

**Waiting
Daily rhythm in a time of loitering
bylaw enforcement**

Ismail Farouk

Misfortune comes to one who waits. The saying holds some truth in the case of the trolley pushers (luggage porters) of Joubert Park in downtown Johannesburg: They spend a fair amount of their time waiting for customers on street corners, where they are often arrested for contravening the city's loitering bylaw that forms part of a preventative policing policy. Johannesburg's loitering bylaw provides a legal framework for the arrest and abuse of poor black people, who the public authorities perceive as undesirable and criminal. The bylaw was developed at the height of apartheid during the state of emergency in 1985, and even though many consider it unconstitutional, is still being enforced on the streets today.

For the trolley pushers, the enforcement of the loitering bylaw presents a daily work time challenge, adding to a life already dogged by uncertainty, danger and poverty.

Today, Monday, I am feeling under the weather because of the hangover. Where I am renting in Soweto they promised me to chase me away because I did not agree with the rising of rent with R100. This is stressing me a lot as I haven't found a place of my own. It's been five years staying at the same place and paying the same money for those years. As you might know, when a place has a new owner, old rules change to new ones but for me they are beyond my control. Even the toilet is locked. When you are going to the toilet you have to ask the keys from the landlord. This is affecting my performance at work. Even my friends are not visiting me anymore – Mthobisi Dlodlo, Cigarette Paper Diaries (Mon 30/03/09).

On leaving home for work, Mthobisi notes:

Every morning my mode of transport is a taxi and takes 30 to 45 minutes. Today it took 15 minutes from Soweto to town! The taxi driver's rudeness made every passenger inside the taxi to remain quite. One brave guy told him about smoke emitting from the engine and explained that every person inside the taxi is a breadwinner. The driver said the car needs money, but he also needs money and the taxi owner also needs his money at the end of the day. So that is why he cannot service the car. To us passengers, prayer was the only solution to our problem. I did not think we would reach our destination safely the way he was overtaking – Mthobisi Dlodlo, Cigarette Paper Diaries (Thurs 26/03/09).

**በፖሊስ ያለአገባብ ቢታሰሩ ምንማድረግ
እንዳለብዎ ያውቃሁን?
መብትዎን በማወቅ እራስዎን ይጠብቁ!!!**

ሰሞኑን ፖሊስ ያለአገባብ በጥቅል በጄ.ኤንስቦርግ በተለይም በመሀል ከተማ ማሰሩን ቀጥሏል። ብዙዎች የሚታሰሩበት ምክንያት "LOITERING" ወይም በከተማ ውስጥ ያለምክንያት በዘዋወር መገኘት በሚል የሰው ልጅን መብት የሚጋፋ ነስ ነው። ይህ ግፍ ተግባር በእስም ላይ ቢደርስብም ማድረግ የሚገባዎ ጥንቃቄዎች፤

1. የፖሊሱን ስም ወይም የፖሊስ መኪና ቁጥር ለመያዝ ሞክር ለምሳሌ. (HB07, Hillbrow car number 7)
2. በምን ምክንያት እንደታሰሩ **NOTICE OF RIGHTS** መጠየቅ።
3. ፖሊስ አገባብ ባለወ መልኩ ካልለቀቅዎ ለፖሊስ የገንዘብ ቅጣት ወይም **ADMISSION OF GUILT** ከክፈሉ ደረሰኝ ይጠይቁ።
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ለተጨማሪ መረጃ በስልክ ቁጥር 011 633 2140 ይደውሉ



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Amharic language loitering pamphlet, 2009
courtesy of Africa Diaspora Forum

As the conveyor of an artist-led initiative called *Trolley Works*, I began exploring ways of circumventing the effects of the criminalisation of trolley-pushing activity in the city. One of the objectives of the art project was the manufacturing of custom-made trolleys owned by trolley pushers and so, in theory, safe from police confiscation of stolen supermarket trolleys, which threatens their livelihoods. Another objective was to develop creative strategies for dealing with the loitering bylaw. Strategies were adopted with regard to the enforcement of the loitering bylaw; in 2009, research led to a workshop designed to inform participants of their legal rights if arrested for loitering. In writing about daily life in a time of loitering bylaw enforcement, this work draws on the written accounts of trolley pusher and cigarette salesman Mthobisi Dlodlo.



