

Practice Notes

Keep the bus moving: SMME inclusion in the construction sector

Compiled: July 2023

1. INTRODUCTION

An issue which has been gaining media attention over the last two years, is the prevalence of so called “construction mafias”. In 2020, research by the SACN found that site disruptions on large-scale City projects were a major factor in the slow rate of infrastructure delivery, with many projects dragging on for much longer than intended. The SACN City Engagement Process of 2021 also highlighted the importance of this issue. It became clear the SACN needed to have a dedicated research project to unpack SMME challenges further and propose a way forward. After an interview process with city officials from three cities, a report has been drafted highlighting key findings and proposing recommendations.

In order to ensure that the research was framed in a manner consistent to the experiences of city practitioners, two Practitioner Learning Exchanges were held. The first took place at the start of the project to develop the research question with city practitioners and experts in the field and nominate three cities as case studies. The second Learning Exchange took place just before the finalisation of the draft report to test the findings and further develop recommendations with practitioners according to their lived experiences. Both sessions were facilitated by Rehana Moosajee of the Barefoot Facilitator along with project manager, Kayla Brown, with support from Inclusive Cities Programme Manager, Nicolette Pingo. The sessions were recorded and captured on Mural.

This Practice Note captures and reflects on the two Learning Exchanges.

2. RESEARCH REPORT

After examining the underlying causes for the rise in business forums and ways in which SMMEs are included in the construction sector, the report looks at the practitioner experience, through case studies of three different metropolitan municipalities (Nelson Mandela Bay, Mangaung and City of Joburg). The key question is: “How are city governments using different approaches to engage with business forums in order to keep development projects moving?”. The case studies explore the different challenges and approaches to the inclusion of SMMEs in the construction sector, and highlight innovative practices that are assisting cities to find ways to mitigate the challenges posed by business forums, to avoid project disruptions and “keep the bus moving”. It is hoped that other cities can learn from these case studies and be able to implement better practices in their own contexts. Ultimately, the solution lies in understanding and addressing the underlying failings of the construction sector to incorporate SMMEs in a transparent, regulated and developmental manner.

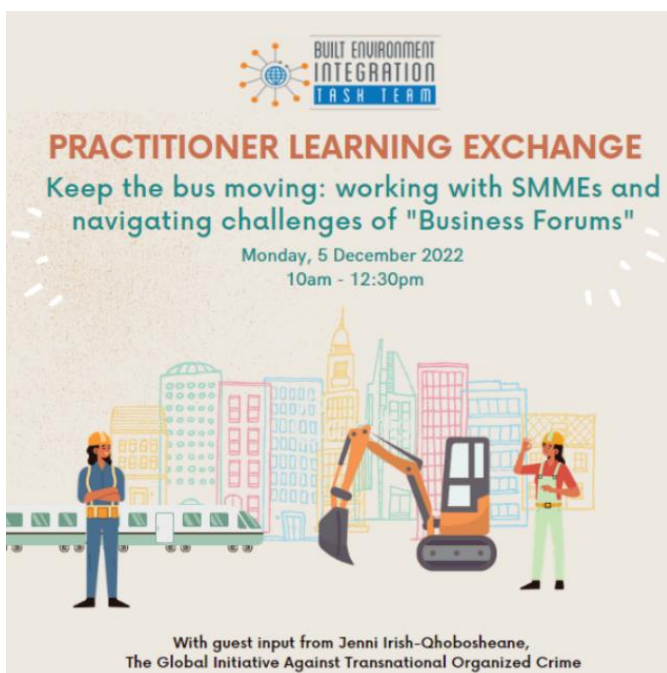
3. IMPLICATIONS OF FINDINGS FOR PRACTICE

This report is taking a more nuanced approach to the issue of business forums, that tries to unpack the prevalence of on-site tensions through understanding the underlying drivers. It maintains that a police-response alone is not the answer and that the “construction mafia” terminology is not always accurate and conveniently shifts the blame away from contractors and government who have largely failed to include SMMEs in a developmental manner. This report is therefore critiquing the media’s obsession with the “mafia” label as well as the usual recommendation that SAPS alone needs to deal with this issue.



