

Informal Trade Meets Informal Governance: Street Vendors and Legal Reform in India, South Africa, and Peru

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Abstract

Street vendors conventionally are understood as operating outside of state regulatory frameworks. Recent research, however, has emphasized the role of the state in constructing vendors' informal status and has documented local government practices that take advantage of an ambiguous legal environment for vendors. These practices include low-level harassment, merchandise confiscations, and arbitrary evictions. This article examines the regulatory spaces through which local government officials have developed these informal practices and documents the extent to which street vendors and market traders experience them in five cities: Accra, Ghana; Ahmedabad, India; Durban, South Africa; Lima, Peru; and Nakuru, Kenya. The article then identifies three components of legal reform used in Ahmedabad, Durban, and Lima to counter those practices: (1) establishing limits on municipal power, (2) linking street vending to poverty alleviation, and (3) establishing channels for street vendors' representation. The findings suggest ways in which cities can more effectively balance the right to livelihood with the need to govern public space.

Introduction

In the wake of the 2008 global financial crisis, governments and donor agencies increasingly are recognizing the need to rethink employment as a central component of economic recovery and long-term development. A significant shift within that renewed focus is the recognition of informal livelihoods as a form of employment that is here to stay. The World Bank, for instance, has declared that “a global agenda for jobs is needed” (The World Bank, 2013: 38) and echoed the OECD’s recent conclusion that informal is normal (OECD, 2009). Official statistics indicate that

informal employment accounts for much more than one-half of total nonagricultural employment in most developing regions—as much as 82 percent in South Asia and 66 percent in sub-Saharan Africa (ILO and WIEGO, 2013)—and one-half or more of informal workers in most regions are self-employed (Vanek et al., 2014).

The shift in focus toward informal self-employment is especially significant for the urban development agenda. Renewed calls for sustainable and participatory approaches to urban development (for example, UN-Habitat, 2013) require the collective engagement of those who work informally, because they form the majority of workers in many cities (Herrera et al., 2012) but tend to lack representative voice in decisionmaking (Brown and Lyons, 2010; Horn, 2015; Kabeer, 2015). Among the informally self-employed, street vendors comprise as much as 15 percent of total urban employment and 25 percent of total urban informal employment in low-income countries and between 2 and 11 percent of urban informal employment in middle-income countries (Herrera et al., 2012; ILO and WIEGO, 2013)—a substantial and visible part of many urban workforces.

Street trade has long attracted both policy attention and research interest (Bromley, 2000). Recent scholarship is increasingly focused on the interplay between street vendors and local governments and, in particular, the ways in which the state ascribes and constructs informal status on street vendors and the ways in which it does so through a lens of neoliberal entrepreneurial governance (Crossa, 2009; Devlin, 2011; Donovan, 2008; Morange, 2015; Oz and Eder, 2012; Steel, Ujoranyi, and Owusu, 2014; Xue and Huang, 2015). A common theme within this emerging literature is its exploration of governance practices, undertaken on the part of state actors, that likewise could be considered informal.

This article addresses the theme of informal governance practices as they relate to street trading. It begins by establishing a baseline of evidence on these practices from five cities across three continents, drawing from qualitative and quantitative data from 2012. The analysis suggests that three common governance practices—low-level harassment, merchandise confiscations, and periodic evictions—emerge in urban governance contexts in which the rules about the economic right to use public space for petty trading are ambiguous, but also in which limitations on the state's powers are ambiguous. It then examines legal processes in three of the cities as sites of contestation where street vendors have attempted, and been successful at, establishing clearer limits on the local state's power to engage in informal governance practices. The analysis implies that the beginnings of a trend toward legalizing the use of public space for trading may be starting to emerge, but that one necessary condition for such legalization is a coalition of street vending organizations and elite actors with a common commitment to advancing the right to livelihood.

Informal Trade Versus Informal Governance in Global Cities

Street trade played a central role in the development of the concept of economic informality in the 1970s (Hart, 1973; Moser, 1978) and 1980s (Castells and Portes, 1989; De Soto, 1989). Whereas some of the earlier conceptualizations placed street traders and other informal workers outside state regulations and formal economic structures, more recent research has emphasized the role of the state and social institutions in constructing and governing informality (Harriss-White, 2009; Roy, 2005; Watson, 2011, 2009; Xue and Huang, 2015).

An important new direction in this recent research is a focus on the interaction between informal traders and local governments. One research strand places explanations of urban governance approaches—including both public space cleansing exercises (Donovan, 2008) and tolerance of street vending (Holland, 2015)—in electoral politics. Another strand emphasizes the nonpermanence of the relationship between street vendors and the state, as incoming municipal administrations constantly renegotiate the terms on which they tolerate informal trade (Roever, 2005; Xue and Huang, 2015). Several strands also have traced different forms of resistance to neoliberal urban governance approaches that prioritize private investment over public consumption of public space (Crossa, 2009).

All these studies imply that the relationship between informal traders working in public space on the one hand and local government officials charged with governing public space on the other hand is a dynamic one. Often obscured within this dynamic, however, are the regulatory spaces through which local government officials—primarily the police and other enforcement agencies—develop mechanisms to use their own position of relative power to extract concessions, both material and symbolic, from street vendors. These mechanisms are referred to collectively as informal governance practices—informal in that they do not adhere to written norms regulating the ways in which local government authorities are (or are not) empowered to address street vending.

