



Sub-national governance and the plight of people working in public spaces

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1. Introduction

The socio-economic and political landscape in many African countries has seen some improvement since the independence wave of the 1960s and 1970s. However, the current reality in several African countries remain stark as there remains challenges such as high population density, poor healthcare systems, limited access to land, water shortages, and inadequate infrastructure.¹ This is coupled with inequality, poverty, and high unemployment rates, forcing populations to turn to the informal economy for survival.² Consequently, the informal economy has in many Sub-Saharan African countries become the main economic driver, making up between 25 and 65 percent of the Gross Domestic Product and accounting for

between 30 and 90 percent of total non-agricultural employment.³

The informal economy can be described as all economic activities by workers and economic units that are (in law or in practice) not covered or insufficiently covered by formal arrangements.⁴ Activities within the informal economy include the sale of food, fresh produce (fruits and vegetables) and other small products; mini-bus operating and touting, the collection and recycling of waste products, as well as the operation of small businesses, such as barbershops and hair salons.⁵ These activities are conducted in public spaces that are accessible to all citizens, regardless of their income and

¹ T Corrigan, 'Socio-Economic Problems Facing Africa: Insights from Six APRM Country Review Reports' (South African Institute of International Affairs, 2009), 4, <https://saiaa.org.za/wp-content/uploads/2009/06/Occasional-Paper-34.pdf>.

² Corrigan, 'Socio-Economic Problems Facing Africa: Insights from Six APRM Country Review Reports'.

³ 'World Economic and Financial Surveys Regional Economic Outlook - Sub-Saharan Africa Restarting the Growth Engine' (International Monetary Fund, 2017), 49, <https://www.imf.org/>

</media/Files/Publications/REO/AFR/2017/May/pdf/sreo0517-chap3.ashx>.

⁴ International Labour Organization, 'Informal Economy', 2023, <https://www.ilo.org/global/programmes-and-projects/prospects/themes/informal-economy/lang-en/index.htm#:~:text=The%20informal%20economy%20refers%20to,insufficiently%20covered%20by%20formal%20arrangements.>

⁵ Women in Informal Employment: Globalizing and Organizing, 'Informal Economy', 2023, <https://www.wiego.org/informal-economy#:~:text=The%20informal%20economy%20is%20the,employment%20in%20small%20unregistered%20enterprises.>

personal circumstances.⁶ A distinction can be made between open public spaces (beaches, parks and other natural spaces, roadsides, pavements, markets or squares), closed public spaces (libraries, museums or religious, spiritual and heritage sites) and other spaces of public use (transport interchanges, sports grounds and recreational facilities).⁷ In this context, we refer to work conducted in open public spaces such as markets, pavements, squares or street corners where potential customers are located.

The reality in most African countries is that those working in public spaces are generally vulnerable people such as women, children, migrants, poor and homeless persons who depend on it for survival. The right to work in public spaces has recently become a highly contested issue. On the one hand, international human rights law seeks to protect fundamental human rights, including and not limited to, the right not to be discriminated against, the right to human dignity and the right to freedom of movement⁸, and on the other hand, more needs to be done to protect the rights of all workers, including those working in the informal economy or in public spaces.⁹ There is a need to problematize and rethink the conventional notions of work in the informal economy

owing to the distinct challenges that those working in it encounter and the significant contribution that they provide to the socio-economic development of countries. To the above should be added that informal traders (particularly women traders) typically have several dependents,¹⁰ indicating that constructive reforms will have a multiplier effect, but the reverse is also true for restrictive laws and enforcement.

This fact sheet highlights the plight of certain groups of people working in public spaces including women traders, migrants, reclaimers and transport operators and touts.

2. Background and key issues

There is a clear distinction between the formal and informal economy. The former is regulated by rigid national legislative provisions which guarantee the rights and responsibilities of employers and employees; while the latter is unpredictable and flexible by nature, and is governed by regulations set at local government level, which may present several challenges for persons working in public spaces. In the below, five such challenges are articulated.

The first challenge is the onerous bureaucratic requirements such as the possession of trading or market

⁶ Safer Spaces, 'Public Spaces: More than "Just Space"', 2023, <https://www.saferpaces.org.za/understand/entry/public-spaces>.

⁷ Safer Spaces.

