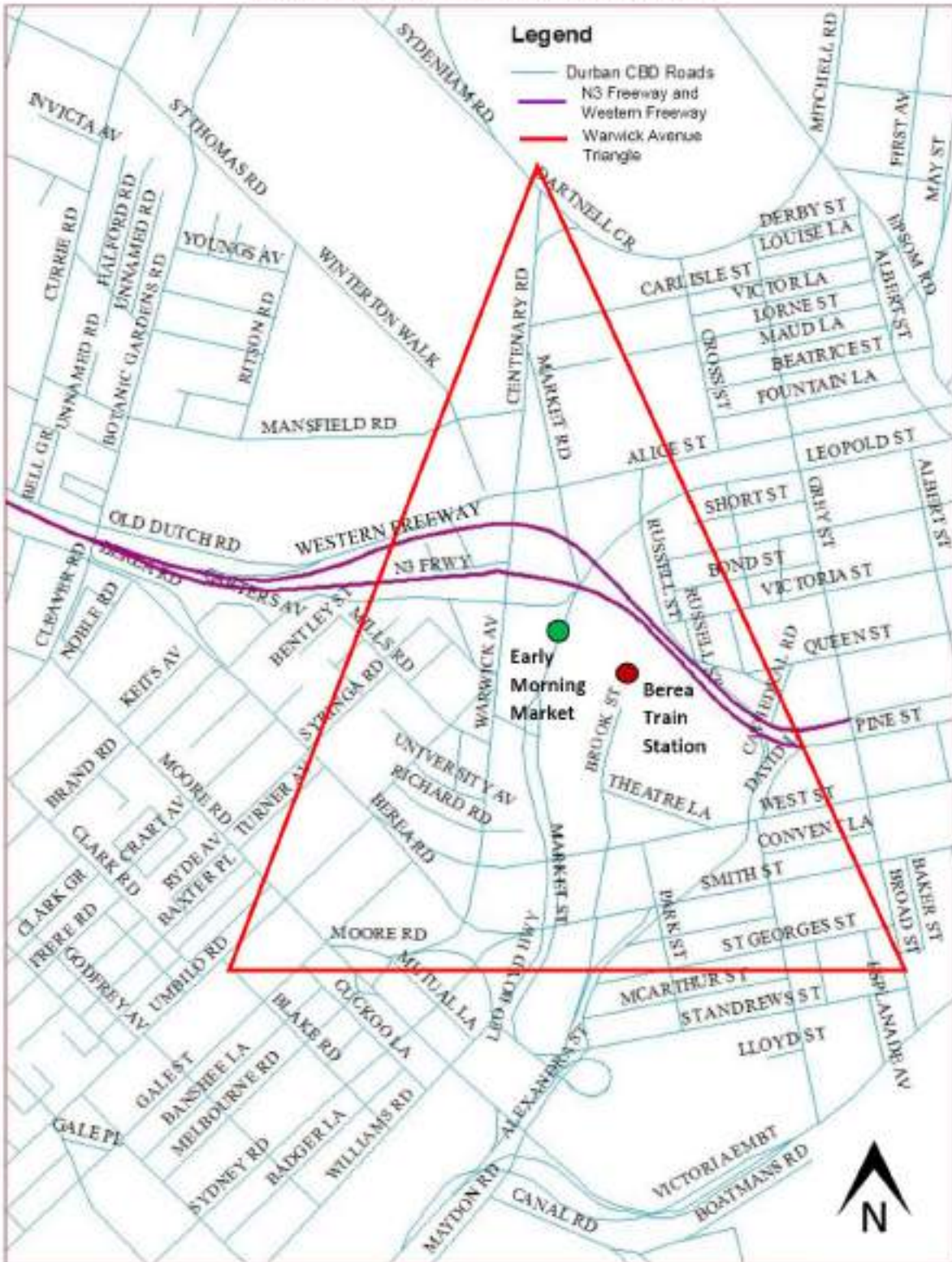
The WAT represented the 'city centre' for the majority of the low-income people in the Durban area. According to the influential Trafalgar Inner City Report, 'if Durban had a heart, it is the Warwick Junction' (Arde, 2007:25). The WAT (Figure 1) became an established residential and business location at the turn of the nineteenth century because of its proximity to Berea Road that was an important route into the interior of the colony.

**Table 1 Markets in the Warwick Triangle**

<b>Market</b>	<b>Main type of products sold</b>
Early Morning Market	Fresh produce, Spices, Fresh flowers, Poultry
Bovine Head Meat Market	Bovine head meat, Platted Food, Fresh produce
Herb market	Traditional herbs and medicines
Brook Street	Fresh fruits, Traditional attire, Music, Fashion and accessories, Pinafores, Arts and Craft, Mixed/General products, Hardware, Hair saloon
Impepho and Lime Markets	Impepho, Mineral lime balls
Bead Market	Beaded products
Berea Station	Fresh produce, Traditional attire, Church garments Fast food, Music, Fashion and accessories
Music Bridge	Music, Fashion and accessories, Hardware
Mealie Cooks	Mielies/maize

Source: Adapted from Conway (2015, p. 14).

Figure 1: Warwick Avenue Triangle



There are several, smaller, intertwined markets which were symbiotically linked to each other, and especially the EMM, which was called the ‘mother market’ (Table 1; Figure 2). This was a ‘maternal reminder that it has history and that it has gathered around it a significant number of viable informal income generating activities’ (Dobson, 2011:1). It is evident from Table 1 that foodstuff (fresh produce, cooked meals), traditional herbs and medicines, fashion accessories and music, were the main products sold in the different markets in the Warwick Junction.

As the democratic initiatives of the early 1990s gained momentum, the Durban Metro acknowledged that the WAT had been “politically marginalised in the past in terms of physical, social and economic development and investment”.<sup>2</sup> In November 1995, the Physical Environment Service Unit of the Metro announced an impressive plan to upgrade the Warwick Avenue Triangle (WAT) in “terms of safety, security, cleanliness, functionality and the promotion of economic opportunities”.<sup>3</sup> Furthermore, the ‘redevelopment of the Warwick Avenue area, specifically, should be geared towards promoting its primary role and function as a major regional hub for public transportation and trading, with particular focus on the needs of the urban poor’.<sup>4</sup>

The Report emphasised that the success of the project was “dependent upon a high level of political commitment” from government at all levels from local to central”. The plans for the redevelopment of the WAT had emerged in consultation with existing residents and other interest groups, including representatives from 21 organisations, which formed the Greater Warwick Avenue and Grey Street Forum. This led to the establishment of the Inner City Thekwini Regeneration and Urban Management Programme (iTrump), and the focus was on “six key outcomes, namely, increasing economic activity; reducing poverty and social isolation; making the inner city more viable; effective and sustainable urban management; improving safety and security and developing institutional capacity.”<sup>5</sup>

Some of the prominent achievements of the iTrump project included: Upgrading the main roads and intersection in the WAT; upgrading the entrance to the city at the corner of Warwick Avenue and Old Dutch Road; establishing a multipurpose community centre and a temporary creche; improving taxi ranks; providing shelters for informal traders; providing ablution facilities; repairing and extending street lighting facilities; and a general environmental upgrade; making renovations to the EMM; and reducing the crime level and increasing police visibility in the area.<sup>6</sup>

The success of the iTrump Warwick project is aptly captured in the book, Working in Warwick, by iTrump project Manager Richard Dobson and Caroline Skinner, published in 2009 by the School of Development Studies at UKZN: “Warwick is a South African example of the inclusion of the poor into an urban economy and it can be a model for developing a strong, practical vision of where we want to go with our cities” (Dobson and Skinner, 2009:2).

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<sup>2</sup> Physical Environment Service Unit Report for Committee, Greater Warwick Avenue and Grey Street Project, November 1995, p. 5.

<sup>3</sup> Physical Environment Service Unit Report for Committee, Greater Warwick Avenue and Grey Street Project, November 1995, p. 5.

<sup>4</sup> Physical Environment Service Unit Report for Committee, Greater Warwick Avenue and Grey Street Project, November 1995, p. 5.

<sup>5</sup>[http://www.durban.gov.za/City\\_Government/Administration/Area\\_Based\\_Management/Pages/iTrump](http://www.durban.gov.za/City_Government/Administration/Area_Based_Management/Pages/iTrump) (accessed 20 November 2013).

<sup>6</sup> ‘Big Plans for Warwick Avenue’, Daily News, 28 February 1996; ‘City’s Plan for Casbah Facelift’, The Leader, 15 December 1996.

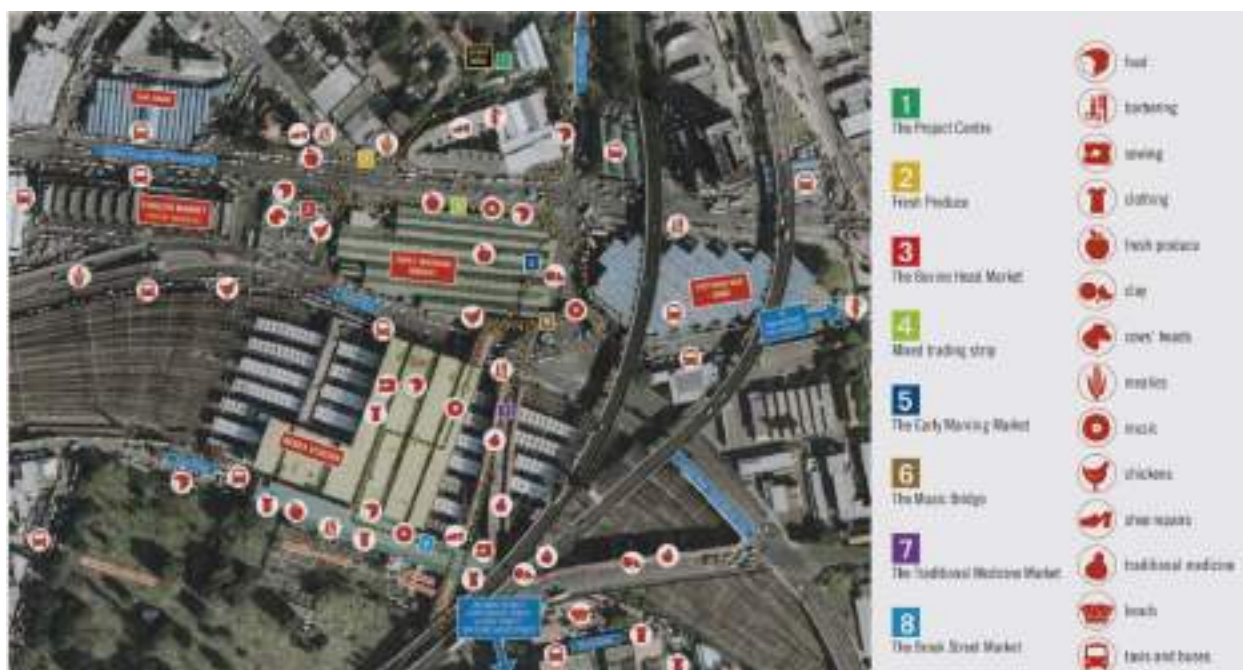


In endorsing the iTrump project, international informal sector expert Professor Keith Hart from Glodsmith's University (London), stated: "Warwick Junction has provided exhilarating proof of how poor people, in sensitive collaboration with urban planners, can enliven a city centre, generate employment for themselves and expand services for the population at large".<sup>7</sup>

The success of the program up to 2008 in terms of upgrading the Warwick area without displacing traders and destroying their livelihoods, received national and international recognition. For example, the iTrump project received a prestigious award from the International Union of Architects in April 2008, for

the transformation of the Warwick Junction Market in Durban thus uplifting the lives of an estimated 8000 market and curbside traders by creating a vibrant, socially and economically sustainable city market. Rather than relegating this activity to a peri-urban ghetto, he (Richard Dobson) ensured its participation in the vitality of the inner city.<sup>8</sup>

**Figure 2 Location of Different Markets in the WAT**



Source: Dobson and Skinner (2009:6-7).