Low-Level Harassment

One such mechanism identified in the literature is referred to as “low-level harassment” (Skinner, 2008). This mechanism emerges in situations in which the legitimacy of street vendors’ access to public space is legally or politically ambiguous. Itikawa (2006), for instance, documented “bribes per square meter” paid in downtown São Paulo, where 90 percent of street vendors lack a permit. Anjaria (2006) similarly showed how an overlay of licensing requirements that are impossible to meet and temporal restrictions on vending activity generated by higher-level city officials can generate a form of double illegality that requires the payment of “double hafta” (bribe) on the part of vendors to lower-level officials. Harassment is not restricted to demands for bribes; researchers have also documented the common police practices of arbitrarily chasing vendors away from their posts and seizing goods for personal consumption (Asiedu and Agyei-Mensah, 2008; Mahadevia, Vyas, and Mishra, 2014). The lack of protection for street vendors is especially evident in cases in which women vendors are targeted for harassment or asked to exchange sex for permits (Lubaale and Nyang’oro, 2013).

Merchandise Confiscations

A second mechanism that local enforcement officials use is the seizing of vendors’ merchandise, using one or more components of the legal infrastructure as justification. In India, for example, for decades, police have invoked the India Penal Code of 1860, the India Police Act of 1861, and the Bombay Municipal Corporation Act of 1888 as justification for seizing vendors’ goods (Mahadevia et al., 2012). It is more common that local bylaws contain provisions granting authority to municipal officials to seize vendors’ goods as a sanction against unauthorized use of public space (Skinner, 2008). Those provisions in many cases are not accompanied by limitations on what municipal authorities can do with seized merchandise afterward and, where such limitations exist, vendors have little recourse anyway if their goods are never returned (Roever, 2014).

Evictions

A third mechanism through which state actors exert unequal power is arbitrary evictions, often linked to electoral cycles or mega-events (Corrarino, 2014). Small-scale, targeted evictions of vendors from particular streets or blocks are common; a 3-month pilot in 2012 to track evictions worldwide counted at least one per day reported in the mass media in English and Spanish only (WIEGO, 2012). More widely recognized are the large-scale, coordinated evictions implemented by multiple city departments, such as the infamous Operation Murambatsvina in Zimbabwe (Musoni, 2010; Skinner, 2008) and Operation Clean Sweep in Johannesburg, South Africa (Béni-Gbaffou, 2015), and smaller-scale but notably violent evictions (Swanson, 2007; Xue and Huang, 2015). As Steel, Ujoranyi, and Owusu (2014) noted, these evictions may succeed in clearing the streets for a short time but, over the longer term, they do not actually deter street vending.

Common to these governance practices is a “selective logic of regulation” that generates uneven rules and uneven levels of control across urban spaces (Xue and Huang, 2015). They seem to emerge regardless of what the actual regulations are; the common thread is that formal governance regimes are ambiguous about collective rights to access and use urban public space to carry out livelihoods (Brown, 2015), and the regimes are ambiguous about the limitations on the state to enforce them. The following section examines these practices in five cities: Accra, Ghana; Ahmedabad, India; Durban, South Africa; Lima, Peru; and Nakuru, Kenya.

Legal Ambiguity and Insecurity of Workplace: Evidence From the Informal Economy Monitoring Study

This section draws on the Informal Economy Monitoring Study (IEMS), a 10-city study of working conditions in three occupational sectors of the informal economy—home-based work, street vending, and waste picking—undertaken by the global research-policy-advocacy network Women in Informal Employment: Globalizing and Organizing (WIEGO) and membership-based organizations (MBOs)¹ of informal workers as part of the 5-year Inclusive Cities project.² The objective of the IEMS was to provide credible, grounded evidence of a range of driving forces, both positive and negative, that affect conditions of work in the informal economy over time. Using two primary data collection

¹ The term *MBOs* in this report refers to those representing informal workers. Informal workers' MBOs are a subset of the broader category “membership-based organizations of the poor,” which are defined as organizations whose governance structures respond to the needs and aspirations of the poor because they are accountable to their members (Chen et al., 2007).

² More information about the study is at <http://wiego.org/wiego/informal-economy-monitoring-study-iems-publications>, and more information about the Inclusive Cities project is at <http://www.inclusivecities.org>.

techniques—one qualitative³ and one quantitative⁴—the study examined the impact of these drivers across and within sectors and also informal workers' responses to them. The first round of the study, undertaken in 2012, examined street vending in Accra, Ahmedabad, Durban, Lima, and Nakuru.

The study's sampling approach was designed to maintain comparability in the results across cities on the one hand and to allow some flexibility as demanded by local circumstances on the other hand. Each city team aimed to include only MBO members or affiliates. Street vendors were sampled along two variables in each city, sex, and location, where location was dichotomized into center-city and noncentral areas.⁵ Among the respondents in the sample, 72 percent were women and 28 percent were men. In each city, the research team developed the most representative sample possible of MBO members, including both street and market vendors.⁶

The pervasiveness of the practices noted previously is evident in data from the study, with some interesting variations by city and type of trader. The drivers ranked most important by focus group participants related to workplace insecurity, harassment, and evictions (Roever, 2014: 22). The quantitative data similarly showed that general insecurity of vending sites and harassment on the part of authorities are common problems for street vendors in Ahmedabad, Durban, Lima, and Nakuru, but are less so for vendors in Accra (exhibit 1). Harassment on the part of local authorities and police affect more than one-half the survey sample in Ahmedabad and Durban and nearly one-half in Lima and Nakuru; merchandise confiscations and evictions were also common in Ahmedabad, Durban, and Nakuru.