⁸ 'UN General Assembly, "International Covenant on Civil and Political Rights", Arts. 2, 3, 6, 7, 9, 10, 12 and 26', Pub. L. No. Pub. L. No. Resolution 2200A (XXI) (1976).

⁹ S Roever, 'Workers' Rights in Informal Economies', *Organising Precarious Workers in the Global South (Beyond Trafficking*

and Slavery/Open Democracy, 2020), https://cdn-prod.opendemocracy.net/media/documents/Organising_Precarious_Workers_In_the_Global_South.pdf.

¹⁰ 'Know Your Rights: Informal Trader Workers' (Legal Resource Center (Durban), 2016), 6, https://lrc.org.za/wp-content/uploads/pdf/2016%20Handbook%20on%20The%20Rights%20of%20Informal%20Traders.pdf?fbclid=IwAR07NwZ7IC7BK9KKcJVtsDam8SnSoWqhwy4HDhGHVozlO_XCFdxilneXhk.

permits which, although set at a standard price, may be unaffordable and inaccessible to some.¹¹ Moreover, in some instances, issued permits are limited for the sale of particular goods or services; meaning that a person who is issued a permit for selling food items may not also sell textile products, and vice-versa. In municipalities that do not require informal traders to pay for trading permits, they may be required to undergo the arduous bureaucratic process of registering for one, even if there are no costs involved.¹²

A second challenge is that municipal by-laws and regulations do not give due regard to people working in public spaces.¹³ In fact, the policy making process often excludes them and there is little to no consultation with marginalised or vulnerable groups impacted by these policy decisions.¹⁴ Furthermore, these by-laws and regulations tend to restrict trading within particular hours and areas, limiting business opportunities of informal traders.¹⁵ It is a general observation that instead of creating an enabling environment and providing

favourable conditions for informal trade, municipal by-laws and policies governing informal trade tend to restrict people working in public spaces.¹⁶

A third challenge facing people working in public spaces is that they often encounter harsh treatment by law enforcement officials who may impose a combination of formal penalties (e.g., fines, confiscation of goods, arrest and detention) and informal penalties (e.g., the solicitation of bribes, extortions, etc.).¹⁷ Previous research has shown that marginalised and vulnerable people who are considered 'to not belong' are often harshly and poorly treated by law enforcement officials.¹⁸ Moreover, the use of reasonable and minimum force by local law enforcement officials is a contentious issue in many African cities. There are numerous reports of harassment, abuse, and inhumane treatment by law enforcement officials towards hawkers, street vendors, and reclaimers working in public spaces especially in

¹¹ C Rogerson, 'South Africa's Informal Economy: Reframing Debates in National Policy', *Local Economy* 31, no. 1–2 (2016): 172–86.

¹² J Mohlala, 'Permit Struggles Force Cape Town's Informal Traders into "Cat-and-Mouse" Game with the Law', *Daily Maverick*, 22 September 2023, <https://www.dailymaverick.co.za/article/2023-09-22-cape-towns-informal-traders-in-permit-struggle/>.

¹³ K Petersen, 'Public Spaces & Informal Work: Principles and Approaches to Law & Policy-Making' (Dullah Omar Institute, August 2023), [file:///C:/Users/Admin/Downloads/ACJR%20Factsheet%2026%20\(1\).pdf](file:///C:/Users/Admin/Downloads/ACJR%20Factsheet%2026%20(1).pdf).

¹⁴ Petersen.

¹⁵ Socio Economic Rights Institute of South Africa, 'Towards Recommendations on the Regulation of Informal Trade at

Local Government Level.' (South African Local Government Association, 2016), <https://www.salga.org.za/Documents/Knowledge%20Hub/Publications/Research%20Projects%20and%20Results/SERI-SALGA%20Recommendations%20on%20the%20Regulation%20of%20Informal%20Trade.pdf>.

¹⁷ J Mangwanda, 'Fact Sheet 27: Sub-National Law Enforcement and Oversight in Four African Countries: Kenya, Ghana, Nigeria, and Zambia' (Dullah Omar Institute, October 2023), <https://dullahomarinate.org.za/acjr/acjr-publications/acjr-factsheet-01-2023.pdf/view>.