It was estimated that there were about 8000 traders operating in the Warwick area, employing about 5700 assistants. Daily over 450 000 commuters and 38 000 vehicles pass through the area, including 300 buses and 1 550 mini bus taxi daily departures (Dobson and Skinner, 2009:2). There were other invisible support activities provided by barrow operators (who moved goods around the city), water suppliers, paraffin suppliers, storage assistants, metal recyclers, etc. It has been estimated that the total annual turnover in the Warwick Junction exceeded R2bn (Conley, 2015).

Against this thriving background, the decision of the eThekweni municipality to support the mall project and the demolition of the EMM was irrational and a shock to formal and informal traders,

<sup>7</sup> Endorsement of the book, *Working in Warwick* (Dobson and Skinner, 2009).

<sup>8</sup> [http://www.co.za.ad/UserFiles/File/2008\\_04\\_ABRIL/20080430\\_VS\\_Prize08\\_En.pdf](http://www.co.za.ad/UserFiles/File/2008_04_ABRIL/20080430_VS_Prize08_En.pdf)

civil society organisations and associated interest groups. In the first democratic decade, there was no reference to the establishment of a mall in the Warwick Avenue area in any of the planning and redevelopment documentation.

#### 4. The Mall Project

The mall project was initiated by private developers. The Warwick Mall (Pty) Limited was established in 2006 and had a lease agreement with the South African Rail Commuter Corporation for the development of a mall on land south of the Berea Station (Figures 1, 2).

The total costs for the construction of the Mall at the Berea Station was considered too high. The mall developers subsequently approached the eThekweni Municipality for a similar project at the Early Morning Market site, with a view to establish a public-private partnership.

On 19 August 2008, Carlos Coerria from the Warwick Mall Inc. made an ‘unsolicited bid ... in respect of development rights over City-owned [property] within the Warwick Precinct’ to Julie May-Ellingson, Head, Strategic Projects Unit and 2010 Programme, eThekweni Municipality. In what can only be interpreted as extraordinary haste, (in terms of the pace at which such projects are normally approved), Julie-May Ellingson replies in considerable detail two days later as follows:

This Unit recognises the potential benefit of an integrated development which inter alia: (i) further integrates the Warwick precinct with the core CBD ...; (ii) rationalises public transport movements through the bridging of the rail reserve thereby addressing current conflict, and (iii) incorporates public transport ranking facilities.<sup>9</sup>

She proceeds to advise that such a plan would require Council support, must comply with the Municipal Finance Management Act, and be open to public scrutiny, especially in terms of funding implications and benefits. The Head, Strategic Projects Unit, then raises eight issues for negotiation in the same correspondence:

- i) Commercial rights to be leased at Market Value, payable in a single up-front rental for the 50-year period.
- ii) The Council to retain the right to dispose of ‘residual’ bulk.
- iii) The Council to contribute 50% of the cost of vehicular ramps.
- iv) The Council to contribute 50% of the cost of pedestrian linkages at 1<sup>st</sup> floor level and/or above the existing Victoria Street Bus Rank Site.
- v) The Developer to provide mini-bus taxi ranking facilities for 400, at its cost in lieu of the City’s ordinary car parking requirements.
- vi) The Developer will assume responsibility for the management of the taxi ranking facilities at its own cost, the terms and conditions of which are to be agreed with the City.
- vii) *The Developer to accommodate existing informal traders and Early Morning market traders within the development. In this regard, the City will provide the*

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<sup>9</sup> Email from Julie May-Ellingson, Head, Strategic Projects Unit and 2010 Programme, eThekweni Municipality, to Carlos Coerria from the Warwick Mall Inc. 21 August 2008. Source: LRC Court Records.

*numbers to be accommodated and in the instance where such numbers exceed 150, shall fund the full cost of such additional facilities (emphasis added).*

- viii) The Developer will complete the Phase 1 development, including the elements referred to in (i) to (vii) above ahead of Fifa 2010, provided that the EMM is vacant by 31 January 2009.<sup>10</sup>

**Table 2 Impacts on Trading Activities<sup>11</sup>**

<p><b>Lancers Road Clinic:</b> It is the intention that the Clinic, approximately 450m<sup>2</sup> in extent, be relocated within the new Warwick Mall development and" that the City negotiate a lease in this regard. This will then provide for the development of Phase 1 of Masigiye Square.</p>	<p><b>Bovine Meat Vendors:</b> There are 30 Traders located within this purpose-designed facility who will be relocated to a new purpose built facility within the English Market.</p>
<p><b>Street/Pavement Traders:</b> Whilst the site boundaries have been located on the back of pavement line (and hoarding erected), the 237 traders who trade from the adjoining pavement areas will to varying degrees be affected both during and post construction. During construction a single lane Of traffic around the perimeter of the Early Morning Market site will be close to provide for the retention of the traders, pedestrian movement and crane positions. A detailed management plan is being developed in this regard. On completion of the construction, all legal traders will be accommodated within Masigiye Square, an open space zone, adjacent to Mall.</p>	<p><b>Early Morning Market:</b> With the relocation of the Fresh Produce Market to Flower Road, and amongst other things, the growth of Street Trading within the Inner City, trading at this Market has declined and it is accordingly intended to relocate these traders to a temporary facility to be established on the Site commonly known as the MMD Site, located at the corner of Julius Nyerere and Johannes Nkosi Street. It is then intended that a study be undertaken on fresh produce distribution within the Inner City to resolve precisely what the demand is for a Central Fresh Produce Market, prior to the City making any firm commitment as regards permanent location.</p>

A month later, on 22 September 2008, the Strategic Projects Unit and 2010 Programme Committee made a confidential ‘in committee’ submission to the Executive Committee about the proposed Warwick Mall Development. The purpose of the submission was to brief the Council about the project, and to seek approval to proceed with the lease agreement.

It is significant that point (vii) from the email of 22 August 2008 (*The Developer to accommodate existing informal traders and Early Morning market traders within the development. In the regard the City will provide the numbers to be accommodated and in the instance where such numbers exceed 150, shall fund the full cost of such additional facilities*) was deleted.

Instead, in communication with the Metro Council (24 February 2009), the Strategic Projects Unit identified specific *Impacts on Trading* as summarised in Table 2.

On 22 September 2008, the Executive Committee of the Metro Council had mandated the City Manager to continue negotiations with regard to the possible lease of the EMM site, and to report

<sup>10</sup> Email from Julie May-Ellingson, Head, Strategic Projects Unit and 2010 Programme, eThekweni Municipality, to Carlos Coerria from the Warwick Mall Inc. 21 August 2008. Source: LRC Court Records.

<sup>11</sup> Adapted from: eThekweni Municipality, Strategic Projects Unit and 2010 Programme – Proposed Warwick Mall Development Report, 24 February 2009, p. 7.

to the Executive before any final decision is made. Up to this stage there was no reference to any form of consultation with the directly affected parties (i.e. the traders), or any procedure for public participation.

However, in correspondence from the with the Metro Council dated 24 February 2009, the Strategic Projects Unit and 2010 Programme states that “the Administration has become aware of the promulgation of Asset Transfer Regulations, 2008, (which became effective on 1 September 2008), which requires that the City engage in a public participation process in respect of the prosed lease”.<sup>12</sup> In terms of the Asset Transfer Regulations, 60 days before the meeting where Council could approve the lease:

- i) The proposed lease agreement must be made public;
- ii) The affected parties and other interested persons are invited to make comments and representations about the lease;
- iii) The views of the National and Provincial Treasury and must also considered.<sup>13</sup>

A damning indictment was the acknowledgement that “a detailed costing in respect of the Council’s contribution to the development has not been undertaken”<sup>14</sup> (and even by 27<sup>th</sup> April 2009, there was still no indication of the costs that would be borne from the public purse for the project).<sup>15</sup> The Strategic Projects Unit and 2010 Programme subsequently prepared an ‘Information Statement’ summarising the reasons for lease agreement, and the benefits of the proposed mall development (Table 3).

**Table 3 Reasons for the Lease and Expected Benefits<sup>16</sup>**

Reasons for the proposal to Grant the Lease	Expected Benefits to the Municipality resulting from Granting of the Lease
<ul style="list-style-type: none"> <li>• The South African Rail Commuter Corporation (“SARCC”) concluded the lease with Warwick Mall (Pty) Limited (“the Developer”) for aerial rights immediately to the south of Berea Road Station for the development of retail and taxi facilities.</li> <li>• The Developer approached the Municipality with a proposal to acquire the lease of what is known as the Early Morning Market Site, together with certain aerial rights over the surrounding roads, with a view of achieving a single, integrated development, which meets the needs of both the Developer and the Municipality.</li> </ul>	<ul style="list-style-type: none"> <li>• The development of the R350m Warwick Mall.</li> <li>• The Developer will construct and manage a 400 bay taxi rank. The management of which shall be undertaken at its own cost and under terms to be agreed with the Municipality.</li> <li>• The Developer will construct ‘Masigiye Square’, a significant public space which runs along Julius Nyerere Avenue into an open public square bordered by Wills Road. The costs associated with this element is to be shared on the basis that the Developer will contribute the cost associated with 150 trading positions within the area.</li> <li>• The Developer will construct an access ramp off Brook Street, over the SARCC rail reserve,</li> </ul>

<sup>12</sup> Report from Strategic Projects Unit and 2010 Programme, Proposed Warwick Mall Development, 24 February 2009.

<sup>13</sup> Report from Strategic Projects Unit and 2010 Programme, Proposed Warwick Mall Development, 24 February 2009.

<sup>14</sup> Report from Strategic Projects Unit and 2010 Programme, Proposed Warwick Mall Development, 24 February 2009.

<sup>15</sup> Report from Strategic Projects Unit and 2010 Programme, Proposed Warwick Mall Development, 27 April 2009.

<sup>16</sup> Report from Strategic Projects Unit and 2010 Programme, Proposed Warwick Mall Development, 24 February 2009.