The data in exhibit 1 reflect somewhat different approaches to the regulation of street trade in the five cities. The Accra sample consists mostly of market traders, who pay a mix of daily, weekly, monthly, and annual fees to the local authority (Anyidoho, 2013; Budlender, 2015). The local governance regime around *markets* in Accra builds on the historical role that central markets have played in the city's history; the governance regime around *streets*, conversely, criminalizes informal trade. The low percentage of Accra respondents reporting problems associated with an insecure trading site reflects the fact that the sample contains mostly market traders with more secure worksites.

³ The qualitative component of the study was based on participatory informal economy appraisal (PIEA), an innovative method designed to capture systematically the perceptions and understandings of informal workers, in their own words, in a focus group setting. The PIEA qualitative methodology was developed collaboratively with Caroline Moser, Angélica Acosta, and Irene Vance, who designed the tools and trained the city teams in data collection methods and data analysis. Each city team—consisting of an MBO coordinator, two qualitative researchers, and two quantitative researchers—conducted 15 focus groups of about five participants each per occupational sector or group (home-based workers, street vendors, and waste pickers).

⁴ The quantitative component consisted of a survey questionnaire administered to the 75 focus group participants plus another 75 workers, for a total of 150 respondents per city-sector. The questionnaire was designed to supplement the focus group data by collecting information on the household profile and income sources of the workers; the asset profile of the workers' households; the enterprise or occupation of the workers; and the linkages between their informal work and the formal economy.

⁵ The exception was Ahmedabad, where only women street vendors were sampled because the partner MBO, the Self-Employed Women's Association (SEWA), has only women members. In that case, the second sampling variable was product category, dichotomized as food and nonfood vendors.

⁶ The findings are therefore not necessarily representative of the entire street vending population in each city—only those affiliated with the MBO.

Exhibit 1

Problems Street Vendors Encountered in Work in Five Cities

Problem	Accra, Ghana (%)	Ahmedabad, India (%)	Durban, South Africa (%)	Lima, Peru (%)	Nakuru, Kenya (%)	Total (%)
Insecurity of vending site	6.71	67.76	49.31	60.14	42.22	45.33
Harassment	8.00	61.18	55.41	43.54	43.97	42.41
Confiscations	3.33	44.08	53.42	21.77	38.35	32.01
Evictions	7.33	63.16	44.90	17.36	27.35	32.39

N = 738.

Note: Differences between cities are statistically significant at the .001 level (χ^2) on every item.

Source: Informal Economy Monitoring Study survey data (2012)

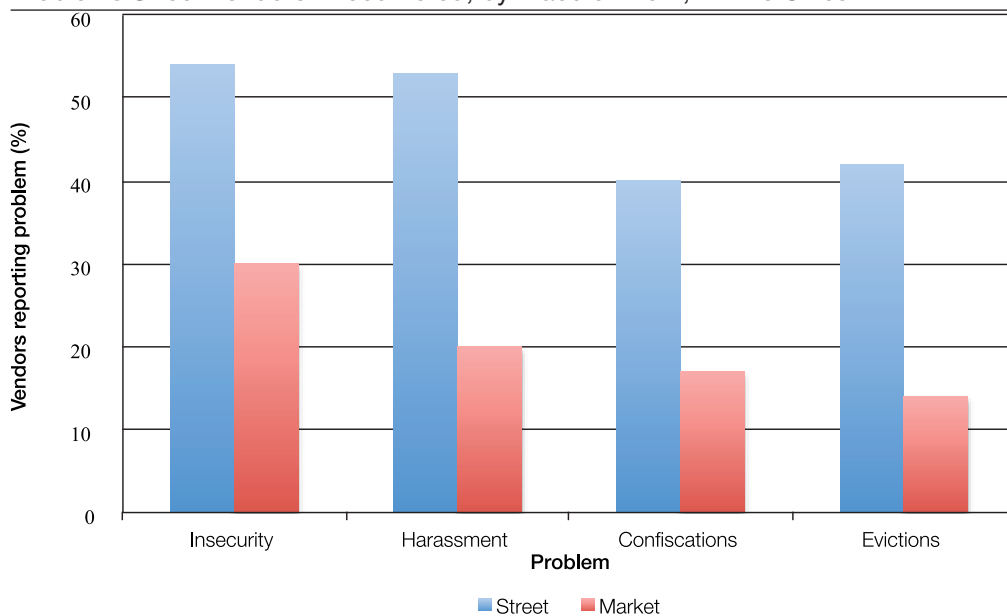
The Ahmedabad sample to some extent represents the other end of a continuum. This sample consisted only of street traders, none of whom hold a license because the municipality has not issued licenses for many years, despite high court demands to do so (Mahadevia, Vyas, and Mishra, 2014). Street trade in Ahmedabad is not explicitly criminalized in law; in fact, it is one of the few cities where vendors can point to several decades of judicial decisions supporting their right to livelihood. Local authorities, however, routinely apply their own informal governance approaches, rooted in asymmetrical power and a lack of effective rights among the poor, by engaging in all manner of harassment and justifying those actions with colonial-era legal provisions related to public obstruction and public nuisance.