Cigarette salesman and trolley pusher Mthobisi Dlodlo sitting outside Magic Spares Shop on Twist Street, Joubert Park, 2009
courtesy of Ismail Farouk

On Method

Mthobisi's written work began as part of a creative writing experiment, aimed at developing practical methodologies for documenting the rhythms of everyday life in the city. His entries were hand written on the gold cigarette paper found inside a flat pack of 30 Courtleigh cigarettes, and, for this reason, they became more affectionately known as *The Cigarette Paper Diaries*. The inspiration for this writing emerges from the work of Henri Lefebvre, who outlines a method for analysing the rhythms of urban space and the effects of those rhythms on people (Lefebvre, 2004). It builds on his past work, with which he argued that space is the product of social practices.

In practical terms, the writing methods used attempted to combine Lefebvre's notions of the rhythms of the everyday with ideas from writer and musical composer WA Mathieu, who is the author of a practical guidebook, called *The Listening Book*. Mathieu's work sets out practical methodologies for documenting auditory landscapes, and for using the power of listening as an instrument of self-discovery and personal transformation.

The process we followed began with the documentation of sounds in the urban environment. Later, the writing exercises included the use of other senses, such as sight (observation) and smells. This work was conducted over a one-month period during March 2009. Mthobisi found time to write while

waiting for customers standing outside Park Central Filling Station on the corner of Twist and Plein Streets.

Waiting: Trolley-pushing activity in central Johannesburg

Many people are being paid their wages today. Hopefully it's going to be a good day for me. It's now past 10 am and the police are arresting anyone with a trolley, even if you carry the load or luggage on your head. If they know that you are a trolley, boy they will arrest you. I feel so blessed because I had the privilege of selling cigarettes even though this place is a No Hawkers Zone – Mthobisi Dlodlo, Cigarette Paper Diaries (Tues 20/03/09).

On average, a trolley pusher earns around R20 a day. This meagre figure is the result of stiff competition amongst the large numbers of self-organised trolley pushers, who charge as little as R5 for the transportation of a single load of luggage between the two major taxi interchanges in the area, although occasionally the opportunity arises to earn more:

As I was about to reach Park Central Motor Spares where I work, I saw something amiss and it happened when a taxi driver was trying to change a spare wheel. One guy saw a phone inside the taxi. He took it and ran away. So I had to tell the driver to run after him and we managed to get the phone back to its rightful owner. He gave me R20 to say thank you. I had to carry 15 boxes of oil with my trolley from Magic Spares to Park Central Spares. It's a distance of nearly 100 metres and they gave me R40! It took me 10 minutes to reach my destination – Mthobisi Dlodlo, Cigarette Paper Diaries (Tues 13/03/09).

It's morning time: a police van is parked next to us, as they are arresting people without passports. Shwi! Shwi! Shwi! is the sound of a broom, which they are using to clean the pavement. R3-R3-R3 – Zam-Buk! Someone is selling and about five drivers are getting rowdy about how they managed to escape from Metro Cops during a roadblock. Around 12pm Sakhisizwe is collecting trolleys and this makes other people not to work. During the afternoon my friends [school children] visited me so we had to have a joyride together on the new trolley. They enjoyed each and every moment together – Mthobisi Dlodlo, Cigarette Paper Diaries (Tues 13/03/09).

At the time of the project, there were no city-run social welfare programmes aimed at young adults in Johannesburg, although occasionally trolley pushers can access counselling programmes and feeding schemes run by local faith-based organisations.

In February 2009, the City of Johannesburg began construction of the Bus Rapid Transport (BRT) system in Joubert Park. As the bulldozers and heavy road maintenance equipment arrived, so did the police trucks. The digging up of the sidewalk space caused a physical disruption to street selling and to related economic activity, moreover it became clear that the physical infrastructure work was linked to a wider targeted social clean up of the city.



Trolley pushers Hansa Monsaka and Keith Busani pose in front of a police truck, 2009
courtesy of Ismail Farouk

It's Monday and the traffic cops are everywhere. The taxi drivers are trying to run away but to no avail. I am between Plein and Klein Street where this is happening. The only sound I can hear is the sound of my trolley when it is empty. Many people are running away from metro cops. The streets are empty except for those who have the right to sell in the streets – Mthobisi Dlodlo, Cigarette Paper Diaries (Tues 16/03/09).