¹⁸ Muntingh and Petersen, 'Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences' (Dullah Omar Institute, 2015), 43.

central business districts in countries such as Ghana, Kenya, South Africa and Zambia.¹⁹

A fourth challenge faced by people working in public spaces is that most local authorities fail to ensure that minimal conditions of sanitation and basic services are provided at demarcated trading sites (i.e., ablution facilities, potable water and electricity, storage facilities, central waste storage and collection services, and wastewater drainage systems).²⁰ Moreover, some local governments fail to provide for the safety of vendors by ensuring that basic infrastructure such as adequate street lighting and sufficient space allocations between stalls (in markets) are available.²¹ This is likely the result of poor town planning, rapid urbanisation which has placed a strain on already scarce resources, or the absence of political will to cater to the informal economy and certain groups of people.

A fifth challenge facing people working in public spaces is environmental and climate changes and associated health hazards as a result of global warming and its accompanying consequences.²² Vendors of fresh produce (fruits and vegetables) face the risk of stock damage due to excessive heat, low or high humidity resulting in income

losses; and reclaimers working in landfills are daily confronted with health risks when undertaking their work of rummaging through waste products in landfills.²³

The challenges described above are to a greater or lesser extent applicable to all persons working in public spaces. The following section discusses particular challenges faced by women traders, migrants, reclaimers, informal transport operators and touts.

3. Women traders

Market and street traders generally sell food, fresh agricultural produce, small manufactured goods in public spaces. Their working hours are generally long and they earn a minimal amount of money from their businesses.²⁴ Women form the majority of informal market traders especially in Africa and this is generally because of limited educational opportunities, and overall high levels of inequality and poverty.²⁵ In Ghana, women traders, especially those working in informal markets hold an important position in society and are considered as the backbone of food distribution as they ensure food security

¹⁹ Mangwanda, 'Fact Sheet 27: Sub-National Law Enforcement and Oversight in Four African Countries: Kenya, Ghana, Nigeria, and Zambia'.

²⁰ M Sepadi and V Nkosi, 'Strengthening Urban Informal Trading and Improving the Health of Vendors: An Integrated Management Model', *International Journal of Environmental Research and Public Health* 20, no. 4836 (2023): 1–15.

²¹ Sepadi and Nkosi.

²² D Dodman et al., 'Climate Change and Informal Workers: Towards an Agenda for Research and Practice', *Urban Climate* 40 (2023): 2.

²³ Dodman et al., 3.

²⁴ T Fleetwood, 'Space, Gender and Work: The Experiences and Identities of Female Street Traders in Central Pinetown, Durban' (Masters Degree Thesis, Durban, South Africa, University of Kwa-Zulu Natal, 2009), https://ukzn-dspace.ukzn.ac.za/bitstream/handle/10413/408/Fleetwood_Final%20Masters%20Thesis.pdf?sequence=1&isAllowed=y.

²⁵ M Mabilo, 'Women in the Informal Economy: Precarious Labour in South Africa' (Masters Degree Thesis, Stellenbosch, South Africa, Stellenbosch University, 2018), 28, <https://core.ac.uk/download/pdf/188223477.pdf>.

for the urban economy.²⁶ However, women traders working in unregulated public spaces face challenges vis-à-vis safety, discrimination and criminalisation.²⁷ A study conducted at Makola market in Accra, Ghana, found that women traders experience security concerns as they are often the targets of criminals stealing their stock.²⁸ This may be due to the likelihood that women traders (unlike their male counterparts, are less likely to physically defend themselves in cases of stock theft).²⁹ Moreover, factors such as race, ethnicity, class, gender and/or socio-economic status may make women traders feel more vulnerable to victimisation than male traders.³⁰ The study further found that failure by local government to provide adequate infrastructure such as street lighting in marketplaces contributes to the insecurity that women traders experience.³¹ Women traders face a constant threat of harassment and abuse by law enforcement officials as they are more likely to be solicited for sexual favours from law enforcement officials who tend to apply

other laws, such as sex-related offences when arresting women traders working late at night.³²

Furthermore, women traders face gender discrimination which can be manifested both explicitly and implicitly, for example, when male customers make demeaning and inappropriate demands on women traders which they are unlikely to do to male traders.³³ Women traders are also confronted with the reality of striking a balance between their work and maintaining households and child-care responsibilities that come with it.³⁴ The situation was exacerbated during the COVID-19 pandemic as women traders shouldered a relatively heavier burden than men as some were forced to go to the market with their children due to school and crèche closures.³⁵

The above points highlight some of the challenges faced by women traders and it is important that their concerns and challenges are acknowledged by local authorities in the policy-making process.