Local authorities in Durban, Lima, and Nakuru all fall somewhere in the middle by applying a mix of permitting or licensing, regulatory restrictions, neglect or forbearance, and low-level harassment to manage street trade. Durban’s policy orientation toward street trade has oscillated from apartheid-era control to inclusion and support and to incremental erosion of that support (Skinner, 2008). The city has a permitting system for street and market traders, and many traders in the sample hold permits; yet the permits do not provide them with *effective* protection of rights (Mkhize, Dube, and Skinner, 2014; Roever, 2015) because, in practice, few limitations exist on the effective power of the local authorities over traders. Put differently, the written rules are ambiguous enough that they establish opportunities for local authorities to abuse their positions of power and take advantage of traders who have little recourse; for example, one trader said about the police, “they do as they please” (Roever, 2014: 25). This abuse of power helps explain why even a notable portion of market traders—who have a more routinized claim to their space in cities—are subject to harassment, confiscations, and evictions (exhibit 2).

Lima’s policy orientation toward street vendors has likewise shifted over the years, but it has also been uneven over the city’s 43 local municipal districts. The trend broadly was toward supportive policy in the 1980s, when municipal elections opened a door for politicians to recruit votes from vendors; moved toward more antagonistic policy in the 1990s under urban neoliberalism that prized successful evictions and relocations, starting with the city’s Historic Center; and became ambivalent in the early 2000s (Aliaga Linares, 2012; Roever, 2005). Some municipalities have licensing systems, but others do not.

Exhibit 2

Problems Street Vendors Encountered, by Place of Work, in Five Cities



Source: Informal Economy Monitoring Study survey data (2012)

The Lima respondents, also a mix of street vendors and market traders, reflect the variety of circumstances in this large city. Instability of workplace is very common (60 percent). Some vendors in the sample hold licenses, but those are temporary and can be revoked by the authorities at any time. Others sell from the same spot every day but have to dodge the authorities because they lack licenses. Still other vendors in the sample are itinerant and have no fixed workplace at all. Harassment on the part of local authorities is fairly common across the board and is especially common among women and fresh produce vendors (Castellanos, 2014; Roeber, 2014). Confiscations as a practice are less prevalent among the Lima sample than among the samples in Ahmedabad and Durban, however, and evictions are more episodic.

Nakuru represents an interesting contrast as a smaller city. Like Lima, Nakuru has a licensing system, and those in the sample who hold licenses reported the substantial benefit that it brings in terms of security of workplace. Those who try to sell in the busiest part of the city, known as “the stage,” however, are more likely to be itinerant vendors and more likely to report increasing harassment (Lubaale and Nyang’oro, 2013), including assault, abuse, arrest, and solicitation of bribes in exchange for licenses, and those who sell farther away from the heart of the city reported fewer problems. For example, one respondent said, “They trump up charges and then you get locked up.... If you are fortunate, they will ask you to pay a bribe” (Roeber, 2014: 28). Therefore, although the formal legal-regulatory system in Nakuru does not vary across space, as it does in Lima, the informal practices applied by local authorities do.

These issues around informal governance mechanisms have shaped legal challenges and campaigns undertaken by street vendors in Ahmedabad, Durban, and Lima. The following sections explore these legal developments, emphasizing three countermechanisms that aim to transform the relationship between city authorities and street vendors. The next section, *Establishing Limits on Municipal Power*, examines instances in which legal challenges have established limitations on the power of municipal authorities, with specific reference to confiscations and evictions. The following section, *Linking Street Vending to Poverty Alleviation*, traces the pro-poor components of current legal norms that open a space for the legitimization of street vending as an appropriate use of public space. The next section, *Providing Channels for Street Vendors' Representation in Decisionmaking*, outlines cases in which structures of representation have been created to bring the collective voice of street vendors into local decisionmaking. The shift in these cases toward some form of legal recognition of street vending is significant historically, given the global restructuring of employment that has been under way for several decades now (ILO, 2015).

Establishing Limits on Municipal Power

Ahmedabad

Efforts to establish limitations on the power of local authorities began in Ahmedabad with the Self-Employed Women's Association (SEWA) of India, which has been organizing women street vendors since the 1970s and which was instrumental in the founding of the National Association of Street Vendors of India (NASVI). Both organizations—SEWA beginning in the 1970s and NASVI in the 2000s—have pursued legal reform through various strategies, including public interest litigation, protest, negotiation, and national-level advocacy.

Street vending in India has long been framed by colonial-era legislation. During the first half of the 20th century, municipal authorities drew on the substantial powers granted to them in laws defining public nuisance,⁷ assigning duty to the police and to municipal authorities to remove obstructions in the public way,⁸ and establishing sanctions for committing offenses in public space⁹ to restrict or prevent street vending. Of those laws, only the Bombay Municipal Corporation Act of 1888 identified a circumstance in which selling goods on the street would be permissible: under and in conformity with the terms and provisions of a license granted by the commissioner.