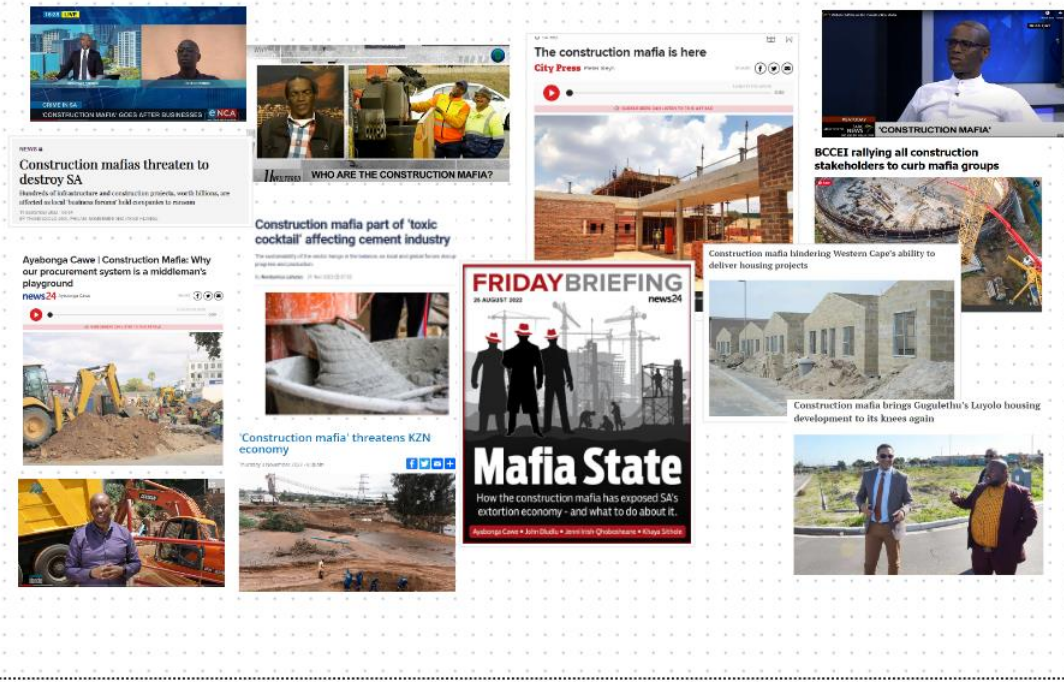
The report uses the participatory practices of the JDA and MBDA as best practice examples and argues that other cities and departments should be learning from them. The recommendations highlight the importance of social facilitation, SMME development, the role of economic development departments, and above all: an agreed upon approach to SMME inclusion so that different cities and entities are not all running in different directions. It argues that a unified approach and philosophy to SMME inclusion is critical to developing the SMME sector and to combat extortion.

4. PRACTITIONER LEARNING EXCHANGE 1



The first Learning Exchange was held on 5 December 2022 as part of the Built Environment Integration Task Team (BEITT) meetings. It was intended to be a first touchpoint with practitioners around the challenges of SMME inclusion in the construction sector and to determine the direction of the research project. The session hosted expert on the topic, Jenni Irish-Qhobosheane, who recently published a report titled “Extortion or transformation? The construction mafia in South Africa”. Irish-Qhobosheane provided a rigorous framing of the session through her in-depth research.