²⁶ C Wrigley-Asante et al., 'Crime and Safety in Urban Public Spaces: Experiences of Ghanaian Women Traders in the Makola Market in Accra, Ghana', *Geographic Journal* 188, no. 1 (2021): 76–90, <https://doi.org/DOI:10.1111/geoj.12423>.

²⁷ S Sassen, R Galvaan, and M Duncan, 'Women's Experiences of Informal Street Trading and Well-Being in Cape Town, South Africa', *South African Journal of Occupational Therapy* 48, no. 1 (2018): 28–33.

²⁸ Wrigley-Asante et al., 'Crime and Safety in Urban Public Spaces: Experiences of Ghanaian Women Traders in the Makola Market in Accra, Ghana'.

²⁹ Wrigley-Asante et al., 78.

³⁰ Wrigley-Asante et al., 78.

³¹ Wrigley-Asante et al., 84.

³² Muntingh and Petersen, 'Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences', 37.

³³ Mabilo, 'Women in the Informal Economy: Precarious Labour in South Africa', 116; T Njenga and F Ng'ambi, 'Women Working in the Informal Economy: Challenges and Policy Considerations' (Sex Rights Africa Network, 2016), <https://www.sexrightsafrika.net/wp-content/uploads/2016/11/OSISA-womenworkinginformaleconomy-copy.pdf>.

³⁴ Fleetwood, 'Space, Gender and Work: The Experiences and Identities of Female Street Traders in Central Pinetown, Durban', 36.

³⁵ S Sinyolo, P Jacobs, and A Nyamwanza, 'Women Informal Food Traders during COVID-19: A South African Case Study', *Routledge* 36, no. 2 (2022): 64.

4. Migrants

Migrants are a vulnerable group of persons who have moved away (either voluntarily or forced)³⁶ from their usual place of residence to settle in another, either temporarily or permanently, for a variety of reasons, including economic, political or social.³⁷ Migrants generally face discrimination, exclusion, stigmatisation, exploitation and ill-treatment by locals in host countries. Administrative issues limit their opportunities to secure formal employment in host countries and as a result, many migrants turn to the informal economy to earn a living by working in public spaces. While public spaces are meant to be accessible to all, and offer an opportunity for migrants to integrate into local communities, it is often the case that migrants have limited access to these spaces, and even less opportunities to work in them.³⁸

Moreover, their needs and concerns in the informal economy are hardly addressed by policy-makers at local government level, neither with regards to urban spatial planning suitable for migrants, nor regarding the challenges they face, which are numerous.³⁹ Firstly, some migrants are undocumented or make use of temporary asylum-seeker permits that require regular renewal, restricting their ability to obtain relevant trading permits from local government, limiting their access to banking loans and financial services.⁴⁰ Undocumented migrants face the ever-present fear of harassment, deportation and arrest by law enforcement officials for not having appropriate documentation. This limits migrant traders' chances of securing demarcated spaces in markets, forcing them to operate in spaces not demarcated for trade, for example, on street corners which further exposes them to law enforcement and criminalisation.⁴¹

³⁶ L Oucho and D Williams, 'Challenges and Solutions to Migrant Integration, Diversity and Social Cohesion in Africa' (World Institute for Development Economics Research, 2017), 2, https://www.wider.unu.edu/sites/default/files/OUCHO,%20Linda%20Adhiambo_paper.pdf.

³⁷ 'International Migration Law: Glossary on Migration' (Geneva, Switzerland: International Organisation for Migration, 2019), 132, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf; 'Who Is a Migrant?', *International Organisation of Migration*, 2023, <https://www.iom.int/who-migrant-0>.

³⁸ J Navarro and M Franco, 'Immigration and Use of Public Spaces and Food Stores in a Large City: A Qualitative Study on Urban Health Inequalities', *Journal of Migration and Health* 1, no. 2 (2020): 6, https://www.researchgate.net/publication/346718236_Immigration_and_use_of_public_spaces_and_food_stores_in_a_large_city_A_qualitative_study_on_urban_health_inequalities.