In the latter half of the 20th century, street vendors began pushing back against the considerable arbitrariness with which nuisance regulations were being applied. One early success took place in the 1970s, when SEWA filed a case petitioning the High Court of Gujarat state for trading spaces and licenses for vendors at Manek Chowk, the historic trading area in central Ahmedabad (Bhatt, 2006). In this instance, the petitioners argued the case on the basis of article 19(1)(g) of the Constitution of India, guaranteeing the protection of rights to carry on any occupation, trade,

⁷ India Penal Code of 1860, Section 268 (public nuisance) and Section 283 (obstruction in public way).

⁸ India Police Act of 1861, Section 31 (establishes police as duty bearer for keeping order in streets and preventing obstructions); Bombay Municipal Corporation Act of 1888, Section 314 (establishes Municipal Corporation as duty bearer for the removal of obstructions [Section 61]).

⁹ India Penal Code of 1860, Section 283; India Police Act of 1861, Section 34.

or business. The argument was that the Ahmedabad Municipal Corporation and its police force were using the power granted to them under state legislation¹⁰ to collect fines from street vendors without complying with provisions from the same legislation mandating the municipal corporation to issue licenses for street vending (Mahadevia et al., 2012). In this case, the court granted the request to issue licenses and vending space to the vendors at Manek Chowk.

Additional cases filed in the 1980s led the Supreme Court of India to progressively clarify the rights of street vendors. In one case, the Bombay Hawkers' Union challenged the constitutional validity of the Bombay Municipal Corporation Act of 1888 on the grounds that it confers unguided power on the authorities to refuse vendors licenses and, therefore, denies them the right to livelihood as established in article 19(1)(g) of the Constitution. In its ruling, the court evaluated the Bombay Municipal Commissioner's (BMCs) scheme for issuing licenses and creating hawking zones and, in doing so, introduced some restrictions on the BMCs power by applying a *standard of reasonableness*.

This ruling marked a significant shift in the way the Supreme Court of India evaluated claims around the right to livelihood. The court defined several practices that were unreasonable: (1) to deny street vendors the ability to protect their wares at all from sun, rain, wind, and so on; (2) to prohibit the sale of food, as "there are several working families in Bombay, belonging to different strata of society, which depend on the food supplied by hawkers"; (3) to require vending to stop at 9:00 p.m., because "in cities like Bombay nights are quite young" at that hour; and (4) to not issue licenses for hawkers in areas other than nonhawking zones; indeed, it argued that licenses "should not be refused in the hawking zones except for good reasons." The court also established a spatial norm for the first time, that "as far as possible there should be one hawking zone for every two contiguous municipal wards in Greater Bombay."¹¹

The limitations the court placed on local government power were subsequently reflected in the National Policy on Urban Street Vendors, first issued in 2004 and later revised in 2009 (Sinha and Roever, 2011), and in the Street Vendors Act of 2014,¹² which protects the rights of urban street vendors and regulates street vending activities at the national level. The 2014 act places explicit restrictions on merchandise seizures, evictions, and relocations. Although it has yet to be implemented fully, these provisions give vendors leverage in reigning in arbitrary treatment on the part of the authorities.

Durban

The organizing context in Durban has followed a different path than in Ahmedabad and, consequently, the trajectory of legal challenges there began much more recently. The first successful effort on the part of street vendors and their allies to limit the power of the local state came in 2009 with a case filed to block the city's plans to demolish part of the historic Warwick Junction markets

¹⁰ The Bombay Provincial Municipal Corporation Act of 1949 (Section 384); the Bombay Police Act of 1951 (Section 102 and Section 117). These two pieces of legislation were rooted in, and borrow language from, the Bombay Municipal Corporation Act of 1888 and the India Police Act of 1861, respectively.

¹¹ *Bombay Hawkers' Union v. Bombay Municipal Corporation*, July 3, 1985.

¹² Accessible at <http://wiego.org/resources/street-vendors-protection-livelihood-and-regulation-street-vending-act-2014>.

to make way for a shopping mall (Chetty and Skinner, 2013). The city eventually rescinded its decision to build a mall, but, throughout that period and in subsequent years, street and market traders faced frequent harassment from local authorities.

The city's 1995 street vending bylaws, along with the 1991 Businesses Act, framed local government practice in a way that has encouraged the impoundment of goods, even when a street vendor holds a permit. Such was the case of John Makwickana, a 65-year-old trader supporting a family of eight by selling plastic and rubber sandals in downtown Durban. In 1996, he secured a permit in exchange for a fee and, in subsequent years, hired an assistant, who also paid for a license. On August 6, 2013, a police officer arrived at his stall when he was away and his assistant had gone to a nearby market to purchase food; the officer impounded 25 pairs of new sandals on the grounds of illegal trading, given that both the applicant and his assistant were away from the table at the time she arrived.¹³ The receipt she issued for the impounded goods did not itemize what she took, nor did it specify where the goods would be kept or how he could get them back. The notice set the fine at 300 rand.