<ul style="list-style-type: none"> <li>A significant retail development of some 30,000m<sup>2</sup> is then envisaged in Phase 1, spreading across both the SARCC's and the Municipality's land which equates to an investment of over R350m in this area.</li> </ul>	<p>providing access to the taxi rank facilities, which will exit via the Khuzimpi Shezi Road ski-ramp thereby rationalising public transport movements through Warwick.</p> <ul style="list-style-type: none"> <li>The Developer will bridge David Webster Street and provide direct pedestrian access from the Victoria Street Bus Rank Site, through the Warwick Mall development, to the taxi rank facilities above and the Berea Road Station, thus integrating the public elements.</li> <li>Masigiye Square is to be managed by the Developer under terms to be agreed with the Municipality.</li> <li>Subject to the Municipality being in a position to grant occupation of the site by April 2009, the Developer commits to completing this Phase 1 development ahead of the commencement of the 2010 FIFA Soccer World Cup.</li> <li>Within 5 years of the registration of the proposed lease, a minimum of 51% equity within the Developer is to be held by persons having PDI status.</li> </ul>
<p><b>Expected Proceeds to be Received by the Municipality from Granting of the Lease</b></p> <ul style="list-style-type: none"> <li>The payment of a phased once-off rental of R22,5m being the amount assessed as the fair market value of the rights proposed to be granted, in 3 instalments, as follows: <ul style="list-style-type: none"> <li>R500,000.00 on signature of the lease agreement;</li> <li>R11,0m by 1 May 2010; and</li> <li>R11,0m by 1 December 2010</li> </ul> </li> <li>The Developer will construct a 400 bay taxi rank at 2<sup>nd</sup> floor level over the Early Morning Market Site, for the benefit of the Municipality (and an appropriate reserve will be registered in favour of the Municipality in this regard). This will equate to an R62,8m investment in public goods (taxi rank), and to which the Municipality will contribute R24,0m.</li> </ul>	<p><b>Expected Gain or Loss to Realised or Incurred by the Municipality from Granting of the Lease</b></p> <ul style="list-style-type: none"> <li>The payment of a phased once-off rental of R22,5m.</li> <li>The construction of the 400 bay taxi rank, which will equate to an R62,8m investment in public goods (taxi rank), and to which the Municipality will contribute R24,0m.</li> <li>The R23,2m cost of the access ramp, off Brook Street, over the SARCC rail reserve, providing access to the taxi rank facilities is to be shared equally by the Municipality and the Developer.</li> <li>There are economic gains to the Municipality and Warwick Precinct in respect of the proposed R350m retail centre.</li> </ul>

Initially, the municipality argued that the developer must 'accommodate existing informal traders and the EMM traders within the development. In this regard, the City will provide the numbers to be accommodated and in the instance where such numbers exceed 150, shall fund the full cost of such additional facilities'.<sup>17</sup> However, in the final agreement this clause was excluded because the municipality contended that trading at the EMM was declining. Hence, before deciding on a permanent location for displaced traders, the municipality decided to study 'fresh produce

<sup>17</sup> Email from Julie May-Ellingson, Head, Strategic Projects Unit and 2010 Programme, eThekweni Municipality, to Carlos Coerria from the Warwick Mall Inc. 21 August 2008. Source: LRC Court Records.

distribution within the Inner City to resolve precisely what the demand is for a Central Fresh Produce Market'.<sup>18</sup>

A major challenge was the lack of public participation, and especially consultation with the immediately affected traders in the EMM.

## **5. Flawed Public Participation Process**

On 22 September 2008, the Executive Committee of the Metro Council mandated the City Manager to continue negotiations with regard to the possible lease of the EMM site, and to report to the Executive before any final decision is made. Up to this stage there was no reference to any form of consultation with the directly affected parties (i.e. the traders), or any procedure for public participation.

However, in correspondence with the Metro Council dated 24 February 2009, the Strategic Projects Unit and 2010 Programme stated that “the Administration has become aware of the promulgation of Asset Transfer Regulations, 2008, (which became effective on 1 September 2008), which requires that the City engage in a public participation process in respect of the proposed lease”.<sup>19</sup> In terms of the Asset Transfer Regulations, 60 days before the meeting where Council could approve the lease:

- i) The proposed lease agreement must be made public;
- ii) The affected parties and other interested persons are invited to make comments and representations about the lease;
- iii) The views of the National and Provincial Treasury and must also be considered (which subsequently did not raise objections to the proposed lease).<sup>20</sup>

Given that Council had supported the lease in principle on 22 September 2008, the Strategic Projects Unit and 2010 Programme requested a “condensed, 30 day, public participation process”, using the main Durban newspapers, as well as displaying prominent notices around the EMM. The Council condoned “the non-compliance with the 60 day public consultation period ... given the tight time frames necessary to complete Phase 1 of the development”. Table 4 presents a chronological listing of Municipality’s ‘public engagement’ process, which was largely top-down, tokenistic, in the form of information sharing. There was minimal consultation with those who were likely to be most adversely affected by the construction of the proposed mall. There is no evidence that the concerns raised by formal and informal traders in the Warwick Junction were taken seriously.

The fatally flawed planning fiasco in Warwick Avenue was driven by a top-down process, which favoured private sector interests. There were no transparent, competitive public tenders for the development of a mall on the market site. The project was initiated by the mall developers. The

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<sup>18</sup> Adapted from: eThekweni Municipality, Strategic Projects Unit and 2010 Programme – Proposed Warwick Mall Development Report, 24 February 2009, p. 7.

<sup>19</sup> Report from Strategic Projects Unit and 2010 Programme, Proposed Warwick Mall Development, 24 February 2009.

<sup>20</sup> Report from Strategic Projects Unit and 2010 Programme, Proposed Warwick Mall Development, 24 February 2009.

Mercury (22/5/09) has argued that a “primary concern must be to explain how the tender process was handled – and whether this was done in sufficiently open and even-handed manner”.

**Table 4 Chronological listing of Municipality’s ‘Public Engagement’**

18/02/2009	Awareness Meeting	One of two meetings held by the Municipality on that day to alert traders in the Warwick area that the mall project would include the demolition of the Early Morning Market.
18/02/2009	Awareness Meeting	The second of two meetings held by the Municipality that day, intended for the traders from the EMM. EMMTA had concerns about relocation, and were informed that this would only be temporary.
23/02/2009	Clarification Meeting	A meeting was held between the Warwick Traders’ Committees and the Municipality to seek clarification about the mall project. A breakdown of all the activities taking place in Warwick Junction was discussed in detail and the 267 traders directly affected would be accommodated after the Warwick Mall was built.
03/03/2009	Public Notices	As part of its ‘consultation plan’ the Municipality placed a number of notices in a several local newspapers and posted the same notices at each pedestrian entrance of the EMM.
11/03/2009	Awareness Workshop	All traders and their various associations were invited to a workshop, which was a follow up to the initial trader awareness meetings held on the 18 <sup>th</sup> of February 2009. Trader representatives complained about the limited time for public comment, and especially that the decisions had already been made in Council before seeking meaningful input from interested parties. Responses to such questions were not recorded in the meeting minutes.
27/03/2009	Information Meeting	The head of the Business Support and Markets Unit held a special meeting with the EMMTA about their objections to the relocation of the EMM, especially since no viability study had been conducted for the new site. It was indicated that the Municipality will set up and market the new site, so the traders should provide the Municipality with a list of their needs regarding the new site at the next meeting.
27/03/2009	Meeting	Three traders’ organizations: ACHIB, The Eye and Siyagunda Traders Association requested a special meeting with the Municipality to discuss the lease agreement between the City and the Mall Developer. Their main concern was that the agreement should ensure that the traders are accommodated and that business opportunities are provided to traders’ co-operatives.
08/04/2009	Meeting	Meeting convened between the City and the EMMTA to discuss their list of needs with regards to the relocation in the temporary site which would be ready by May 2009. They were told that during a feasibility study on a new, permanent site, they would be consulted and were requested to provide input.
09/04/2009	Meeting	The meeting was a continuation of the one held on March 27, 2009. Issues discussed included interim trading areas and improved relations between traders’ associations and officials.
24/04/2009	Meeting	A number of representatives from the KwaZulu-Natal Institute of Architects met with the Municipal Manager, Dr. Sutcliffe, and head of the Special Projects Unit, Ms. Ellingson, to discuss the growing resistance to the Warwick mall development. The architects also provided alternative building suggestions which would satisfy demands on both sides.
04/05/2009	Notice	The Municipality issued a notice to EMM traders that they would be relocated from the EMM to the Materials Management Building between the 25 and 31 of May 2009.

Source: Adapted from Tirone (2010:131-136).

In the public debates which followed, the essence of the city’s case for the destruction of the market, and the construction of a mall became more clearer: the present site was a dirty, disruptive and ‘illegal’ blot on a modern city (very much similar to the ‘sanitation syndrome’ of the apartheid era which equated contact with blacks with disease and contamination); and the public-private partnership with the mall developers would improve the transport infrastructure in the area:

Warwick Junction is seen as the main transport hub and gateway into the city and more than 400 000 people who rely on public transport pass through this area on a daily basis. The rejuvenation of the Warwick Junction area is long overdue. This area is over populated with traders, pedestrians and vehicles. Because of this and other factors, this area is home to one of the country’s worst intersections for fatalities. With hundreds of accidents occurring in the area annually, rampant crime, overcrowding, and other ills concentrated in this area, the revamp is critical for the safety of the commuters, residents and business and all who pass through the area on a daily basis. The Warwick Junction Precinct Plan aims to improve public transportation systems to enhance accessibility, mobility and safety; reduce unnecessary traffic congestion; create economic opportunities for both

informal and formal trade; and make development culturally responsive and unique to enhance the tourist potential of the area.<sup>21</sup>

According to City Manager, Dr Mike Sutcliffe, and Deputy Mayor, Logie Naidoo, those who were opposing the development of the mall in Warwick Avenue were: preventing poor people from enjoying the privileges associated with malls; pursuing narrow, ethnic, racist agendas; opposing a 'golden opportunity for investment'; opposing the democratic majority; and wanting the traders to remain 'trapped in the second economy'.

Logie Naidoo, the Deputy Mayor, cautioned about the dangers of the City losing the investment: We are not trying to rob anyone of their bread and butter. This development will benefit the traders in the long run. However, I have to caution that if they do not reach a settlement soon, this proposed development could be lost forever. The developers could pull out and we could lose government funding. Also, according to the Fifa 2010 agreement, no construction can take place in the city during the soccer world cup. If we do not get the ball rolling now we will never meet the deadlines (emphasis added) (Nair, 2009:1).

The Deputy Mayor further argued that the EMM building was

derelict and run down and we want to upgrade it. The mall is going to be there and in our opinion, and time will tell, the informal traders are not going to be affected. Working people who don't have their own cars use buses and taxis at Warwick and why shouldn't they have the chance to use a mall? It's urban renewal. This is a golden opportunity for investment for us in the area because after June next year I already hear ... that we will never smell a cent from government (Sanpath and Comins, 2009:3).

The City Manager contended that the mall project is a public-private partnership, and a catalyst for investment in the WAT:

The Developers of the proposed Warwick Mall development will invest R400m into the area, creating an opportunity to make numerous services, such as banking, the post office and retail stores accessible to people in the area for the first time. The development is the first private sector outlay in the area for many years, and is a catalyst for further business investment in Warwick Junction. The Warwick Junction Mall will breathe new life into this once neglected area and formalize much of the trading that occurs in the precinct.<sup>22</sup>

However, Dobson and Skinner (2009:130) warned that the Warwick Junction was a 'living organism':

There is a relationship between the walking distance between the different modes of transport, the numbers of taxis, the proportion of formal retail to informal retail and the density and composition of the traders. The detailed consultation and careful project interventions have led to equilibrium that works. If any one of these factors is changed,

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<sup>21</sup> Warwick Junction Developments and Early Morning Market Facts, eThekwini Communications Department, 07 July, 2009.

<sup>22</sup> Warwick Junction Developments and Early Morning Market Facts, eThekwini Communications Department, 07 July, 2009.



without involving the traders, this could impact negatively on the viability of trader business (Dobson and Skinner, 2009:130).

Also, in such partnerships local democracy is compromised as the fiscal prospects of local governments become dependent on the business decisions of the private sector. In essence, “the rights of private property and the profit rate trump all other notions of rights” (Harvey, 2008:23). Democratic governance is subsequently compromised as public resources are inevitably diverted from projects that favour the poor, disadvantaged and downtrodden towards supporting the needs of big business. Furthermore, the city’s experience with public-private partnerships has been spectacular failures.