Media coverage:



Presentation by Jenni Irish-Qhobosheane, The Global Initiative Against Transnational Organized Crime



- It's been a wake-up call to the construction sector
- There is a need to distinguish between people involved in extortion and then there are excluded communities with real grievances
- Looking at how the 30% can benefit a community beyond construction

RESPONSES TO EXTORTION IN THE CONSTRUCTION SECTOR

Business responses have included:

- Seeking to interdict those invading sites (more than 51 interdicts granted by 2019)
- Hiring additional security
- Accommodating extortion
- Negotiating with leadership of local business forums

The activities of groups involved in extortion in the construction has been fueled by the weak response from the state, allowing them to expand their activities. This includes failure of the police to respond effectively when invasions occur and failure to disarm and prosecute people leading these invasions

- Different levels of accommodating extortion from simply paying, to involving in the project
 - Negotiating becoming a more common option, often with positive results with training and mentorship, however, there are critics, and needs a well thought-through approach...
1. Can't have a situation where one forum or federation is the gatekeeper for local involvement as not all SMMEs are part of a forum
 2. Can't entrench extortion practices further
 3. If only working with one area, what happens when that contract finishes if they can't participate in other areas?

IMPACT OF EXTORTION IN THE CONSTRUCTION SECTOR

- Damage caused by the business forums has resulted in delays in the delivery of several important infrastructure projects
- It has also contributed to the demise of several businesses.
- Worst affected have been small enterprises within the sector that have lost opportunities for subcontracts
- While the economic impacts may be clear, more difficult to measure is the impact of extortion on people's feelings of security and the long-term damage cause

NEED TO ADDRESS EXTORTION

Disrupting extortion economies, particularly in areas where it has taken root, is not an easy task. However, not addressing it will have dire consequences not just for the construction sector but for the entire country. Failure to address this issue allows extortion to become normalized.

International practices have shown that that to deal with extortion economies it requires serious commitment and that measures implemented need to involve the state, business and communities.

You can't expect the state to arrest away this problem - we need state, business and community

STEPS TO BE TAKEN IN ADDRESSING THE PROBLEM

- The state needs to develop a more comprehensive strategy to deal with the problem of systemic corruption, one that includes a more proactive response from within the criminal justice sector.
- An environment needs to be created that will encourage victims of extortion to feel safe enough to report extortion.
- Strong partnerships need to be developed between government, business and communities.
- Partnerships and strategies need to address the issue of normalization of extortion within the business sector
- The state must address the issue of extortion groups accessing and using illegal firearms.
- Local government needs to be involved in partnerships and strategies developed to address extortion in the construction sector.
- Early-warning systems need to be developed to detect and prevent extortion as it arises.
- Dealing with extortion in the construction sector will require responses that address a comprehensive and equitable approach to infrastructure development
- Integration of local communities in developments taking place is crucial

E.g. Latin America: "farewell to extortion" campaign - refusing to pay

City practitioners from Mangaung and Nelson Mandela Bay joined the session to share their experiences of this issue and provide practitioner-centric perspectives to add to Jenni's research findings. The following key points were raised by the two cities:

- Nelson Mandela Bay, Mandela Bay Development Agency: Reflecting on the Helenvale Safety Prevention through Urban Upgrading project in Helenvale, Gqeberha, George Jerry told the story of overcoming the challenges of working with business forums.
 - At the point of starting SPUU there was only one Business Forum, but other forums were soon formed.
 - Upfront payment and the Preferential Procurement Policy (30% of contracting to go to SMMEs) was demanded and stopping and starting the process with more demands and negotiating.
 - A new process was started, of involving more people.
 - But then new business forums were set up, as youth and women were feeling excluded from the forum.
 - Issues starting again with upfront payments to the new groups.
 - So began the "stadium" process of including large groups of people at the stadium for negotiations.
 - Despite MBDA staff feeling scared to engage, we managed to negotiate successfully.
 - Stadium process: all community leaders to pledge their support of the project and sign an MOU to keep the project moving.
 - After that when there were issues we would convene another stadium meeting.