The South African Legal Resources Centre supported Makwickana in challenging the component of the relevant norm¹⁴ that imposed no limit on fines applicable to street traders, thus providing police officers with “unfettered discretion to determine the amount of the fine regardless of whether it is proportional to the infringement.” The case also challenged the norm in its failure to offer guidelines about how confiscated goods should be dealt with, again allowing for unlimited discretion on the part of police officers. Without clear guidelines, they argued, the act conflicted with section 1(c) of the Constitution of South Africa establishing the supremacy of the rule of law.

The judge who heard the case ruled that the municipality was going beyond the scope of its powers by impounding the applicant's goods¹⁵—a highly significant development in a context in which abuses of authority were routine and pervasive. According to the ruling, the municipality was not authorized by the empowering provision to impound the goods and, thus, violated the principle of legality embedded in section 1(c) of the constitution.

Further, the court ruled that the impoundment provisions of a revised bylaw issued in 2014 (section 35(1) to (8)) were problematic. This section of the ruling is significant, because it recognizes the type of everyday harassment that vendors face and it articulates the blatant disregard for due process on the part of the authorities.

Section 35(1) permits an official to remove and impound goods upon the mere suspicion, reasonably held, that the informal trader has contravened a provision in the By-law. Effectively, the street trader suffers punishment and deprivation of her property before a court of law has determined her guilt.... Section 35(1) is over-broad in that it permits impoundment for all contraventions without differentiating between serious absolute contraventions and less serious, formal non-compliances such as trading without producing proof of a permit that do not pose a threat to the public.¹⁶

¹³ The local bylaws have been interpreted over the years to say that the permit holder must be physically present at his or her stall at all times.

¹⁴ Subsection 6(A)(1)(d)(i) of the 1991 Businesses Act.

¹⁵ *Makwickana v. eThekweni Municipality & Others*, Paragraph 74.

¹⁶ *Makwickana v. eThekweni Municipality & Others*, Paragraph 80.

These deficits were held to be all the more significant, given that the bylaw also empowers the municipality to sell, destroy, or otherwise dispose of impounded goods. In Makwickana's case, the municipality failed to give notice of the sale of his goods or the refund to which he was entitled, less the impoundment fee—making it effectively a confiscation rather than an impoundment. Allies of Makwickana viewed the court's move to limit the authorities' ability to engage in this practice as highly significant, given its pervasiveness.

Lima

By contrast with events in the other two cities, the street vendor movement in Lima has focused recently on legislation, rather than litigation. The city's approach to street vending evolved from populist support in the 1980s to a strong neoliberal stance in the 1990s that continues to dominate into present day (Aliaga Linares, 2015). Street vendor organizations most recently lobbied for an updated metropolitanwide ordinance to replace one that had been in existence since 1985 but that was rarely enforced. The metropolitan administration under Mayor Susana Villarán undertook the effort to pass a new ordinance; Ordinance 1787 came into effect in May 2014.

The ordinance reflects what was politically possible for the city's first leftist mayor since the 1980s, given the country's neoliberal political orientation. It establishes the "temporary and exceptional" nature of authorizations to vend in public space (chapter II, par. 4.3) and contains a vision of eventually "graduating" all street vendors to microenterprise operators working in private commercial spaces. The ordinance contains very little in the way of limitations on the power of local authorities, save for article 47, which contains mentions of the right to due process, to be treated with respect, to be oriented in formalization processes, and to the rights established in the country's constitution. Nonetheless, it complements regulation with promotion in the sense that it aims to support vendors in an effort to save enough capital to eventually formalize—so it is not strictly focused on restrictions and punitive measures.

Linking Street Vending to Poverty Alleviation

Ahmedabad

In addition to establishing limits on the actions of local authorities regarding its restrictions on street vending, the Supreme Court of India also made a case for public space as a livelihood resource in contexts of poverty. In another 1985 ruling on the constitutional validity of the provisions of the Bombay Municipal Corporations Act of 1888 relating to obstructions on public streets relative to the rights outlined in article 19 of the constitution,¹⁷ it ruled on the content of the right to life and, specifically, on the question of whether the right to life contained the right to livelihood. It is significant that the court ruled that it does.

The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by

¹⁷ *Olga Tellis & Others v. Bombay Municipal Corporation & Others*, October 7, 1985.

law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. Deprive a person of his right to livelihood and you shall have deprived him of his life.¹⁸

The court went on to establish the right of street vendors to work in public space more forcefully than it had before in the case of *Sodan Singh v. New Delhi Municipal Corporation* in 1989. It stated explicitly that the right to carry on trade or business established in article 19(1)(g) of the constitution, “if properly regulated, cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and for no other use.”¹⁹ Proper regulation is a necessary condition, it argued, but “there is no justification to deny the citizens of their right to earn a livelihood by using the public streets for the purpose of trade and business.”²⁰ Moreover, the court acknowledged that roads are not laid for the purpose of the carrying on of private business, but rather for the use of the general public for transit. It argued, however—

This is one side of the picture. On the other hand, if properly regulated according to the exigency of the circumstances, the small traders on the said walks can considerably add to the comfort and convenience of the general public, by making available ordinary articles of every day use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after [a] day’s work can pick up these articles without going out of his way to find a regular market. If the circumstances are appropriate and a small trader can do some business for personal gain on the pavement to the advantage of the general public and without any discomfort or annoyance to the others, we do not see any objection to his carrying on the business.²¹

These and other provisions of the court’s rulings have firmly established the right to use public space for street vending in India and have done so with reference to the role street vending plays in poverty alleviation, not only for the vendors themselves, but for residents who depend on vendors to access goods in small quantities and at low prices.