³⁹ T Lappi and M Tervonen, 'Public Spaces, Placemaking and Integration of Migrants in Finland' (Institute of Development

Studies, June 2022), 2, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/17493/IDS_Policy_Briefing_200_Online.pdf?sequence=1&isAllowed=y.

⁴⁰ A Atkinson, 'Migrants and Financial Services: A Review of the Situation in the United Kingdom' (Personal Finance Research Centre, University of Bristol., 2006), 18, <https://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc0605b.pdf>.

⁴¹ 'No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa' (Human Rights Watch, 2009), 18, <https://www.hrw.org/sites/default/files/reports/SA.pdf>; L Zuma, 'Perceptions and Experiences of Migrant Informal Traders: A Case Study in the Small Town of Howick Pietermaritzburg.' (Masters Degree Thesis, University of Kwa-Zulu Natal, 2021), 20, https://researchspace.ukzn.ac.za/bitstream/handle/10413/20196/Zuma_Laurencia_Nonhlakanipho_2021.pdf?sequence=1&isAllowed=y.

Secondly, migrants also face negative sentiments and violent actions by local citizens, particularly those living in low-income neighbourhoods. This is generally due to a combination of reasons including resource competition, poverty, and accumulated frustration with government.⁴² There has been a cyclical phenomenon of xenophobic attacks in South Africa since 2008 targeting African foreign nationals, under the guise that they are stealing the jobs reserved for local citizens.⁴³ Similar attacks have also occurred in Kenya against Somali migrants who are perceived to be connected to terrorist acts within the region.⁴⁴ The above challenges negatively impact migrants who are a vulnerable group that not only contributes to cultural diversity in host countries, but also provide new sets of skills, and contributes to host country's socio-economic development. Therefore, migrant needs and concerns should be considered during policy making processes.

5. Reclaimers

Globally, there are many people who rely on recycled waste for their livelihoods.⁴⁵ Reclaimers, also referred to as waste pickers, recyclers or waste salvagers, engage in a range of activities such as rummaging through garbage in search of food and other basic items. They are also considered as informal collectors and sorters of recyclables for sale to the formal sector.⁴⁶ A study conducted by Women in Informal Employment: Globalizing and Organizing (WIEGO) found that the waste picking sector is one of the most vulnerable of all sectors in the informal economy.⁴⁷ Many reclaimers are homeless, face severe economic and social hardships and are exposed to hazardous living and working conditions.⁴⁸ Most of them are socially disadvantaged and include vulnerable groups such as migrants and refugees, women, children, persons with disabilities, and ethnic and religious minorities.⁴⁹

⁴² C Claassen, 'Explaining South African Xenophobia' (Afrobarometer, 2017), 3–4, https://www.afrobarometer.org/wp-content/uploads/migrated/files/publications/Documents%20de%20travail/afropaperno173_xenophobia_in_south_africa.pdf.

⁴³ Oucho and Williams, 'Challenges and Solutions to Migrant Integration, Diversity and Social Cohesion in Africa', 4; M Choane, L Shulika, and M Mthombeni, 'An Analysis of the Causes, Effects and Ramifications of Xenophobia in South Africa', *Insight on Africa* 3, no. 2 (2011): 130.

⁴⁴ Oucho and Williams, 'Challenges and Solutions to Migrant Integration, Diversity and Social Cohesion in Africa', 4.

⁴⁵ T. Ogwueleka and B.P Naveen, "Activities of Informal Recycling Sector in North-Central, Nigeria," *Energy Nexus* 1 (November 1, 2021): 100003, <https://doi.org/10.1016/j.nexus.2021.100003>; "Scavengers: Loathed by Authorities, Valued by Recyclers - Daily Trust," *Daily Trust*, April 24, 2022, <https://dailytrust.com/scavengers-loathed-by-authorities-valued-by-recyclers/>;

O. Adama, "Marginalisation and Integration within the Informal Urban Economy: The Case of Child Waste Pickers in Kaduna, Nigeria," *International Development Planning Review* 36, no. 2 (April 1, 2014): 155–81.