In Durban Remant Alton would be a classic example of such disastrous partnerships. In 2003 the city’s reasonable bus service was ‘sold’ to Remant Alton for R70 million. In addition to offering Remant Alton several financial ‘bailouts’, in 2008 the city was forced to ‘re-purchase’ the buses for R405 million, and commuters continue to receive a dysfunctional service (Sole, 2009). Another case would be the uShaka Marine, which in 2007 had an operating deficit of R94 000 000.<sup>23</sup>

In the first democratic decade, there was no reference to the establishment of a mall in the Warwick Avenue area in any of the planning and redevelopment policy documentation. According to Professor Tim Quinlin the propaganda churned out by the eThekweni management about crime and grime in support of the mall and the destruction of the market

conveniently ignores that fact that 12-13 years ago, the same government initiated an innovative project at Warwick Junction to address these same issues. The results were remarkable. Within a few years, the degradation was turned around to the point that the Warwick Junction had become a tourist attraction in addition to being the market hub that, reputedly, generated as much business as the Pavillion. The city also proudly broadcast the project as a world-leading initiative. The project demonstrated that pro-poor ‘sustainable development’ could be done successfully through co-ordination of municipal authorities, political will and systematic consultation with, and the participation of, traders (Mercury, 15/6/09).

Glen Robbins, a town planner who had previously worked for the municipality, offered some critical reflections on the mall development, the failure of public participation, and the associated contradictions:

The Warwick proposals have sparked a real struggle affecting many people in very direct ways with impacts that I can only imagine. But I also wonder if a new city is being crafted before our eyes, ad hoc project by ad hoc project, where we get to confront only the powerpoint pieces and where the whole is either concealed in the imaginations of a few (or only one?), or is written obscurely in between the lines in an IDP or is completely absent. Is a grand modernist upon us which poses a choice between chaos (traders?) and irrationality (academics, urban professionals?) on the one hand and a veneer of bureaucratised rational planning on the other ...<sup>24</sup>

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<sup>23</sup> [www.durban.gov.za/Resource\\_Centre/.../2006-2007%20UShaka%20Report.pdf](http://www.durban.gov.za/Resource_Centre/.../2006-2007%20UShaka%20Report.pdf)

<sup>24</sup> Email communication, 9 June 2009 (IAP).

If there were a genuine intention to help the traders to escape from the second economy then the best way to do so would be for them to have become shareholders in the Warwick Mall Pty Ltd, which was registered in 2006. The majority of the shareholders of Warwick Mall Pty Ltd have been previous recipients of Black Economic Empowerment (BEE) opportunities. The ANC government has argued, at least at the rhetorical level, that it wants to stop this practice in order to favour the poor and disadvantaged. In the WAT, the livelihoods of this group would adversely be affected by the mall project, and were subjected to different forms of structural and physical violence.

## **6. Violence associated with the Mall Project**

The main, immediately affected groups were the traders inside and outside the EMM. Ultimately, all informal traders in the city were affected as they had a symbiotic connection with the EMM. There were four forms of violence associated with the mall project that will be discussed in this section: loss of livelihoods; forced removal and relocation; physical violence and brutality; and racial stigmatisation.

The main concerns of the traders inside and outside the EMM about the mall was loss of livelihoods, forced removals and relocation, physical attacks, violence and brutality, and racial stigmatisation, which will be discussed in this section.

### *i) Loss of Livelihoods*

The construction of the mall has serious consequences for the livelihoods of 683 traders, as well as 8000 other formal and informal traders and street vendors in the Warwick precinct, many who access their products from the EMM.<sup>25</sup> The EMM also offers income-earning opportunities for sales assistants, barrow operators and cleaners. It is significant that a common concern raised by traders about the mall project was loss of income and livelihoods (Table 2).

Against this background, church leaders in KZN contended that the Municipal authorities were advancing the interests of those with economic clout, while demonstrating contempt for the poor traders: 'This is yet another 'development' that will be paid for by the poor - by the destruction of their means of livelihood and the trampling of their rights and dignity'.<sup>26</sup>

It was evident that the market offered 'an important outlet for the traders, employment for unskilled labour and a central source for street traders to draw their stock from' (KZN, 2009:2). The Warwick Junction was 'a dynamic and vibrant area with traders that are particularly responsive to poorer commuters' needs' as well as supporting the 'livelihoods of those who trade there' and their immediate and extended families, and multiple dependents (Dobson and Skinner, 2009: 131).

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<sup>25</sup> Interestingly, the city's website [www.gov.za/durban/government/spu/2010/preparations/transport/index](http://www.gov.za/durban/government/spu/2010/preparations/transport/index), accessed 29 June 2009, suggests that there are more than 12 000 traders in Durban central)

<sup>26</sup> KZN Church Leaders' Group, Excerpt from joint Advent Message, 'Laying an axe to the roots', 22 December 2009 (<http://www.politicsweb.co.za/news-and-analysis/kzn-church-leaders-on-the-political-elite-and-the->, accessed 15 October 2014).

Research conducted by the School of Development Studies at the University of KwaZulu-Natal suggests that each trader has between 6 and 25 dependents. According to Caroline Skinner of the international NGO Women in Informal Employment Globalising and Organising (Wiego):

These traders are supporting large extended families and although individual incomes are very low, profits from these activities are going into poorer parts of the city, which is in stark contrast to the formal retailers who will trade in the mall.<sup>27</sup> ...It is estimated that between 70 000-100 000 household members, many of them already extremely vulnerable could be negatively impacted upon (Skinner, 2009a:1).

Hence, the legal argument from a social justice perspective was that:

A decision to close the market, when the applicants and others in their position have made a living for decades cannot be just an valid without honest and open consultation, and serious consideration of the effects that such development will have on the lives of individuals and their families, particularly those from disadvantaged communities and those falling within the most vulnerable groups in our society.<sup>28</sup>

This perspective was reinforced by another legal opinion that the majority of the displaced traders who would be denied their livelihood by the mall project were poor subsistence traders, struggling to provide for their basic daily needs: scarcely:

Without an adequate means of generating income the dignity of the (traders) and their dependents are compromised. Their right to life faces threat without being able to adequately sustain themselves with food, clothing and basic necessities of life.<sup>29</sup>

It has been estimated that the establishment of the mall would result in the costs of basic foodstuff increasing astronomically. For example, cost of fruit and vegetables in the area would increase by more than 100 percent – beyond the affordability of the poor.<sup>30</sup> Zet Luzipo, Congress of South African Trade Unions (Cosatu) provincial secretary, has referred to this as ‘an act of economic parasite where you suck the blood of those who have nothing to give to the bank balances of the rich’ (Daily News, 1/6/ 2009).

Most significantly, the EMM and ‘its environment provides for both traders and consumers who would have operated outside of the formal business sector’ (KZN, 2009:1). Makin (2009:1) aptly summarises the catalytic role played by the EMM in supporting livelihoods with traditional supply-chain systems, and the implications of a mall:

The prevailing traditional system of trading in Warwick Junction is uniquely rich and complex, with its supply chains offering a livelihood to thousands and thousands of people across the economic spectrum ... This system is symbolised by, and centers on, the EMM which has offered multi-cultural market place trading and supply chain opportunity since 1860. The construction of a Retail Mall on the site of the EEM will destroy this core, the economic opportunity it provides to the most economically marginalised, and over a

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<sup>27</sup> Mail and Guardian, 3-9 April, 2009.

<sup>28</sup> Court Case No: 11559/2009, in the matter between Ntulakhe Mbali and Others vs. eThekweni Municipality and Others. Filed on 13/08/2009.

<sup>29</sup> Legal opinion from Advocate RBG Choudree, Senior Counsel, 14 September 2010 (IAP).

<sup>30</sup> COSATU TODAY, 30 July 2009.

hundred years of social history and heritage. It will destroy the single most important catalyst for the development of a globally unique cultural precinct that links trading, political struggle for democratic freedom in SA, and vibrant cultural diversity.

The anxiety about loss of livelihoods was inextricably linked to the threats of forced removal and relocation.

*ii) Forced Removal and Relocation*

There has been no opposition to the upgrading of services and infrastructure in the Warwick area. The opposition has been to the forced removal and relocation (reminiscent of the apartheid era) and the outcome will always be the same – the banishment of poor, black people to even greater levels of impoverishment. The trade union COSATU contended that:

The forced removal of the early morning market and the subsequent liquidation of informal trade in the Warwick precinct is a neo-liberal assault against the poor people of this city. It is led by agents of big business who masquerade as public servants ... The Warwick development initiative is defaulting on the development mandate since it does not upgrade the existing structure and improve prevalent conditions. Development is not development when it destroys the existing mode of subsistence and replaces it with a new mode of subservience.<sup>31</sup>

The Social Movements Indaba (KZN) referred to the displacement of traders and the mall project as a ‘classic land-grab’ that was reminiscent of the apartheid era:

Land that the Early Morning Market has made attractive and prime, over more than a century of small trade, is now being grabbed by forceful means. We are told that the building isn’t much and that the city needs to get on with development. These threatening and insensitive remarks are nothing new from those in power. We heard them before during the dark days of forced removals and the Group Areas Act: in Cato Manor, Pageview, Sophiatown, District Six, etc. ... After enduring decades of apartheid’s ‘blackjacks’ and *baaskap*, the market is now threatened with demolition and eradication. The real tragedy is that ... the municipality is spearheading the demolition bid, rather than promoting small agri-production and business.<sup>32</sup>

Professor Franco Frescura, Chairperson of KZN Institute of Architects’ Heritage Committee similarly argued that the continuities between apartheid and post-apartheid eras were remarkable in Durban: ‘The hands driving municipal government may have changed, but its machinery remains essentially unaltered. This is why Durban’s poor continue to be housed on the outskirts of the city’ (*Mercury*, 10/6/09).

Journalist Samantha Enslin-Payne has similarly argued that history is repeating itself as opposition to the destruction of the market

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<sup>31</sup> Letter from COSATU (Kwa-Zulu Natal) to Dr Mike Sutcliffe, City Manager, eThekweni Municipality, 22 May 2009.

<sup>32</sup> Submission regarding the threatened demolition of the Durban Early Morning Market made by the Social Movements Indaba (KZN), to the Honourable Mr M Mabuyakhulu, 6 July 2009.

echoes a struggle that began in the late 1800s. At that time, Indian traders in Durban were trying to secure marketplaces for their fresh produce and other goods. In 1890 the City Council tried unsuccessfully to close down the Indian market. It remains to be seen whether the council's attempts, almost 120 years later, to close the Early Morning Market will be more successful (Business Report, 17/6/09).

The traders and vendors were instructed to vacate and relocate by 31 May 2009, and this was then extended to 31 July 2009, to a site that would suffocate their enterprises and relegate the majority to penury. This was not surprising as the history of apartheid forced relocations revealed that the victims were always further impoverished, and their rights to livelihoods compromised.

The City Manager argued that there was a 'culture of non-payment' (of rents) at the EMM, and that the traders had argued that the market was no longer a sustainable proposition because of the high crime levels in the area; competition from informal traders; the poor quality of facilities at the market; and lack of parking.<sup>33</sup> So rather than address the problems raised by the traders, the Municipality's solution is to raze the EMM and replace it with a mall.