- Mangaung, Legal Services and Human Settlements Department: Charlie Naidoo and Olebogeng Mojaki shared their experiences of challenges and successes navigating their city's business forums:
 - Mitigation measures: reconstruction and recovery plan, interdicts to forums.
 - Mangaung Service Delivery Forum and Mangaung Concerned Community Forum are the two metro-wide forums operating as representatives of SMMEs.
 - Issues of managers getting held hostage and vandalism to infrastructure.
 - Often the procurement process is not understood.
 - Preferential Procurement Policy framework: casework where the policy was challenged.
 - Changes to the PPP and invalidity of pre-qualification.
 - In Human Settlements, one project was not badly affected by business forums, because of involvement of the community.
 - The community needed the work opportunities and worked around the business forum.
 - In another project, the city met with all the subcontractors in the ward, which has multiple townships.
 - But there are still questions of how to localise the procurements between settlements in a ward - grouping them across settlements throughout ward.

The two cities presented experiences which raised a number of complex questions around the ability of cities to work with SMMEs proactively rather than responding only when relations have soured. Both cities presented successful ways that projects were able to continue. The contributions also sparked a conversation with practitioners from other cities who share experiences from their cities.

- Practitioners from eThekweni and Tshwane contributed to the discussion:
 - The issue of labels is important, we lose the opportunity to engage when you use the label of "mafia".
 - On the municipal side: how transparent are we as local government?, there are very few medium and SMMEs benefiting while others are benefitting
 - Violence breeds violence, communities are preparing themselves or responding to violence from the state.
 - There's a limit on the supply side from the SMME sector and a missing voice - so there's a gap that gets taken advantage of
 - I've worked with multiple sectors, and there is always a cloud around things and "impure" agendas.
 - Lots of us are technical, PMs are engineering types. We need people who can navigate the technical and social.
 - Have to introduce a social facilitator in a contract. Policy just talks about CLOs.
 - If we had more Jerry's it would really help.
 - Issue of emphasis of the ward and continuity of opportunity
 - Tender documents are so disempowering.
 - It's encouraging to hear how colleagues are responding differently.
 - "Looking for lost keys in the light" - highlighting the issues of mafias and 30% are issues under the light and the issues lie elsewhere.
 - Cases from Malaysia in implementing economic development plan with a huge amount of detail. We tend to go for slogans without the detailed groundwork to inform programmes.
 - At the coalface one must fashion out what is expedient to get the most movement
 - Role of communities is critical, you learn a lot from the community, which will enhance how progress will look in the future.
 - Regulations can limit the creativity because in fact we should be playing outside of the regs to get solutions.

- Jenni Irish-Qhobosheane closed the session with her key take-away points:
 - Research needs to look at how do you bring local communities into the economies?
 - Are local businesses always going to be SMMEs dependent on subcontracting?
 - What do we define as local? For business forum's it's often a settlement
 - Cannot ignore the environment that causes these challenges.
 - You're not going to solve the problem of gatekeepers, unless there is a bigger strategy of engaging in the economy in a sustainable way.
 - What does genuine local community development actually look like - without gatekeepers.
 - How to engage local communities to be engaged in a sustainable way.

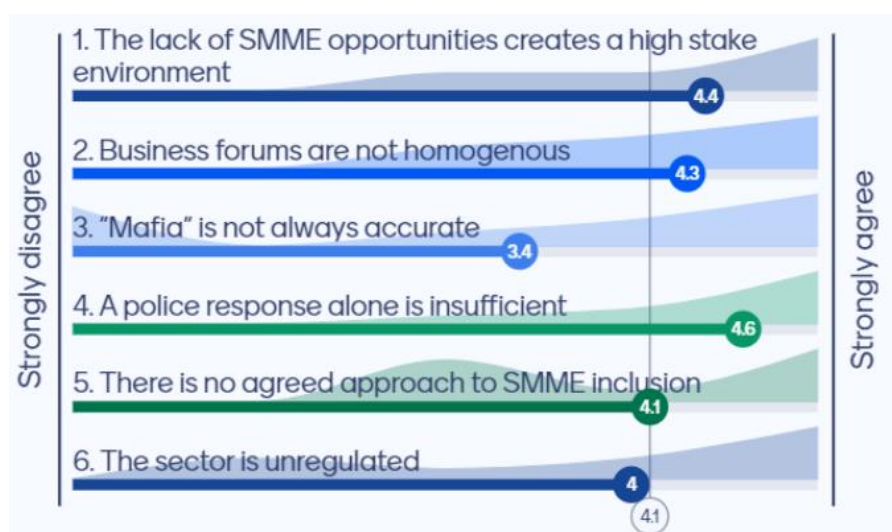
The Learning Exchange provided an important departure point for the research project and help to identify key focus areas at the outset based on the actual experiences of city practitioners. It also helped to outline some of the kinds of solutions that city practitioners are exploring to keep projects moving. The focus on Mangaung and Nelson Mandela Bay, and the interesting solutions that they shared, led to these two cities becoming two of the three case study sites to be used for gathering research. The City of Joburg was also added as a case study as practitioners from Joburg expressed interest to participate.