⁴⁶ WIEGO, 'Waste Pickers', Empowering Informal Workers, Securing Informal Livelihoods, accessed 2 November 2023, <https://www.wiego.org/waste-pickers>; N Ngcobo, 'Waste Pickers and the Informal Economy: A South African Constitutional Law Perspective', *Speculum Juris* 36, no. 1 (2022): 23.

⁴⁷ S Dias and Melanie Samson, 'Informal Economy Monitoring Study Sector Report: Waste Pickers' (WIEGO, February 2016).

⁴⁸ Ngcobo, 'Waste Pickers and the Informal Economy: A South African Constitutional Law Perspective', 24.

⁴⁹ International Labour Office, 'Waste Pickers' Cooperatives and Social and Solidarity Economy Organizations', Cooperatives and the World of Work (Geneva, Switzerland: International Labour Office, 20 August 2019), 1,

Governments and especially local municipalities benefit from reclaimers recycling activities. In many countries, reclaimers supply the only form of solid waste collection at little or no cost to municipalities.⁵⁰ They provide an income for themselves, thus alleviating and reducing poverty. They also contribute to the reduction in greenhouse gas emissions and assist in keeping cities and towns clean. Despite the significant contribution to public health, sanitation, and the environment,⁵¹ reclaimers often face social stigma, and discrimination by public and private actors.⁵² Local government policies or processes often exclude them from participating in the formal municipal waste management system in comparison to 'formal recyclers' (often private or public companies).⁵³ This prevents them from earning a livelihood to feed their families. Secondly, they are often harassed by local authorities, arrested or penalised under local or municipal by-laws for engaging in waste collection activities.⁵⁴ In many African countries, they are not legally recognized as workers, and thus suffer from poor and hazardous working conditions and lack social protection.⁵⁵ Women

reclaimers face more challenges in comparison to men. For example, they may not be allowed access to high-value recyclables and their earning power can be limited by the need to balance domestic duties, including raising children and caring for the home.⁵⁶

There have been global dialogues within the human rights framework, recognizing the significant value of reclaimers and there are processes in place to transition informal economy workers, including reclaimers, to the formal economy by strengthening their collective voice and addressing some of the challenges they face.⁵⁷ Given the significant contributions reclaimers make globally, inclusive waste management policies integrating reclaimers into formal recycling chains will contribute to promoting recycling and also the creation of decent work, poverty reduction, and social inclusion.⁵⁸ This could improve their working conditions, secure livelihoods, improve social security and contribute to keeping cities and towns clean.⁵⁹

http://www.ilo.org/global/topics/cooperatives/publications/WCMS_715845/lang--en/index.htm.

⁵⁰ WIEGO, 'Waste Pickers'.

⁵¹ International Labour Office, 'Waste Pickers' Cooperatives and Social and Solidarity Economy Organizations', 1.

⁵² International Labour Office, 1.

⁵³ Petersen, 'Public Spaces & Informal Work: Principles and Approaches to Law & Policy-Making'.

⁵⁴ Petersen.

⁵⁵ International Labour Office, 'Waste Pickers' Cooperatives and Social and Solidarity Economy Organizations', 1.

⁵⁶ S Dias, A Ogando, and Vanessa Pillay, 'Photo Essay: Inside Efforts to Strengthen Leadership among Women Waste Pickers', WIEGO, 7 March 2017,

<https://www.wiego.org/blog/photo-essay-inside-efforts-strengthen-leadership-among-women-waste-pickers>.

⁵⁷ International Labour Office, 'Waste Pickers' Cooperatives and Social and Solidarity Economy Organizations', 2. See the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), The Global Dialogue Forum on Decent Work in the Management of E-waste.

⁵⁸ International Labour Office, 5; Petersen, 'Public Spaces & Informal Work: Principles and Approaches to Law & Policy-Making'.

⁵⁹ D. Kuria and R. Muasya, 'Mapping of Waste Pickers and Organisations Supporting Waste Pickers in Kenya' (Women in Informal Employment: Globalizing and Organizing, 2010).