Unusually, the mandate to formalise trolley-pushing activity in Johannesburg lies with the Community Policing Forum (CPF). This is unusual because the activities of the CPF are generally associated with representation of community needs in policing matters. Yet, in Joubert Park the CPF are known for brutal enforcement and harassment.

Today I arrived at work very late around 9am. As I arrived, someone introduces himself to me as Mr Khumalo. He is from Policing Forum and he says they are registering everyone pushing a trolley. He wanted to take a photo of me. I refused because he did not divulge any details of the contract. He promised to arrest me for loitering on Friday. So it is a wait-and-see situation – Mthobisi Dlodlo, Cigarette Paper Diaries (Tues 31/03/09).

The criminalisation of trolley pushing (and indeed many other activities on the street) through enforcement of the loitering

bylaw does not seem to make an impact on the numbers of trolley pushers operating during the week. Raids on Fridays result in weekend detention, however, by Monday, the detained trolley pushers are back on the streets in search of a supermarket trolley to continue their work. The trolley pushers say they are not directly responsible for the theft of trolleys.

In response to the theft of supermarket trolleys, the chain stores have contracted a private security company, Sakhisizwe, to help recover the stolen trolleys. This firm conducts weekly raids in collaboration with patrollers from the local Community Policing Forum and the South African Police Services (SAPS). In response, the trolley pushers have devised a system whereby trolleys are locked to immovable property on the sidewalks. During raids, trolleys are also moved off the streets and are parked in the basements of high-rise buildings.

A protest action against the criminalisation of trolley-pushing activity in 2008 demonstrated that the trolley pushers were united in their struggle. Addressing members of the police, they argued that they were providing a valuable service and were not mere criminals, as suggested by the police. The deadlock between trolley pushers and the police provided the rationale for the development of a legal alternative to the stolen shopping trolleys used on the streets.

In March 2009, the *Trolley Works* Project began to implement a legal cartage trolley alternative. The work was undertaken in collaboration with Johannesburg-based artist Rob Peers, and the participating trolley pushers who stood outside the Park Central Filling Station. Our collaboration resulted in the production of 13 custom-built cartage trolleys, but our aspiration was to build an eventual 140 trolleys to meet the demand on the streets.

It was during this period that police stepped up their operations, not only arresting trolley pushers for their use of stolen trolleys but indiscriminately arresting people under the loitering bylaw. Our trolley initiative was adversely affected by the newly enforced bylaw, as many trolley pushers were arrested, despite their use of the new legal trolley.



Stolen trolley padlocked on the streets, 2009
courtesy of Ismail Farouk

Fighting arrests for loitering

By definition, loitering means standing around without intent. However, the people being arrested at the time of this project were far from idle. Most were informal workers and traders, who ply their trade on the sidewalks. Once arrested for loitering, victims were transported to the Hillbrow Police Station, where they were fined R300, as well as subjected to further abuse – for example, their identification documents were destroyed. A prominent feature of the enforcement campaign was corruption amongst the police officers: The bribe for instant release was R100.

On 16 May 2009, the *Trolley Works* Project hosted a workshop aimed at empowering trolley pushers on the appropriate course of action if they were arrested for loitering. The workshop was held in collaboration with the Africa Diaspora Forum (ADF), which continues to play a leading role in refugee advocacy work in the city. Representatives from both the SAPS and the CPF were present at the workshop. However, earlier that morning the police had targeted the trolley pushers in Joubert Park, making several arrests and confiscating supermarket trollies, resulting in poor attendance and creating a tense atmosphere, as the police raid had left some trolley pushers feeling visibly upset.

First, trolley pushers were briefed on their legal rights in case of arrest and encouraged to seek assistance from the Wits University Law Clinic if necessary, including help with accessing Home Affairs documentation and other permits. Using a leaflet informing people on the steps to take if they were arrested, based on information gathered by the Clinic, and published by the ADF in several languages (English, French, Amharic, Swahili, Portuguese and later isiZulu), participants were briefed on their legal rights.

ADF member Claire Benit-Gbaffou explained to the trolley pushers present that the steps they should take are as follows:

1. If possible, take note of the POLICE CAR NUMBER (for instance HB07: Hillbrow car number seven) if you are not able to take note of the police officer's name.
2. If arrested, ask for a NOTICE OF RIGHTS at the police station. (It is compulsory for the police to give notice and explain why you are arrested.)