The City Manager also alleged that Indian traders owned more than one stall and that this was illegal. Also, some stallholders were 'illegally' subletting their stalls. However, the traders argued that

during a period when stalls became vacant, the market administration auctioned these stalls and thereby encouraged multiple stall ownership ... the bulk of these traders rank amongst the poorest of the poor, usually run by a single trader and/or assisted by family members, whose very survival depends on the proceeds of the stall.<sup>34</sup>

There was also contestations about who was 'legal' and 'illegal', respectively. According to the EMMTA, about 600 stallholders were trading at the EMM for many years without any interference from the authorities. The municipality argued that there were 450 traders using 600 stalls (KZN, 2009). As the opposition to the mall escalated, the municipal authorities decided to enforce its legal permit system for stallholders that had not been applied for decades. There were several attempts to lockout 'illegal' or illegitimate traders in the EEM. However, the 'legal' traders decided to stand in solidarity with their 'illegal' colleagues.

In summary, the traders, bovine head cookers and barrow operators were working at the EMM and Warwick Junction for most of their adult lives for several decades, and this was their only source of income and livelihood. Several traders were illiterate and had no alternate source of income. Many were second or third generation traders and some were now being assisted by their children at the market. The profiles succinctly revealed life histories and lived experiences that were inextricably connected with the EMM and the Warwick Junction for decades (Table 5).

The profiles of a cross section of traders and those who were dependent on the EMM for their livelihoods, cutting across race and gender, was obtained from affidavits presented in the various

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<sup>33</sup> Adapted from: Proposed Warwick Mall Development, eThekweni Municipality Strategic Projects Unit and 2010 Programme, 27 April 2009, Annexure A.

<sup>34</sup> Submission by Roothiran Moodley, Third Generation Early Morning Market Trader, to the Honourable Mr Mabuyakhulu, MEC for Economic Development Tourism, 6 July 2016.

**Table 5 Typical Profile of those Adversely Affected by the Mall Project**

<p><u>MILLION KINGWELL PHEHLUKWAYO</u>: <i>I am the Vice-chairman of the Early Morning Market Traders Association. I am so grateful to those Indian traders who taught me how to conduct business in this market ...I vowed to my fellow traders that the mandate they have given me which is to fight for this market and its heritage will go on and the market to see another 100 years. This market is unique to me because we have mixed cultures and we trade side by side, Indians and blacks as one big happy market family.</i></p>	<p><u>SANDERGASEN MOODLEY</u>: <i>I started trading at the Early Morning Market stalls number 365 and 366 at a tender age of 16 years. I have been trading at this market for the past 59 years. This Market has taken care of my family for decades. I am now old and grey but this market keeps me alive because of my interaction with other traders and customers. This market also provides a livelihood for hundreds of porters and informal traders.</i></p>
<p><u>VELIAMMA VEERSAMY</u>: <i>I started business in the Early Morning Market at an early age, despite not being educated formally the Early morning Market served as my school of learning. I over came all of my difficulties and still made ends meet to this very day. I was orphaned at an early age and this Market to me is my mother, since I never experienced the love of my mother. Today I am so happy that after all these years of trading to see at my age we Indian and African traders trading side by side in happiness. My wish is for this market to be preserved and upgraded for future generations to come.</i></p>	<p><u>THOKOZANI MKHIZE</u>: <i>I am adult female chicken seller, trading at the Early Morning Market. I reside at Willowglen near Umkomaas on the south coast I have been trading at the market for over 27 years. I am unmarried and I support 4 children from my income of approximately R1000.00 per month from selling chickens. In addition to my immediate family, I am also responsible for the support of my extended family ... I am the only person in the family with a regular source of income. I confirm that the majority of the live poultry sellers at the market are opposed the relocation of the market and plans for its eventual development into a shopping centre.</i></p>
<p><u>NOMATEMBA MBELU</u>: <i>I am an adult female residing in Lindelani, an informal settlement near Durban. I am a food cooker carrying out my trade in the vicinity of the Warwick Junction. I prepare food at Warwick Junction, such as rice, porridge and meat. I generally sell a plate of food for about R10, and my primary customers are the people working at the Early Morning Market. Generally, I earn about R70 per day, and then pay for a taxi to get home at night. If business is slow, however, I sometimes have to sleep at the market. The idea of closing the Early Morning Market is so painful, because I am the breadwinner at home and I don't know where I will go.</i></p>	<p><u>RAMLAL BACHOO</u>: <i>I am an adult male, age 69, residing in Chatsworth. I am a live poultry seller carrying out my trade in the vicinity of the Warwick Junction. I live with my son, who works with me at the market, my wife, my daughter-in-law, my grandson, my sister and her two children. I generally arrive at the market about 5:30am, and I work six days a week selling live poultry. I employ two ladies that help me with my trade, and we generally earn R150 per day net profit. My father had the same stall that I operate today. He came to the Early Morning Market in the 1930s from the North Coast, and eventually put the stall in my name. I don't know what I will do at this age if the market closes. I have been told about a relocation site, but there is no way I can keep live poultry under a tent. If the Early Morning Market closes, I will surely lose my livelihood.</i></p>

court cases and a brochure entitled “The Journey of the Early Morning Market” to celebrate the centenary of the market in 2010.<sup>35</sup>

An analysis of the historical, social and economic profiles of those who would be adversely affected by the mall project revealed that they had been dependent on the EMM and associated income earning opportunities in adjacent zones for decades (Table 5).

As those affected began to consider their options and challenge the decision to demolish the EMM, the local state responded brutally, with violence, in an attempt to intimidate the traders into accepting relocation.

### *iii) Physical Violence and Brutality*

It was clear from the tone of an e-mail exchange between municipal manager Michael Sutcliffe and Strategic Projects Units and 2010 programme head, Julie-May Ellingson, dated 5 May 2009, and published in the Mercury newspaper, that threats, strong arm tactics, and intimidation against the traders opposing the demolition of the EMM would be escalated:

Sutcliffe says: ‘...I will indicate either they accept the relocation or we will simply terminate the lease and will only accept into the temporary facility those who do not owe us any arrears’.

Ellingson replies: ‘This is what we predicted. They are going to try to use this opportunity to entrench themselves in Warwick despite the fact that they have a long history of payment arrears. I suggest you meet with them and that we immediately issue letters of termination’ (Magwaza, 2009).

Not surprisingly, this was followed by the Municipality's Business Support and Markets Unit head, Phillip Sithole, announcement of his intention to cancel leases and evict traders:

We're now following legal processes ... The first step is to serve termination notices... we need the site for development. We've held meetings with everyone who's invested in this venture and we're left with no option but to terminate the lease agreements...This relocation comes with a package which includes a rent-free, six-month period and the marketing of the new site, but they refuse (to move) (Ndlovu, 2009a:3).

On the night of 30 May 2009, traders staged a legal sit-in at the EMM to protest against the mall project and the demolition of the market. However, city police attacked the traders with tear gas and pepper spray, ‘saying they were carrying out the orders of city manager Mike Sutcliffe’ (Comins, 2009:3). According to Early Morning Market Traders Association chairperson, Harry Ramlall, many elderly people were injured: ‘The Metro Police came in last night and started assaulting people and throwing out people. Elderly people were hit’ (Comins, 2009:3).

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<sup>35</sup> For more testimonies of the historical Early Morning Market traders about their feeling with regards to their eviction, see Shopping Mall vs Market, part one and two ([https://www.youtube.com/watch?v=IP-hDdmaHUQ&feature=player\\_embedded](https://www.youtube.com/watch?v=IP-hDdmaHUQ&feature=player_embedded)), produced by Doung Jahangeer. Also “We came in spring carts” ([https://www.youtube.com/watch?v=tk\\_ib1bnF1I](https://www.youtube.com/watch?v=tk_ib1bnF1I)), produced by Clive Read,

Former Inkatha Freedom Party MP, Loretta Rajcoomar, had joined the "sit-in" at the market (with which her late father had a historical connection), described how traders between 50 and 75 years old were sprayed with tear gas, and faced the barrels of guns:

It is mostly women traders there. They (police) were going to the stalls and pushing out women and pulling them and assaulting people on the floor. I told the police that these were mothers and people with heart problems and they said 'shut up and move before we arrest you'. They pulled me by the arm and pushed me and then this one woman fell and they were holding guns to these old women. They kicked me on my leg. My leg has swollen up (Comins, 2009:3).

Fifty-seven year old trader from Phoenix, Dularie Gopal, who has worked at the EMM for 37 years, was also teargassed: 'While trying to escape I injured my leg. I don't know how I am going to feed my family'. Doorpathy Singh from Redhill who is 50 years old and traded at the market for 25 years was manhandled by the police: 'They pulled me out of my stall and demanded that I get out. I am a widow. I have nothing to fall back on'. However, spokesperson for the municipal police, Joyce Khuzwayo, stated that 'minimal force' had been used by the law enforcement officers (Ramjith, 2009:2).

There was another violent attack on the morning of 15 June 2009, the eve of the 1976 Soweto Uprising, when the municipal police fired rubber bullets and teargas at traders who were locked out of the market, in defiance of a court order that it should remain open. The brutal force with which elderly women and men were attacked was reminiscent of the apartheid era (Figure 3). Eyewitness Roy Chetty said: 'It happened quickly. The traders weren't being violent. The police jumped over the boundary wall and started shooting. People were shot in the face and some in the back' (Ndlovu, 2009b:5). Blessed Gwala, IFP MP in the KZN Provincial Government, contended that the violent attack against unarmed traders

was further evidence of the high-handedness which the eThekweni Council appears to resort to whenever its autocratic decisions are challenged by those whom they affect most. It is an indictment of this democratically elected local authority that it never even attempted to resolve this conflict amicably.<sup>36</sup>

Municipal police spokesperson Joyce Khuzwayo said officers were forced to fire rubber bullets when traders attempted to enter the market without displaying their permits: 'The traders without licences outnumbered those with permits and tried to force their way in. They were a stronger force and we were forced us to use rubber bullets' (Ndlovu, 2009b:5).

KZN Economic Development and Tourism MEC, Mike Mabayakhulu, stated that "if the law is broken, the police must act, but not apply more force than is necessary ... we do not want any action on the side of the police that is exaggerated" (Wicks, 2009:2).

Themba Mthembu, the provincial secretary of the SACP, stated that the party was 'infuriated' that the Municipality used 'force and brutal means on defenceless street traders ... The city council has brought back the inhumane and the brutal practice of the apartheid regime and perfected it' (Mbanjwa, 2009:2).

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<sup>36</sup> Address to KZN Provincial Legislature, 19th June 2009.



The Social Movements Indaba (KZN) contended that the EMM was being managed like a ‘concentration camp’:

Since 30 May 2009, the market community has lost many days of trade due to lockouts and the unprecedented occupation of the market by scores of City Police (sometimes well over 100 in number). After the lockouts, the beatings, shootings ... the market is administered more like a concentration camp than a place of free trade.<sup>37</sup>

**Figure 3 Those injured in the brutal attacks receive medical attention**



Source: Roy Chetty, Early Morning Market Support Group

The Municipal authorities were quick to label those opposed to the mall project as racists. More sinisterly, there were attempts to divide the traders on a racial basis. Given the divisions of the apartheid era, this undermined the social cohesion strategies of the democratic government.

*iv) Racial Stigmatisation*

Stung by the criticism from many of his former academic colleagues and comrades, Dr Mike Sutcliffe, the City Manager replied: ‘Much of the sound and fury in the media is about race, self-interest and opposition to the democratic majority’ (Sutcliffe, 2009a). He further questioned the motives and abilities of academics who were critical of the mall project: ‘I am not sure if it is race or self-interest or opposition to the democratic majority that brings these academics together, but it is certainly not a result of them practicing their craft’ (Sutcliffe, 2009b). The City Manager (who holds a Ph.D. in geography from Ohio State University) was described as a “very rare white technocrat who wielded enormous political power through skilled manipulation of factions within the ruling party” (Bond, 2012:1).