Durban

The Durban High Court’s ruling on the Makwickana case also reflects a pro-poor orientation toward the use of public space as a livelihood resource. In doing so, it begins to establish the groundwork for arguments in favor of collective rights to public space, pushing back against the commodification of public land. The court’s opinions on two aspects of the case—the poor’s access to courts and the need for procedural fairness with regard to property rights—make the point clearly.

¹⁸ *Olga Tellis & Others v. Bombay Municipal Corporation & Others*, Paragraph 2.1.

¹⁹ *Sodan Singh v. New Delhi Municipal Corporation*, Paragraph 3.

²⁰ *Sodan Singh v. New Delhi Municipal Corporation*, Paragraph 11(4).

²¹ Paragraph 16 of Special Leave Petition (C) No. 15257 of 1987, cited in *Sodan Singh v. New Delhi Municipal Corporation*.

Regarding access to courts, although Makwickana had legal representation, which the court noted is unusual for street vendors, he still did not have an opportunity to recover his goods before they were disposed of, nor was he compensated for his loss afterwards. As the court stated,

[The] right of access to courts is theoretical and illusionary for street traders generally... The meager income they generate goes to sustaining their large families. Employing legal assistance is not realistic. Reform of the dispute system design in the informal sector should take this into account.²²

In addition, the court ruled on the impoundment provisions as they relate to section 25(1) of the constitution, which says that no law may permit arbitrary deprivation of property. The Constitutional Court had previously ruled that a law is arbitrary if it does not provide sufficient reason for the deprivation or is procedurally unfair; in this case, the Durban High Court ruled that the dispute mechanism in section 35 “is incapable of giving effect to the right to procedural fairness before a street trader is deprived of her property permanently,”²³ and also not a proportionate means to the intended end. It forcefully argued that—

Deprivation is so invasive of their property rights that it impacts on the welfare of the street traders and their large families. For most the impounded goods are their only assets and means to a meal. Impoundment is therefore serious irrespective of the commercial value of goods. Deprivation also impacts on their identity and dignity as people with property, however little that is.²⁴

Again, this marks a significant turning point in that the court is explicitly recognizing the conditions of poverty in which these workers are operating and explicitly articulating the effective denial of rights that takes place when the powers of local authority are not constrained. The effect of the bylaw, it argued, was an “irrational and arbitrary deprivation of property,”²⁵ an unacceptable limit on the constitutional right to trade, and a violation of the constitutional protection against discrimination.

The effect of section 35 is to deny street traders access to courts in terms of section 34 of the Constitution, to deprive them of their property permanently without compensation or accounting in contravention of section 25 of the Constitution, and to prevent and impede them in exercising their right to trade in terms of section 22 of the Constitution. Cumulatively and individually the limitation of these rights compounds the prejudice upon a race and socio-economic group already adversely impacted by poverty.²⁶

The court also found that the bylaw limited the constitutional rights to life (section 11), security of person (section 12), the freedom to trade, the right to property, and the right to equality. It recognized that “the nature of the sector is such that unless officials are oriented to be empathetic towards street traders, the risk of powerful officials mistreating powerless poor people is real.”²⁷

²² *Makwickana v. eThekweni Municipality & Others*, Paragraph 87.

²³ *Makwickana v. eThekweni Municipality & Others*, Paragraph 96.

²⁴ *Makwickana v. eThekweni Municipality & Others*, Paragraph 97.

²⁵ *Makwickana v. eThekweni Municipality & Others*, Paragraph 99.

²⁶ *Makwickana v. eThekweni Municipality & Others*, Paragraph 122.

²⁷ *Makwickana v. eThekweni Municipality & Others*, Paragraph 135.

Lima

Despite Lima's explicit neoliberal policy orientation, even that city's new 2014 ordinance also contains some pro-poor provisions. The crux of the ordinance is around access to temporary authorizations to use public space for street vending. The ordinance establishes preferential access to "vulnerable groups in extreme poverty," including the elderly, persons with disabilities, and female heads of household (article 21). It also allows vendors with disabilities and elderly vendors to have a helper assist with the business, and it contains provisions for temporary assistants in cases of illness (article 24). Further, authorizations are issued for a 2-year period, an improvement from the previous 1-year period that vendors argued was necessary to allow sufficient time for accumulating the capital necessary to move off the streets.