6. Informal transport operators and passenger touts

Informal buses and taxis, referred to as minibus-taxis in South Africa, *dala dala* in Tanzania, *matatu* in Kenya, *cars rapide* in Senegal and *tro tro* in Ghana, are some of the main transport services in Africa.⁶⁰ Other less conventional forms of transport such as bicycles and motorbikes, are also used as a mode of public transport in some countries (e.g., Malawi, Nigeria, Ghana, Sierra Leone, Liberia).⁶¹ Many of these transport modes are unregulated and drivers face frequent arrest and detention for driving with ‘unregistered’ or ‘unlicensed’ vehicles or driving in prohibited parts of cities.⁶² In some cases, their motorbikes are confiscated or impounded and auctioned off by the state, taking away their only source of income.⁶³ Beyond licensing and permit issues, the state has other legitimate concerns, such as the use of old vehicles raising road safety concerns, air pollution and

reckless driving.⁶⁴ Despite this, these transport modes are highly favoured by passengers due to their flexible mobility options to transport routes not served by other operators.⁶⁵ Compared to other public transport options, they run late-night services, charge reasonable fares, make convenient stops on long distance routes, and cut down time spent in long queues at bus and train stations.⁶⁶ Fundamentally, these modes of transport also provide employment opportunities for people and contribute to sustainable livelihoods and offer solutions to poverty and hunger. Across Africa, many operators of informal modes of transport are often not consulted in policy decisions affecting their livelihoods, resulting in their exclusion from the formal economy.⁶⁷

Minibus passenger touts (“touts” or “callboys”) are also frequently arbitrarily arrested and detained under vagrancy or nuisance related offences for their touting

⁶⁰ D Bongardt, ‘Changing Tracks in Africa’, *Changing Transport* (blog), 17 June 2023, <https://changing-transport.org/changing-tracks-in-africa/>; Richard I C Tumbulasi and Happy M Kayuni, ‘Can the State Perpetuate the Marginalisation of the Poor? The Socio-Economic Effects of the State’s Ban on Minibus “Callboys” in Malawi’, *Development Southern Africa* 25, no. 2 (1 June 2008): 215–26, <https://doi.org/10.1080/03768350802090659>.

⁶¹ A. Al-Hasan, S. Momoh, and L. Eboime, ‘Urban Poverty and Informal Motorcycle Transport Services in a Nigerian Intermediate Settlement: A Synthesis of Operative Motives and Satisfaction’, *Urban, Planning and Transport Research* 3, no. 1 (2015), <https://www.tandfonline.com/doi/full/10.1080/21650020.2014.978950>.

⁶² Nii Ayi Ayitey, ‘Okada Drivers without License to Be Arrested and Jailed from September’, *Yen.Com.Gh - Ghana News.*, 31 July 2021, sec. Main page, <https://yen.com.gh/191224-okada-drivers-license-arrested-jailed-september.html>; Francis

Murray, ‘Police Resumes Enforcement of Okada Movement Restrictions’, *Politico SL*, 21 September 2020, <https://www.politicosl.com/articles/police-resumes-enforcement-okada-movement-restrictions>.

⁶³ Petersen, ‘Public Spaces & Informal Work: Principles and Approaches to Law & Policy-Making’.

⁶⁴ Bongardt, ‘Changing Tracks in Africa’.

⁶⁵ R. Cervero, ‘Informal Transport in the Developing World’ (Nairobi, Kenya: United Nations Centre for Human Settlements (Habitat), 2000), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://unhabitat.org/sites/default/files/download-manager-files/Informal%20Transport%20in%20the%20Developing%20World.pdf>.

⁶⁶ Tumbulasi and Kayuni, ‘Can the State Perpetuate the Marginalisation of the Poor?’, 1 June 2008.

⁶⁷ Ayitey, ‘Okada Drivers without License to Be Arrested and Jailed from September’; Francis Murray, ‘Police Resumes Enforcement of Okada Movement Restrictions’.

activities in public spaces.⁶⁸ Minibus passenger touts “lure” or “recruit” (mini-bus calling) and organize passengers to board minibuses; for which they receive a fee or a commission.⁶⁹ For some, touts’ actions may come across as a nuisance or harassment, but for them, this is the only option available to earn a livelihood owing to limited education and employment opportunities. A survey conducted in Zomba Municipality and Blantyre City in Malawi revealed that a ban on touting had adverse socio-economic impact on these marginalised Malawians.⁷⁰ The use of the criminal justice system to address such low-level non-violent offence types is not a sustainable solution to the problems associated with touting or other informal transport related offences.⁷¹

States have an obligation to provide or facilitate access to viable income-generating alternatives for those engaged in this work.⁷² There is a need to formalise and regulate the activity of both touts and informal transport operators to better deal with the problems associated with the

industry.⁷³ Similarly, they should be consulted and participate in policy-making processes that impact their livelihoods.