<sup>37</sup> Submission regarding the threatened demolition of the Durban Early Morning Market made by the Social Movements Indaba (KZN), to the Honourable Mr M Mabuyakhulu, 6 July 2009.

UKZN academic Marijke Du Toit, in email correspondence, argued that the City Manager's response was 'insubstantive, high handed, and with unconvincing claims to expertise, and a familiar tendency to attack his opponents in personal terms'.<sup>38</sup> According to Professor Jeff Guy, it was incomprehensible that

a man with the city manager's background and experience can make, in passing, the throw-away remarks quoted above without being aware of not only their damaging, but their dangerous implications ... And to make baseless accusations about race in South Africa is to throw a metaphorical hand-grenade into a crowd (Mercury, 15/6/09).

Professor Franco Frescura suggested that "Sutcliffe's dismissive attitude is reminiscent of the totalitarian thinking during apartheid, when professionals, academics and liberal thinkers were labeled the problem, rather than the government's own cock-eyed lack of political knowledge" (Mercury, 10/6/09).

According to the City Manager 'there is massive exploitation occurring' in the Warwick market. The Mayor similarly implied that Indians were exploiting Africans in the market. Some have viewed this as a classic apartheid divide and rule ruse. It was therefore not surprising that at a meeting convened by the Durban Metro on 10 July 2009 at the International Convention Centre (ICC) to discuss the mall issue, cries of "*Hamba khaya! Hamba uye eBombay!*" (Go home! Go to Bombay!) reverberated in the presence of senior officials. According to eyewitness, Dr Lubna Nadvi:

The most shocking aspect of the meeting was the racialised language being used by members representing the city management, in order to try and co-opt the house to support the development plans. Dr Sutcliffe referred to the EMM as being the Indian market on more than one occasion, attempting to create the impression that those who were fighting to keep it, were actually pro Indian and by implication anti-African (Nadvi, 2009:3).

While the Municipality subsequently distanced itself from such comments, according to another eyewitness and civil society activist, Trevor Ngwane,

many people left the ICC thinking that the main social benefit of getting rid of the market was getting rid of the Indians and that the proposed mall would provide business opportunities to long-denied Africans (In reality, it will be chain stores of multinational corporations who will take the biggest mall locations) (Ngwane, 2009:16).

Councilor Majola, who was chairing the meeting, quoted an old 'ANC strategy and tactics document' stating that the struggle was about liberating blacks in general and Africans in particular. A senior city official was less restrained: '*Kufanele sibakhiphe iqatha emlonyeni*' (we must remove the piece of meat from their mouths).<sup>39</sup>

This was further confirmed by a Wikileaks report on the 17 July 2009 public meeting organised by the eThekweni municipality:

The Chairperson of the eThekweni Business and Market Committee Faso Majola said in Zulu that 'Indians only want to protect their interests in the Warwick area and they don't want township people moving in'. The Head of eThekweni Business Support and Markets Philip Sithole declared that: 'Let us take the food from the mouths of the Indians! Now is

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<sup>38</sup> Email communication, 10 June 2009 (IAP).

<sup>39</sup> The Mercury, 22 July 2009 ( <http://historymatters.co.za/anc-administration-sows-seeds-of-racial-discord>).

the time for Africans to be in power! We will remove them all and replace them with blacks!"<sup>40</sup>

According to the Wikileaks report:

The anti-Indian sentiments expressed by local ANC-appointed leaders and supporters ... stand in contrast to the multi-racial ideals of the ANC ... at its core, the (Warwick mall project) is about the displacement of South Africans of Indian descent by black South Africans. The (Warwick mall) plan is backed by the ANC, and it is simply a matter of time before the EMM is changed forever. Indians are increasingly becoming marginalised in Durban and their political influence has diminished over the years.<sup>41</sup>

Ngwenya (2009:16) warned the local government officials about the political commitment to non-racialism:

The ANC administration in Durban should refrain from sowing dragon's teeth as they appeared to be doing at the meeting. In their eagerness to win the argument, they retraced their steps away from South Africa's non-racial vision. Respect and fairness should be accorded to everyone, irrespective of country of origin or historical origins of our ancestors.

In a subsequent Press Release, the Municipality distanced itself from racial slurs, and denied that any councilor or officials were implicated:

... The Municipality would like to place on record that at no stage did the Mayor or Council Officials make racial remarks in any way at the meeting in question. Our assessment is that this is the work of peddlers, who are desperately trying to politicise the Early Morning Market issue to accomplish their own agendas. We view the publication of this information as misleading in the extreme and only aimed at sowing divisions amongst our residents...<sup>42</sup>

As the opposition and controversies associated with the mall escalated, the developers were forced to release a public statement wherein they try to defend and promote the project.

## **7. The Developers' Defence<sup>43</sup>**

In a media statement the developers argued that in view of the controversy and public debates relating to the mall project and displacement of traders, there were many mis-representations and distortions. According to the developers, media coverage about the mall was biased, favouring those who were opposed to the project and they wanted to "present the facts" in order to put an end to rumours and innuendos:

### *i) Why a shopping centre?*

Responding to criticism that there was no need for the mall, and its viability had not been established: "As responsible developers contemplating a significant investment, we have done our homework. We commissioned a full feasibility study from the respected firm of development economists, Urban-Econ ... Our tenant mix has been carefully matched to our

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<sup>40</sup> [http://www.wikileaks.org/origin/256\\_0.html](http://www.wikileaks.org/origin/256_0.html)

<sup>41</sup> [http://www.wikileaks.org/origin/256\\_0.html](http://www.wikileaks.org/origin/256_0.html)

<sup>42</sup> Press Release: Response to Media Reports of a Racial Slur at Early Morning Market Meeting, 3 August 2009.

<sup>43</sup> All information in this section was obtained from a statement released by Themba Ngcobo, co-developer of the proposed Warwick Mall. See Ngcobo (2009).

anticipated customer profile on the basis of the study. Those who romanticise Warwick should note that just 5 percent of those interviewed found the area appealing at present”. The mall would provide more choice as customers could purchase from formal and informal sectors.

*ii) The informal traders*

The developers were alarmed at provocative allegations that the mall would threaten livelihoods and “drive informal traders out of the Warwick area”. About 270 informal traders with permits would be accommodated in the new public space, Masigye Square, adjacent to the mall.

In terms of the EMM, the relocation of traders was temporary. The developers were prepared to accommodate legitimate traders within the project or nearby, “who will be selected in terms of city allocation criteria”.

The developers were aware of the rich history and heritage of the EMM, and had intended to integrate important features of the market structure into the mall project. They were prepared to consider how more features could be incorporated to “reflect the market's rich heritage”.

*iii) Support for the centre*

They contended that the majority of the stakeholders in WAT supported the mall: “These include thousands of commuters and members of the public, the taxi industry, the Durban Chamber of Commerce and Industry, Warwick Street Traders Committee, ACHIB, eThekweni Informal Economy Forum”. This was attributed to the benefits that included additional retail choices, more efficient taxi services, better ablution facilities, and improved security.

*iv) Track record*

The developers were not “faceless”, there was no secret about their identity, and they had an impressive track record “in numerous retail projects in underdeveloped areas around South Africa, including Orange Farm, Palm Springs, Sharpeville, Osizweni, KTC/Nyanga, Senaoane, KwaMashu, Richmond, Phuthaditjhaba, Tsakane and others”.

*v) The process with the city*

Contrary to the allegations, the Municipality had followed due process (which was neither “rushed” nor “secretive”) in approving the mall project. A precursor for approval was that “any proposed retail development would need to include a fully serviced taxi rank and contribute to the city's goals of easing traffic congestion and providing easier, safer access for pedestrians”.

A grouping of trader, civil society and non-governmental organisations coalesced to mobilise and campaign against the mall project and the demolition of the EMM.

## **8. Mobilisation, Protest and Resistance**

Trader organisations, trade unions, civic associations, NGOs (Siyagunda, Asiye eTafuleni), religious leaders, and academic researchers, amongst others, were opposed to the mall project and destruction of the EMM. Specific organisations included the Early Morning Market Traders Association (EMMTA), Early Morning Market Support Group (EMMSG), Social Movements Indaba (KZN), Congress of South African Trade Unions (COSATU), South African Municipal Workers Union (SAMWU), South Africa National Civic Organisation (SANCO), the South African Communist Party (SACP), and the 1860 Legacy Foundation. Beyond South Africa, there

was also support from Streetnet International and its World Class Cities for All (WCCA) campaign.<sup>44</sup> Many of these organisations had submitted memoranda to the local and provincial governments emphasising grounds for opposing the mall project, and also presented sworn affidavits in the different legal interdicts, etc. Several public meetings were also held, in which most of these organisations also participated (Table 6). Resolutions adopted by the EMMTA is illustrated in Table 7.

**Table 6 Civil Society Mobilisation against the Mall and EMM Destruction**

20/05/2009	Meeting	The Democracy and Development Programme in Durban organized a public forum at Durban University of Technology – ‘The Warwick Mall: is the heart of Durban being ripped out?’ Hundreds of people attended this event and the panel of speakers included the Deputy Mayor, academics, architects, and traders. There was limited time for direct audience participation.
03/06/2009	Meeting	A meeting was held between the EMM traders, the Informal Traders’ Association, the SACP, COSATU, SANCO, members of the Amafa KwaZulu-Natal Heritage Council and academics from the University of KwaZulu-Natal to address the escalating situation with the traders.
09/06/2009	Seminar	A small seminar regarding the proposed Warwick Development and EMM closure was held at the University of KwaZulu-Natal. Attendees heard from traders, academics and politicians who oppose the development.
22/06/2009	Meeting	A meeting was held by the 1860 Legacy Foundation to discuss the future of the traders and the proposed development. Municipal officials, the municipal manager and the MEC for Economic Development and Tourism were present. At the conclusion of the meeting it was announced that the Province was establishing a Task Team team comprising three Members of the Executive Committee, led by the MEC, to consider the views of stakeholders about the mall project.
28/07/2009	Meeting	The 1860 Legacy Foundation convened another meeting, intended to hear the results obtained by the Provincial Task Team, however no officials were present to make any such announcement. The meeting then shifted focus to discuss the reasons why they opposed the mall development and calls were made to strengthen the resistance against the closure of the EMM.
30/07/2009	Seminar	A seminar titled “Livelihoods Forum” was held at the University of KwaZulu-Natal to educate the public about the vulnerability of traders in the Warwick area.
03/09/2009	Discussion	The UKZN Students for Law and Social Justice Society organized a panel discussion regarding the Early Morning Market. It was suggested that participatory democracy and deliberative processes are being demanded by the citizens of eThekweni, showing the Municipality that their voices must be heard. The Deputy Mayor, Logie Naidoo, claimed that the development on the EMM site would not be a mall or shopping centre, it should be viewed as an area of convenience which will be far safer.

Source: Adapted from Tirone (2010:131-136).