3. Ask for a RECEIPT if you pay the fee to the police, or AD-MISSION OF GUILT if you are not able to.
4. After your release, you can contact the AFRICAN DIAS-PORA FORUM for free support (africandiasporaforum@gmail.com).

If an individual who had been arrested had the correct documentation, she explained, it would be possible for them to bring a lawsuit against the Ministry of Safety and Security for each charge of loitering. Potentially legal action can result in the payment of financial compensation, with previous successful cases having resulted in awards of between R20 000 and R60 000 (US\$2 500 – 7 500) per victim.

The workshop also provided an opportunity for dialogue and direct engagement with the authorities without the usual consequences. It was clear not only that the trolley pushers felt victimised, but also that the responsibilities and powers of different branches of the police force were unclear to members of the public and that there was a tendency for one branch to dismiss allegations against police involvement in arbitrary or illegal behaviour by passing the blame onto another.

Next, Police Inspector Mampa, the SAPS representative, explained that the police have no choice but to continue their work enforcing existing laws: 'You usually see me in the streets. Some of you I know; I *arrest* you for different cases. So this one for loitering is the law. It's the law!' If a law is perceived as unfair, he suggested, the only way forward is to seek to have it repealed. To this end, he stressed that pressure from civil society is essential in challenging laws that lead to unfair consequences. Defining the loitering by law, Inspector Mampa explained that the police can arrest people who are thought to be 'about to commit a crime', as well as people who were thought to be 'about to be a victim of a crime', for instance someone who is drunk and is at risk of being mugged.

There were many allegations of police corruption. Inspector Mampa noted that not all members of the police are equally well trained, pointing to reservists who worked on a voluntary basis, without an official salary. He advised the trolley pushers to get in touch with him or with the CPF if a member of the police force abused them.

The trolley pushers responded by pointing out that CPF members were known to solicit bribes themselves. In support



Amharic language loitering pamphlet, 2009
courtesy of Africa Diaspora Forum



Mthobisi Dlodlo (left) distributes and discusses loitering rights pamphlets with trolley pushers working outside Station Liquor Market, 2009
courtesy of Ismail Farouk

of their allegations, I described an occasion where CPF patrolers attempted to solicit a bribe for the release of the Park Central Filling Station trolley pushers, who spent the better part of a day handcuffed to a palisade fence. The CPF members clarified that the community patrolers do not form part of the CPF; rather, they are enrolled as volunteers and trained in a programme headed by the MEC for safety and security. Everyone present was left feeling unsatisfied with the police responses to the bribery allegations.

Conclusion

In 2009, the Central Methodist Church, the most active faith-based organisation in the downtown area, launched a High Court application in an attempt to have the loitering bylaw declared unconstitutional. The case put forward by representatives of the church argued that pre-emptive enforcement provides the police with the power to do whatever they please. In essence, anyone can be arrested at any time, as was demonstrated in May 2009, when police arrested hundreds of homeless people, including disabled persons, women, children and many refugees and asylum-seekers who were sleeping in the vicinity of the church. Many human rights abuses were reported during the arrests, as victims were beaten. Subsequent abuse occurred at the police station, where people's belongings, identity documents, passports and work papers were destroyed.

In the court settlement reached, the City Council signed an agreement stating that the loitering bylaws would not be enforced in the vicinity of the Church (Strategic Litigation Unit, 2009). At the time of writing this article, the loitering bylaw is still being enforced in Joubert Park.

Overcoming the loitering bylaw would be possible with pressure from civil society, as suggested by Inspector Mampa during the loitering workshop. I can see how the work being done by the Africa Diaspora Forum and other civil society groups needs wider institutional support and could also benefit from greater exposure from the media. While it is astonishing that this apartheid-style law continues to provide a legal framework for the arrest and abuse of the most vulnerable people, my fear is that the loitering bylaw is a mere technical legal fix used as a tool to achieve a broader economic objec-

tive, which excludes people who are not considered part of the vision of the regenerated city.

In the case of Johannesburg, the broader economic imperative is linked to property-driven urban renewal processes, which I argue need to be seen in context of the absence of a plan for dealing with the socio-economic challenges faced by the existing poorer residents. The value of Mthobisi's work then, and the methodologies he employs, is the shift of focus from the broader objective and promises of tomorrow, to the realities and the priorities of here and now.

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