Providing Channels for Street Vendors' Representation in Decisionmaking

Ahmedabad

A central component of the 2014 Street Vendors Act in India is the definition of Town Vending Committees (TVCs) to carry out surveys of vendors, ensure that all existing vendors are accommodated in vending zones, and issue certificates of vending. The act orders that the members of the TVCs include at least 40 percent representatives of street vendors, elected by street vendors themselves, at least one-third of which are women. It also requires that due representation is given to scheduled castes and tribes and also to other minorities and persons with disabilities.²⁸

The TVCs are granted considerable authority, leaving the details of who gets a license to vend in what space to a local struggle about who controls the TVC. With 50 percent representation coming from nongovernmental organization (NGO) representatives (40 percent vendors, 10 percent community-based organizations or NGOs), in principle, less scope exists for governance practices that ignore the protections of vendors outlined in the legislation. Also note that SEWA and NASVI both influenced the development of the law, as they had the policy, over the course of many years—so they had the opportunity to build in protections, including the representation of street vendors in decisionmaking.²⁹

Durban

As noted previously, Durban does not have the long history of organizing that characterizes Ahmedabad and Lima, and the recent court decision on confiscations does not address representation in decisionmaking *per se*. The ruling, however, does argue that, as currently written, the relevant street trading bylaw does not offer meaningful dispute resolution to vendors, given the costs involved in litigation. It therefore recommends that a "more accessible and expeditious dispute design system" take into account the capacity constraints on affected vendors and that the

²⁸ Chapter VII of the law details the composition and procedures of the TVCs.

²⁹ The nature and extent of this influence were corroborated in personal interviews with SEWA representatives, conducted by Lily Freeman on behalf of WIEGO, on November 3, 2014.

city must manage its officials more effectively, for “without a firm hand on officials who misbehave, conflict with street traders will persist as respect for law enforcers wanes.”³⁰ The court’s attention to meaningful engagement between street vendors and local authorities represents a first step along the path followed in other cities.

Lima

Although it is far less focused on rights and protections for vendors than the other two cities, Ordinance 1787 in Lima was passed with unprecedented consultation between municipal officials and street vendors’ organizations. The latter established a “Metropolitan Coordinator of Popular Commerce” (locally referred to as the *Coordinadora*) in May 2012 as the space in which vendors’ organizations could achieve a unified voice on the content of the ordinance and liaise with the city administration on its passage. The administration, in turn, formulated its own draft ordinance and organized dialogue sessions with vendors in different parts of Lima, which helped the administration identify concerns with its proposal. It then established a working group with representation of both vendors and city officials to make revisions to the text and eventually present it to the city council.

Moreover, the ordinance itself contains a representative structure, somewhat like India’s TVCs. These structures, called Tripartite Consultation Commissions, also consist of representatives of the municipality, vendors’ organizations, and neighborhoods. Their mandate is to coordinate plans and formalization programs for street vendors with their democratic participation. The ordinance also contains provisions outlining the rights of street vending organizations’ leaders, including the right to be recognized as interlocutors and to be attended to by local officials. According to the city official who implemented the consultative process with street vending organizations in Lima’s 43 districts, “the initiative that vendors took was evident in their proposal to promote changes that would allow them to exercise their citizenship rights and influence the Municipality of Lima, to overcome repressive policies and, in concerted fashion, make municipal legal norms more adequate.”³¹

Policy Implications and Future Research

Despite widespread recognition that street vending is an ancient form of livelihood that exists all over the world, its legitimacy as a modern-day occupation is rarely made explicit in law or in policy. An important stream of recent scholarship has begun to explore how this deficit shapes the day-to-day interactions between vendors and local governments. The evidence presented in this article locates informal governance practices—including low-level harassment, arbitrary confiscations, and evictions—within legal-regulatory frameworks that lack limits on local authorities’ power vis-à-vis street traders. It also gives examples in which street vendors and like-minded elites have jointly advanced collective livelihood rights via legislation and litigation.

³⁰ *Makwikhana v. eThekweni Municipality & Others*, Paragraph 144.

³¹ Guillermo Nolasco Ayasta, “Ordenanza que Regula el Comercio en Los Espacios Públicos de Lima: Iniciando un Sueño (que se hizo realidad),” May 7, 2014. <http://marcialperezherrera.blogspot.com/2014/05/ordenanza-que-regula-el-comercio-en-los.html> (author’s translation).

Recent research holds important lessons for policymakers in both developing and developed countries. First, just as reasonable limits should be placed on the use of public space for livelihood activities, so should limits be placed on informal governance practices that enable local officials to use their position of power to undermine the income-generating activities of those who rely on public space for their livelihood. Second, policy processes in which street vendors and their representative organizations are involved can result in a balance between regulation and protection that may be more sustainable than strictly regulatory or punitive approaches. In U.S. cities where street vending regulations are being contested at present—including New York City, New York; Chicago, Illinois; and Los Angeles, California—understanding the daily experiences and perceptions of vendors themselves could go a long way toward developing rules that are appropriate and sustainable. Finally, in the global urban policy agenda, efforts to recognize and promote the “right to the city” and sustainable, inclusive urbanization—including those under way as part of the Habitat III process³²—must not neglect informal livelihoods.

Further research into informal governance practices and the rules that shape them can play an important role in addressing a city’s need to balance livelihood opportunities on the one hand and reasonable regulation on the other hand. A specific need is for future research to analyze the menu of technical options for establishing fair and transparent systems for allocating licenses and permits, including mechanisms designed to advantage the poor in accessing them. A strong need also exists for more research that privileges the lived experience of vendors in interacting with local authorities and legal-regulatory structures.

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³² Habitat III is the third United Nations Conference on Housing and Sustainable Urban Development, which takes place every 20 years. The next meeting will take place in Quito, Ecuador, in October 2016.

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