Trade union COSATU ‘stood in solidarity with the traders struggle because poor people were being forcibly removed to make way for the interests of a few rich people’ (Daily News, 1/6/09). COSATU emphasized that in addition to the early morning market stallholders, other formal and informal traders would be adversely affected in adjacent areas such as the Warwick Junction, Berea Station, Brook Street, and the Herb Market, if the Mall were built. Hence, the resistance to the

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<sup>44</sup> StreetNet International is an alliance of street vendors with affiliates and representatives from over 40 countries and organisations, such as the Self-Employed Women’s Association (SEWA) in Ahmedabad, India; the Self-Employed Women’s Union (SEWU) in Durban, South Africa; Women’s World Banking in New York, and the International Coalition of Women and Credit in New York; and Women in Informal Employment: Globalising and Organising (WIEGO). (<http://www.streetnet.org.za/show.php?id=19>).

**Table 7 Resolutions Adopted by the EMMTA**

**Resolution Passed at the General Meeting of the Early Morning Market Traders' Association (EMMTA) held at the Early Morning Market on the 23<sup>rd</sup> September 2009 at 3:00pm.**

**PREAMBLE**

WHEREAS WE, the undersigned members of the Early Morning Market Traders' Association, being traders, small market gardeners, barrow operators and allied workers, gathered here at the Early Morning market today, 23<sup>rd</sup> September 2009 on the eve of Heritage Day,

**HONOUR AND RECOGNISE WITH PRIDE:**

1. the historic agricultural and market-trading traditions of the impoverished indentured labourers that had begun some 140 years ago in the Victoria Street area, and that is still carried on by their descendants and the poor today;
2. the determined struggles of successive generations of market women and men against repeated attempts by the racist and oppressive municipal authorities to shut down the Early Morning Market and its noble agricultural market-trading traditions.

**WE REAFFIRM** our total commitment to stop the demolition of the Early Morning market, one of the most enduring, living monuments of the 1860 Indian indentured labourers and which is now a proud source of livelihood for mainly poor Black (so called 'Indian', 'African' and 'Coloured') people.

**WE DECLARE**

- (i) that the 99 year old Early Morning Market, has earned its rightful heritage place in the Durban city centre, and that its future must be guaranteed by the present and all subsequent municipal authorities;
- (ii) that the Early Morning market must be upgraded, developed and preserved for the benefit of all the poor, present and future small fresh produce growers and traders on the non-racial basis.

**WE FURTHER DECLARE** that we are unequivocally opposed to the construction of a shopping mall on this historic site of the Early Morning Market, and declare our complete rejection of the notion of an "accommodation in the mall" or "relocation to an alternate site".

**WE THEREFORE RESOLVE**

- (i) to vigorously RESIST all attempts by the municipality to evict us from this historic trading site, and to rob us of our livelihood;
- (ii) to vigorously RESIST all attempts to lease this land, which was historically granted to the Early Morning Market, to private property developers; and
- (iii) to vigorously RESIST all attempts to demolish the Early Morning Market.

**FURTHER**, this general meeting of the Early Morning market Traders' Association (EMMTA) hereby instructs and mandates the EMMTA Committee and its legal representatives to act at all times in accordance with the spirit and letter of the above, unless instructed and mandated otherwise by a general meeting of the EMMTA.

Source: Minutes of meeting of the EMMTA, 23<sup>rd</sup> September 2009.

‘demolition of this unique market precinct’.<sup>45</sup> Furthermore, COSATU was disappointed

at the municipality’s manner of dealing with the matter ... (especially) the commitment of ‘millions and millions’ of Rands of public funds to build a mall on the current site. It (was) concerned about the failure to call for expressions of interest, the failure of the municipality to comply with an EIA process and the failure of the city to secure the appropriate permit to demolish the listed building (KZN, 2009:6).

The SACP expressed concern about the questionable consultation processes and the lack of transparency; the omission of the opinions of workers and the poor; the need to preserve the heritage site; ‘the failure to cater for African share ownership; the failure to cater for informal traders; and the failure to accurately measure the economic benefit of the market’ (KZN, 2009:7).

Church leaders expressed concern about the struggles and challenges of the formal and informal traders in the Warwick area who were ‘trying to defend and maintain an economy that sustains families and makes fresh produce accessible to many poor people, against a proposed mega-shopping mall’.<sup>46</sup> Veteran anti-apartheid activist, Professor Fatima Meer, who was ailing, attended many of the mass protest meetings in a wheel chair, and added her voice of support for the traders:

The market is a heritage site in that it identifies Durban and the city council wants to demolish that which makes the city. I wonder if the council has done its homework and checked with the clientele of the EMM. The council is attacking poor consumers by closing the market. It is those clients who prefer to shop at the market and not the malls. There is no supporting community for the mall because people who live in areas like the Berea have Musgrave shopping mall. Then there is Pavilion and Gateway (Dorasamy, 2009:3).

The 1860 Legacy Foundation, which celebrates and commemorates the legacy of people of Indian origin and their respective contributions (of which the Warwick Market is an iconic example), which is sensitive to African location, context and experience, also opposed the forced relocation of traders and the demolition of the EEM for the following reasons: its historical link with indentured labourers and heritage status; opportunities provided for Indian and African micro-entrepreneurs; and marginalization by the municipality and big business.<sup>47</sup>

In response to public requests, the Legacy Foundation subsequently hosted a public meeting on 22 June 2009 at the Kendra Hall, in order to facilitate a conversation on this issue, and invitation was extended to all the major role players. One outcome from this meeting was the establishment of a Provincial Task Team (PTT) by the KZN Provincial Government to mediate in the dispute between the eThekweni Municipality and the different formal and informal trader and other interest groups opposed to the establishment of a mall in the Warwick Junction (Wicks, 2009).

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<sup>45</sup> COSATU TODAY, 30 July 2009

<sup>46</sup> KZN Church Leaders' Group, Excerpt from joint Advent Message, 'Laying an axe to the roots', 22 December 2009 (<http://www.politicsweb.co.za/news-and-analysis/kzn-church-leaders-on-the-political-elite-and-the->, accessed 15 October 2014).

<sup>47</sup> Memorandum from the 1860 Legacy Foundation to the Premier’s Office, 2 July 2009.

## 9. PTT Report - Win-win only for mall developers?<sup>48</sup>

The PTT comprised of Michael Mabuyakhulu, MEC for Economic Development and Tourism; Willies Mchunu, MEC Local Government and Traditional Affairs; and Bheki Cele, MEC Transport and Safety and Security. The PTT emphasised that it was “not a commission of enquiry” (p. 3). The much-awaited task Provincial Task Team's (PTT) report on the Early Morning Market (EMM) was released on 27 August 2009 in the opulent surroundings of the International Convention Centre.

The PTT Report identified the different parties involved in the dispute, including local and provincial government, police, formal and informal traders. Intriguingly, the mall developers appeared to be exonerated. The PTT expressed concern about the high levels of conflict and potential for further polarisation amongst the different constituencies. There was an acknowledgment that there was a breakdown in relationships “between the city, traders and various other constituencies”. The PTT urged the parties to “attend suitable relationship building exercises” (p.20).

To its credit, the PTT acknowledged: that the market and its environment provides for both traders and consumers who would have operated outside of the formal business sector (p. 1); the EMM “offers an important outlet for the traders, employment for unskilled labour and a central source for street traders to draw their stock from” (p. 2); that there were problems with the municipality’s consultation process; the need to de-racialise the debate; that police have engaged in “over exaggerated action” (p. 20) at the market in recent months on instruction; a perception that “appropriate procurement processes” (p. 18) were not followed; questions whether there was a “tender or unsolicited bid process” (p.18); insisted that traders deemed by the Metro to be “illegal” are regularised and “immediately and unconditionally issued with permits” (19); demanded that the poor and indigent be incorporated into the project; recognised the historical and architectural significance of the market; and called for “all law enforcement agencies (to) exercise restraint” (p. 20).

Unfortunately, the report regurgitates the Metro’s sweeping, unsubstantiated allegations there were “exploitative relationships” in the market, and the sub-text was that the offenders were of Indian descent. The PTT was concerned that the “debate has taken unfortunate racial overtones” (p. 18). Yet it records unsubstantiated, racist allegations (without revealing the sources), that “market prices are based on colour, there is an Indian price, European and African price ... the market provides for ‘Indian interests’, and all race groups should be accommodated” (p. 11). Untested assertions repeated frequently are often accepted as fact. Ironically, this has fanned the anti-Indian racist discourse raging in Durban for the greater part of 2009, and which the PTT was purportedly trying to diffuse.

The PTT commented approvingly on the record of accomplishment of the Mall developers who were apparently “involved in numerous retail projects in underdeveloped areas” (p. 8). There was no evidence that the Municipality or the PTT had undertaken a due diligence assessment of the developers.

In their submission to the PTT, the mall developers contended that:

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<sup>48</sup> Unless otherwise indicated, all information in this section is from the PTT Report (KZN, 2009).



- i) The process of engagement with the City was not flawed and the minutes of the various meetings are public documents, open to all (however, this information only emerged in court records).
- ii) The project had been planned and they have conducted a full feasibility study.
- iii) In their view the area is “romanticised”, and in fact is found by the public to be unappealing.
- iv) The mall will offer a wide range of offerings, with an appropriate tenant mix to serve anticipated customer profile.
- v) Buyers will be able to purchase from both the informal and formal sector.
- vi) The project had many benefits, including a wider choice of retail offerings; improved traffic flow; covered ranks providing security and cover from the weather; hygienic and dignified ablution facilities; employment in the construction phase; employment in the final phase (which they state excludes the work opportunities for traders) (p. 9).

While acknowledging that the “Early Morning Market is a site of historical significance”, a damning indictment against the PTT was the recommendation that only “where possible, attempts should be made to incorporate the buildings (of the EMM) in the development” (p.17). If such attempts were not possible – demolition.

The PTT urged that the AMAFA appeal process and the EIA assessment be expedited for “the interests of certainty” (p. 20) by 31 October 2009. There was an ominous advanced expectation that both processes would rule in favour of the developers. What if the EIA assessment and AMAFA ruled against the mall development? Clearly, this was a scenario too ghastly for the PTT to contemplate.

The PTT report was at best a very strange and contradictory, and obviously written by a paid consultant. There was an acknowledgement that it “does not purport to make findings of fact” and there was neither critical interrogation of evidence, nor any cross-examination of witnesses (p.3).

Surprisingly, the PTT believed that it had presented a win-win solution. However, it has presented a win for the mall developers and a loss for all those who depended on the EMM for their livelihoods. There was no evidence that the PTT had considered that arguments presented by those who were opposed to the demolition of the EMM. There was no “discernible reference to/or evidence of the detailed written submissions from the EMM Traders, the Social Movements Indaba, the 1860 Legacy Foundation and various academics” (Chetty, 2009:8).

When the PTT was established, Municipal Manager, Mike Sutcliffe had emphasised that “the most important interests in Warwick are not those of the traders, they are those of the commuters – the 400 000 working class people that travel through the area everyday” (Wicks, 2009:2).

The PTT issued a sinister draconian warning that it considered its “findings and recommendations to be so important that it would not be in the public interest or that of any party” (p. 3) not to accept its conclusions and implement its proposals. After ruling in favour of the mall developers, the PTT implored that “all legal disputes should be settled to avoid any sense of a winner and loser, and to prevent a court having to rule on any of the outstanding matters” (p. 21). The PTT was aware that there were several court interdicts against the Municipality. The last resort of those adversely affected was the legal route, to seek relief from the courts.