7. Recommendations and Conclusion

The informal economy provides opportunities for self-employment in several African countries with high unemployment rates. As a sector that generally falls under the mandate of local government, it is important that local governments effectively balance the need to maintain “clean” and “safe” cities while simultaneously upholding the right of people to earn a livelihood in public spaces.

Three recommendations are offered in line with the vulnerable groups discussed above. Firstly, it is a general observation that there is an over-reliance on the criminal justice system to address the socio-economic challenges facing people working in public spaces.⁷⁴ Rather than resorting to criminalisation, it is important that local

⁶⁸ Centre for Human Rights Education, Advice and Assistance and Southern Africa Litigation Centre, ‘No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi’, June 2013, 105.

⁶⁹ Tambulasi and Kayuni, ‘Can the State Perpetuate the Marginalisation of the Poor?’, 1 June 2008; E Enoch and L Okpara, ‘The Role of Touts in Passenger Transport in Nigeria’, *The Journal of Modern African Studies* 26, no. 2 (1988): 327–35; Centre for Human Rights Education, Advice and Assistance and Southern Africa Litigation Centre, ‘No Justice for the Poor’, 101.

⁷⁰ R Tambulasi and H Kayuni, ‘Can the State Perpetuate the Marginalisation of the Poor? The Socio-Economic Effects of the State’s Ban on Minibus “Callboys” in Malawi’, *Development Southern Africa* 25 (1 June 2008): 215–26, <https://doi.org/10.1080/03768350802090659>.

⁷¹ Centre for Human Rights Education, Advice and Assistance and Southern Africa Litigation Centre, ‘No Justice for the Poor’.

⁷² Centre for Human Rights Education, Advice and Assistance and Southern Africa Litigation Centre.

⁷³ Centre for Human Rights Education, Advice and Assistance and Southern Africa Litigation Centre; Tambulasi and Kayuni, ‘Can the State Perpetuate the Marginalisation of the Poor?’, 1 June 2008; A Munzara, ‘Interrogating the Role of Touts in the Informal Road Passenger Transport Sector in Zimbabwe: A Case of Zesa Terminus in the City of Masvingo’, *International Journal of Management Sciences* 2, no. 4 (2014): 203–8.

⁷⁴ M. Von Broembsen and M. Chen, ‘Eliminating Legal Barriers from the Perspective of The Informal Economy’, A Policy Brief for the UN Secretary-General’s High-Level Panel on Women’s Economic Empowerment (United Kingdom.: Women in Informal Employment: Globalizing and Organizing, September 2016), 13.

governments provide constructive solutions to workers in the informal economy by providing adequate infrastructure and guidance to working in public spaces, and building compliance with the law through risk prevention, public education and awareness. The aim must be to seek constructive solutions, and criminalisation should be seen as a measure of last resort.

Secondly, it is important for authorities to recognise that while there has been resistance from organised labour to formalise and include certain informal economy sectors into the mainstream economy, there is clearly a need to better regulate their activities, as this will significantly decrease some of the challenges discussed above.

Thirdly, in the formulation of laws and policies, it is crucial for policy-makers to involve the people mostly impacted by their decisions in policy discussions.⁷⁵ An emphasis should be placed on inclusive public consultations and opportunities for those affected by policy decisions to provide feedback to local governments and share their concerns to improve conditions in public spaces.⁷⁶

Informal economy workers are key role players in socio-economic development as they significantly contribute to alleviating poverty, providing employment (albeit informal) and food security, and in the case of reclaimers, offering cities and local governments recycling and sanitation services. It is therefore important that the plight of people working in public spaces are

acknowledged by policy makers and that constructive and sustainable solutions to their challenges are found.

⁷⁵ H. Bullock, J. Mountford, and R. Stanley, 'Better Policy-Making' (Centre for Management and Policy Studies, November 2001).

⁷⁶ Bullock, Mountford, and Stanley.

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