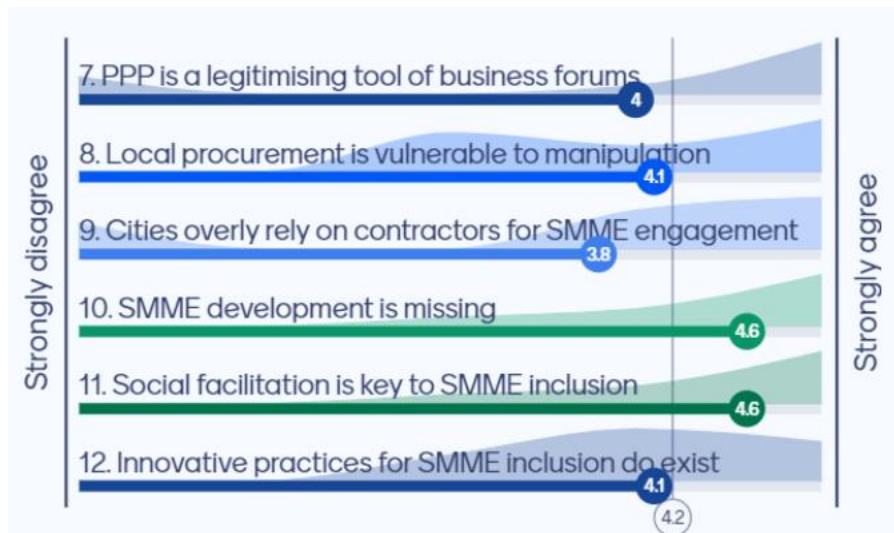
5. PRACTITIONER LEARNING EXCHANGE 2

The second Learning Exchange took place on 24 May 2023 and was an opportunity for sharing the research findings and co-creating recommendations with practitioners who were involved in the interview process as well as other interested practitioners from cities not included in the research. The session started with an empathy mapping exercise (right) to try to understand the experience of an SMME trying to get work in the construction sector and the challenges that they face.



In order to get feedback from practitioners on the research findings, an anonymous poll was run throughout the presentation that allowed participants to rate on a scale of 1 – 5 the degree to which they agreed or disagreed with each of the 12 findings. The below graphics summarise the feedback showing an average score of 4.15 out of 5 for the level of agreement. While certain findings had strong agreement from the group, others were more contentious, such as the finding that the “mafia” label is not always accurate when describing the tactics of business forums.





Results of the Mentimeter poll on participants' levels of agreement with the findings presented