## 10. The Legal Turn

Another strategy of those adversely affected was the legal route, to seek relief from the courts. There were several court actions initiated by the EMMTA, barrow operators and others, against the eThekweni Municipality, seeking to set aside the decision to relocate traders and cancel the mall lease; affirming the right of barrow operators to work in the EMM without personal permits; restraining the Municipality from harassing, intimidating, or otherwise interfering with traders at the market; and authorising the centenary celebrations of the EMM (Table 8). As is evident from Table 9, several urgent interdicts were granted against the eThekweni Municipality with costs.

While some of the traders from the EMMTA paid for private lawyers, the majority were supported by the Legal Resources Centre (LRC) in Durban. The LRC, a non-profit organization, was established in 1979, and is “South Africa’s largest public interest, human rights law clinic (which) uses the law as an instrument of justice for the vulnerable and marginalised, including poor, homeless and landless people”. The “goals are to promote justice using the Constitution, build respect for the rule of law, and contribute to socio-economic transformation within South Africa and beyond”.<sup>49</sup>

Senior Counsel Andrea Gabriel, a former employee of the LRC, aptly summarised the role of the LRC in assisting the affected groups in challenging the Warwick mall project:

- i) We first went to court to secure an interdict against the city from moving the people in the market. That at least meant that the market could continue operating and people could continue earning their livelihoods. We did this as part of an application to review and set aside the decision to close the market ...
- ii) Then the market master started enforcing ancient market bylaws in an extremely ruthless manner. Stallholders were not allowed to leave their stalls without permission from the market manager. So every time a stallholder needed to go to the loo permission had to first be sought. Old ladies and men who were stallholders needed permission to go to the toilet! Even barrow operators were required to have certain types of wheels of a certain thickness on their barrows and to have number plates on their barrows.
- iii) Teams of market officials and security officials marched around the market demanding to see permits and destroyed vegetables if that was not produced. The evidence was that they simply threw produce to the ground, stepped on them and confiscated what was left. An urgent interdict was sought. We showed the Judge pictures of the smashed vegetables. We obtained the interdict against the city. Again, dignity was restored at the market.
- iv) Then the market decided to hold a celebration to celebrate it being in existence for 100 years. Over 1000 people were expected to attend the celebration. Do you know what our city decided to do? It decided to withhold permission for the celebration ostensibly because it would be an unlawful gathering under the Regulation of Gatherings Act.

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<sup>49</sup> <http://lrc.org.za/lrcarchive/> (accessed 24 November 2015).

**Table 8 Court Cases and Outcomes**

Case Number and Date	Applicant(s)	Respondent(s)	Matters tried	Outcome
10185/2009	EMM Traders' Association	eThekwini Municipality and Another	Review and set aside decision to relocate traders and cancel mall lease	The application was adjourned <i>sine die</i> to be set down with the application for case 11559/2009.
8444/2009  June 13, 2009	EMM Traders' Association	eThekwini Municipality	All traders operating in the EMM should be allowed entry	Traders in possession of valid permits issued by the Municipality must be allowed entry into the market (Interim order granted).
9650/2009  July 3, 2009	Mbali and Others	eThekwini Municipality and Others	The right of barrow operators to work in the EMM without personal permits	Urgent interdict granted with costs against municipality from requiring barrow operators to obtain identity cards or permits.
11162/2009  August 4, 2009	Veeron Rambali	eThekwini Municipality and Others	Municipal officials must not harass traders in the EMM	Interdict granted with costs, restraining the Municipality from harassing, intimidating, or otherwise interfering with traders at the market; they were prevented from impounding their goods without a court order, and from compelling traders to remove goods from the market on a daily basis.
11559/2009  August 13, 2009	Mbali and Others	eThekwini Municipality and Others	Review and set aside decision to relocate traders and cancel mall lease	Matter was pending Court review and decision. This became superfluous after the developer pulled out and the eThekwini Municipality.
5686/2010  May 18, 2010	Phehluwayo and other	eThekwini Municipality	Authorising the centenary celebrations of the EMM	<i>Rule Nisi</i> granted and respondents had to show cause why costs should not be awarded.

Source: Adapted from Tirone (2009) and Court records

- v) An urgent interdict had to be sought very late at night. Thankfully, it was obtained and the interdict was granted. Some of the stallholders came to court anxiously waiting to hear what the Judge would say. I will never forget that group of poor people, in threadbare clothes and some without shoes. When that interdict was granted, it once more restored the dignity of people at the market. The celebrations carried on the next day and it was a resounding affirmation of the people at the Early Morning Market and indeed of our heritage.<sup>50</sup>

The impact of the various court applications and interdicts was two-fold. In the short term, it provided immediate relief for the traders, barrow pushers, etc., to continue with their normal operations, which the city wanted to halt and terminate. The long-term impact was to delay and disrupt the targets and timelines set by the developers and the city for the mall project. The developers were worried about the impact of the stagnation of the mall project on their investments and profit margins.

By early June 2009, Carlos Correira, the head of Isolenu, the mall development company, indicated that they were rethinking their decision to invest in the project in view of the public protests and objections: “As developers we are very concerned. We are business people. We never expected this reaction. We can’t invest in an area in which we are not welcome” (Enslin-Payne, 2009:1). In February 2011, Correira formally informed the Municipality that Isolenu was withdrawing from the mall project, which had been delayed by the various legal and judicial processes. This was followed by the Municipality’s Executive Committee decision on 12 April 2011 to withdraw its lease agreement decision with the Warwick mall developers. Deputy Mayor, Logie Naidoo, had earlier conceded the municipality had mismanaged the mall issue: “I agree that we could have taken a better route in terms of how the situation was handled” (Pillay, 2010:3).

It took the occasion of the XXV International Union of Architects Conference in Durban in August 2014 to get a confession from a senior eThekweni Municipality bureaucrat, Jonathan Edkins, chief architect at the municipality, that the Warwick Mall project was a mistake:

Durban had been wrong to try to close down the Warwick Junction market and move traders into a new mall. It stopped listening to its own people before international input in the run-up to the 2010 World Cup ... The 2010 World Cup in a lot of ways damaged our city... and one of these areas was Warwick Junction ... It was going well [iTrump success] until we started thinking international and not listening to local input. We need to hear their voices and bring them back to the table...<sup>51</sup>

## 11. Policy Implications

In recent years, there have been some critical intellectual reflections about who has rights to the city, and how such rights are realised, especially amongst the poor and disadvantaged. According

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<sup>50</sup>Lefa la LRC Durban launch: Speech by Andrea Gabriel SC, 12 August 2011, pp.3-4.

<sup>51</sup> <https://www.iol.co.za/mercury/the-warwick-avenue-mistake-1730933>

to the Montreal Charter of Rights and Responsibilities “the city is both a territory and a living space in which values of human dignity, tolerance, peace, inclusion and equality must be promoted among citizens” (Montreal, 2006:5).

In keeping with such international, progressive trends, post-apartheid South Africa is a rights based constitutional democracy, which recognizes first, second and third generation rights – civic and political; social and economic; and environmental rights, which were expected to be largely realised at the urban or municipal level.

According to Section 153 of the Constitution, a local authority had to ‘structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community’. In the process of defining and claiming rights in South African cities there are social and political struggles over the appropriation of urban spaces, and the contestations relating to the Warwick market would be a classic example.

Historically, markets have been at the core of cities from the pre-industrial era. Markets in the WAT provides opportunities for people from different cultural and socio-economic groups to interact together in a safe and appealing public space, and provide opportunities for “entrepreneurs, including women, to sustain themselves and their families with a minimum of capital investment” (UN-Habitat, 2015:9).

The Durban Metro needs to recognise the productive potential and livelihood opportunities inherent in the EMM and allied markets in the WAT. Replacing traditional markets with malls, reduces economic opportunities for the poor. In the US, local markets were replaced by malls in the 1950s cities. However, in the 21<sup>st</sup> century local markets are re-emerging with more than 7 000 currently operating (UN-Habitat, 2015:9).

It was evident from the Warwick study that there was a lack of consultation and participation of local, affected parties in the mall project. Public participation in planning is an important concept, especially in democratic societies. In a Handbook entitled Placemaking and the Future of Cities, UN-Habitat (2015:4), contended that the “placemaking process, when it is conducted with transparency and good faith from the bottom up, results in a place where the community feels ownership and engagement, and where design serves function. Here, human needs will be met and fulfilled, for the betterment of all”.

## **12. Conclusion**

It has been well documented that cities have evolved as contested territories and the unstable nature of urban space has had a negative impact on the rights of the poor and marginalized, who are often victims of physical and structural violence (Springer, 2008; 2011; Weinstein, 2013). Inequality and deprivation create the grounds for further forms of violence such as marginalization, displacement and loss of livelihoods, as was evident in the case of the EMM. Such contestations are rooted in neoliberal strategies which has significantly influenced the ability of the poor to negotiate and access a foothold in the in the city, and they are invariably alienated to forgotten places (Routledge, 2011).

This has been illustrated in this paper with reference to the struggle to save the EMM from being replaced with a mall. The spatial reconfiguration of the Warwick Junction, with the mall project and demolition of the EMM, was a strategy to favour capital/big business, at the expense of the poor workers and consumers in the area, and was described as a form of ‘neoliberal gentrification’ (Miyachi, 2014:71).

There are serious contradictions evident in the juxtaposition of large-scale developments such as the mall, and the displacement of low income traders, a process which Harvey (2004:63) called ‘accumulation by dispossession’. While projects such as the Warwick Mall are promoted on the basis of increasing economic growth, providing jobs and improving social well-being, these developments “have all too often left local people permanently displaced, disempowered, and destitute” (Oliver-Smith, 2009:3).

The EMM and its surrounds was viewed as a ‘being in a state of organic and inevitable decay’ and in need of ‘renewal’, ‘refurbishing’, or ‘revitalisation’. Such euphemisms obscure the political and ideological processes that have contributed to decay and decline during the apartheid era, and deliberate neglect during democratic era.

The planning fiasco in Warwick Avenue was driven by a top-down process that apparently favoured private sector interests. There were no transparent, competitive public tenders for the development of a mall on the market site. The project was initiated by the mall developers. There was minimal consultation with those who were likely to be most adversely affected by the proposed mall. The Durban Metro authorities abused their power and manipulated democratic processes and regulations to intimidate the EMM traders. The traders were threatened with different forms violence - loss of livelihoods; forced removal and relocation; physical violence and brutality; and racial stigmatisation.

In addition to the economic imperative, traders in the Warwick area had historical, cultural and social ties to their site of livelihood. The displacement of traders from the EMM would have violently severed decades of attachment to a given place that served as “the anchor for bonds of kinship ... for livelihood and provisioning, for memory, identity and being. It becomes a socially inhabited place” (Baviskar, 2009:61).

As protest and resistance to the mall escalated, the local state responded by “increasing brutal atrocities and fictitious claims of ... benefitting the affected” (Patkar, 2009: xiv). The Durban Metro tried to drown out voices of opposition and tied this to the resurrection of old apartheid stereotypes of sharp business practices and sowing racial divisions between traders, but non-racial solidarity was thriving at the EMM, a bane to those who demonstrate a callous disregard for the needs of the poor. In face of determined resistance, rather than want to listen to other voices, the city used its own propaganda machine and resources to intensify its campaign of vilification and self-validation.

There was no disagreement about the upgrading of services and infrastructure in the Warwick area. The opposition was to forced removal and relocation (reminiscent of the apartheid era) and the outcome will always be the same – the banishment of poor, black people to even greater levels of impoverishment. The sustained public outcry and opposition to the destruction of the iconic early morning market and the forced relocation of traders has been unprecedented in democratic South Africa. It has also re-invigorated critical public debate and dissent in Durban.

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