- In addition to the poll, practitioners were given the chance to discuss the findings and share their reflections:
 - City of New York ENDGBV office highlighted the relationship between the City and how procurement excludes small black and brown people. The City budget is a moral document, must deliver justice for all City residents, especially the most vulnerable.
 - (cont.) This framing has not been explicit in the South African context in terms of understanding it as an issue of justice and morality.
 - (cont.) The Procurement Justice document also talks to high barriers [to entry]. Very strong critique that suggests evidence-based interventions are also a matter of justice and ethics.
 - The challenge is how reporting happens - reports on disruption of construction site but not reporting extortion.
 - Issue of extortion or protection money not coming to the fore in the research.
 - The opportunity is if we change our thinking, naming, framing, and working relationship we can affect change.
 - If we want to play by the criminal rules we will never effect change.
 - People present themselves as a business first, we haven't experienced that people come with a gun. If we create the rules it becomes difficult to push through the criminal element.
 - We are not giving criminality power, we are not projecting ourselves as victims.
 - The mafias sometimes extort for "protection money" from these companies? but protection from what other mafias? this is crime and law enforcement should do more.
 - Did we investigate the cost of security on site due to the nature of the environment with SMMEs?
 - Have we engaged with SMMEs in this research? How they would be beneficiaries of this reform agenda?

As per the report, each finding is associated with a number of proposed recommendations which are wide-ranging and involve multiple sectors and actors:

Finding	Recommendation
1. The lack of SMME opportunities creates a high-stakes environment	<ul style="list-style-type: none"> Public infrastructure projects need to be designed with SMME opportunities in mind Economic Development departments need to take a more active role in creating opportunities across government projects
2. Business forums are not homogenous	<ul style="list-style-type: none"> A forum of knowledge sharing is needed: cities need to share insights and practice between each other to find ways to manoeuvre through complexities and potentially disruptive and violent incidents when they arise More research is needed to understand the different ways in which business forums are operating
3. "Mafia" is not always accurate	<ul style="list-style-type: none"> The media needs to be more nuanced with how it reports about construction site disruptions More research is needed to understand the different ways in which business forums are operating
4. A police response alone is insufficient	<ul style="list-style-type: none"> Zero-tolerance on extortion and "protection money" SAPS needs to be more proactive with responding to on-site violence Government needs responses beyond policing to deal with the underlying drivers
5. No agreed approach to SMME inclusion	<ul style="list-style-type: none"> National framework or practice guideline is needed for local SMME inclusion to guide practitioners and establish coherence City departments and entities must be on the same page with regards to SMME engagement philosophies A forum of practice sharing: cities need to share insights and practice between each other to find ways to manoeuvre through complexities and potentially disruptive and violent incidents when they arise
6. The sector is unregulated	<ul style="list-style-type: none"> CIDB needs to assist with the grading of SMMEs to prioritise those that want to develop
7. PPP is a legitimising tool	<ul style="list-style-type: none"> National Treasury needs to address the PPP misinterpretations and provide guidance (in progress)
8. Local procurement is vulnerable to manipulation	<ul style="list-style-type: none"> City databases of SMMEs per ward need to be developed and resources given for their ongoing management
9. Cities need to take responsibility for SMME inclusion	<ul style="list-style-type: none"> Cities as the procuring entity need to play a more hands-on role and not leave it to the contractors to interface with SMMEs
10. SMME development is missing	<ul style="list-style-type: none"> Contractors and the private sector need training on SMME development It must be mandatory for contractors to have dedicated SMME supervisors Cities must have SMME development specialists Databases need to reflect the development of SMMEs and record training undertaken and track progress Department of Small Business Development needs to play a more hands-on role
11. Social facilitation is key to SMME inclusion	<ul style="list-style-type: none"> Engineering and built environment students and practitioners need training in soft skills and community/SMME participation Social facilitators need to become mandatory in all city departments that implement infrastructure projects
12. Innovative practices for SMME inclusion do exist	<ul style="list-style-type: none"> Knowledge and practice sharing platforms are needed between and within cities, including implementing agencies and economic development departments

Participants were given space to interrogate the list of recommendations and suggest changes as well as propose additional recommendations relating to the findings:

- Relating to Finding 1:
 - It would be beneficial if SMME's were organised with a representative body so that uniform communication/negotiation between role players and SMME's can take place.
 - DWYPD shared opportunities which can be an alternative to empower SMMES.

- Ward Councillors can definitely play an active role in improving this challenge, I think the National School of Government should be approached to provide this message to councillors.
- Relating to Finding 4:
 - Community based development and the issues of civil society as eyes and ears of community. It is a development of an asset for a community.
 - We need to create more enabling spaces for people affected by extortion to report these matters to authorities, at a policing level. Intelligence needs to play a role in combating organized crime.
 - We should emphasize the refrainment of normalizing extortion because it has the potential of spilling over to other sectors.
- Relating to Finding 5:
 - Institutions such SAICE, CIDB, SARF, ECSA, etc needs to be included in the training, COP, knowledge sharing sessions. The industry needs to play a more active role in this matter.
 - Not all of the responsibilities only on Cities.
 - Need an SMME engagement policy to know how to deal with SMMEs.
 - Procurement policies should also guide SMME components in the procurement processes.
- Relating to Finding 9:
 - Problem in getting involved in the construction politics, the client doesn't get involved with subcontractors. can play a role in facilitating the agreements, but don't agree they should get intimately involved.
 - 30% has increased the cost of construction, contractors want to be paid up front for the 30%
 - The best placed person to keep reminding the community stakeholders "we are doing this for you" - is sometimes the client to keep driving this message. Whereas the contractor is bound to the details of the contractor.
 - There is involvement vs interference. SMMEs are stakeholders we have identified and if we work this journey with them, it is much better than what the contractor would do alone.
 - We hear it a lot that "this is between the contractor and subcontractor" - but the best person to keep it objective is the client.
 - Not all of the responsibilities only on Cities.
- Relating to Finding 10:
 - Include an Action Plan for Skills Development for SMME in the Contract between Govt and Contractor which implementation must be reviewed at the termination of the Contract to determine fulfilment of the Main Contractors obligations.
 - SEDA (Small Enterprise Development Agency) must also be engaged.
 - Institutions such SAICE, CIDB, SARF, ECSA, etc needs to be included in the training, COP, knowledge sharing sessions. The industry needs to play a more active role in this matter.
 - DWYPD shared opportunities which can be an Alternate to empower SMMES.
 - SEDA (Small Enterprise Development Agency) must also be engaged.

- Relating to Finding 12:
 - Positive intervention of Ward Councillors is also extremely important.
 - Are there not lessons to be learnt from how Cities handled dealing with the minibus taxi industry. There are some similarities.
- General recommendations and responses:
 - Complexity of construction legal agreements and the role of the City with the main contractor. Legal complexity of tripartite agreement
 - Way in which municipalities contract upfront creates key issues.
 - Other side of the contracting world, the 30% has unintentionally increased the cost of projects per Cities.
 - Legal and contracting processes are limited within the MFMA constraints.
 - There is room to specify subcontracting arrangements in contracts. Contracts need to be based on consent of both parties.
 - Addressing some of these issues at procurement stage can have real benefit.
 - Involvement of the client- difference between involvement and interference. The best person to remind the SMME stakeholder that the project is for the client.
 - Role of the City as a key interface to be the voice of the community between the SMME and main contractor.
 - Day to day engagement the City really has a key role to play to allow the contractor to do the work.
 - Are there not lessons to be learnt from how Cities handled dealing with the minibus taxi industry. There are some similarities.

6. WAY FORWARD

Practitioners agreed that this is a critical area of interest affecting cities that cuts across multiple sectors and elements of city development, and thus practitioners beyond project management and the built environment need to be engaged, such as supply chain managers and economic development managers. Instead of creating a new Community of Practice around this subject, it was proposed to use existing platforms to leverage the findings and implement some of the recommendations, such as the City Budget Forum and Economic Development Managers Forum.

A key recommendation for SACN to champion that would assist with practice around SMME inclusion is the development of a practice guide to assist practitioners with a co-produced and shared approach to dealing with SMMEs based on the innovative practices uncovered in the findings. SACN is committing to take forward this task into the 2023-2024 financial year as part of the Inclusive Cities' annual projects.

