



Turning the Law into a Shield for Street Vendors in African Countries

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Photo: Jonathan Torgovnik/Getty Images Reportage

Introduction

On December 17, 2010, Mohamed Bouazizi, a young unlicensed street vendor in Tunisia, had his goods confiscated by a municipal officer on the streets of rural Sidi Bouzid. This had happened to him many times before. For the past seven years, he had been repeatedly harassed by municipal officials, who took his goods, fined him, and stole his money almost on a daily basis.

That day, he went to the local authorities and begged for his goods to be returned to him and for a street-vending

license to finally be granted to him. He was chased out of the Provincial Governorate offices and publicly humiliated. Stricken with hopelessness, he set himself on fire on the street for everyone to see. His desperate act – which would claim his life two weeks later – sparked revolutions and civil wars across the Arab world, starting what would eventually come to be known as the “Arab Spring”.

While most cases do not result in such dramatic and historical consequences, this story is indicative of the hardships that many street vendors face at the hands of their local and/or national governments on any given day.

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² Cabinet Nyemb is an independent law firm in sub-Saharan Africa, widely recognized for providing its clients with innovative and integrated solutions to complex local or multijurisdictional matters. Beyond offering legal advice, Cabinet Nyemb acts as an advisor, providing on-the-ground insights and understanding of the region's political and economic context.



Street vendor, Ghana - In order to protect their rights from the overreach of their governments, African street vendors need to know the law, how it works and, most importantly, how to use it to their benefit. Photo: Jonathan Torgovnik/Getty Images Reportage

...street vending is, for many on the continent, the only way to make a living.

In African countries, street vending is often disparaged and despised by the authorities, if not outright criminalized. In Nigeria for instance, the Lagos State effectively banned street vending in 2016 by reviving its 2003 Street Trading and Illegal Market Prohibition Law, which makes the activity a criminal offence punishable either by a fine or a jail term for both the buyer and the seller. In 2017, in a move which has been described as cruel and inhumane by pro-democracy activists, the City of Harare in Zimbabwe made all street vending illegal, citing public health concerns.

Still, street vending is, for many on the continent, the only way to make a living. And this is not just the case for the poor or the uneducated. For instance, the decayed state of Zimbabwe's economy has forced many from the professional class into street vending due to a lack of job opportunities in a country increasingly dependent on the informal economy.

Furthermore, African governments (both local and national) periodically launch crackdowns on street vending. As a consequence, street vendors—many of them women—routinely face various abuses, which are heightened by government corruption and general lack of accountability.

While law enforcement is a weapon too often turned against street vendors, the legal system may also be a powerful shield for street vendors. In order to protect their rights from the overreach of their governments, African street vendors need to know the law, how it works and, most importantly, how to use it to their benefit.

This brief, therefore, aims to compare the Civil Law system, which is prevalent in Francophone African countries and the Common Law system, which is prevalent in Anglophone African countries, in relation to the issue of street vending. First, the brief describes how the legal order is composed in both Civil Law and Common Law systems, with the aim to explain how rights might be provided (or denied) to street vendors in any given legal system. Then, it outlines the legal recourses available to street vendors in order to ensure that rights given to them within a given legal system are respected.

The Composition of Civil Law and Common Law Systems

In most legal systems throughout the world, the main sources of law are: the Constitution, statute laws passed by the Parliament, regulations issued by central/federal or local governments, and case law crafted by the courts. The Constitution, statute laws and regulations may each be referred to simply as laws. Together, they form the “Law”, otherwise known as the “legal order”.

In theory, the main difference between Common Law systems and Civil Law systems is that Civil Law is generally codified, meaning that everything is written down - the content of the law, the applicable procedures and the appropriate punishment for each offense.

By contrast, Common Law is less codified because historically, the Common Law system has relied heavily on case law. As a result, the law is not only made by the Parliament, but is also—and maybe more so—made by the courts. Judges can interpret the laws and regulations and thereby develop the law; or, in most instances, create it altogether where the Parliament has not previously intervened. Therefore, case law holds the same authority as statute laws, which means that where the Parliament has not spoken, the courts may say what the law is. This does not mean that courts can override the power of the

Parliament. As the Parliament represents the will of the people and is therefore supreme, statute laws may actually dismiss or override case law altogether.

In contrast, Civil Law judges must always rely on existing legal provisions and may not do more than just interpret the law. They may not create law; they are only the “mouth” of it. As a result, they must always refer to one or several legal provisions when deciding on a case. Failure to detail the legal provisions used may result in the annulment of a judge’s decision.

Case law, however, plays a role in Civil Law systems, but it certainly does not hold the same authority as statute laws and merely serves to complement them. Nonetheless, there is a precedent system in Civil Law systems, which is called “jurisprudence”. A series of decisions and rulings rendered by the courts on a particular legal matter which agree on the interpretation of a legal provision are called “settled jurisprudence” (in French: *Jurisprudence constante*).

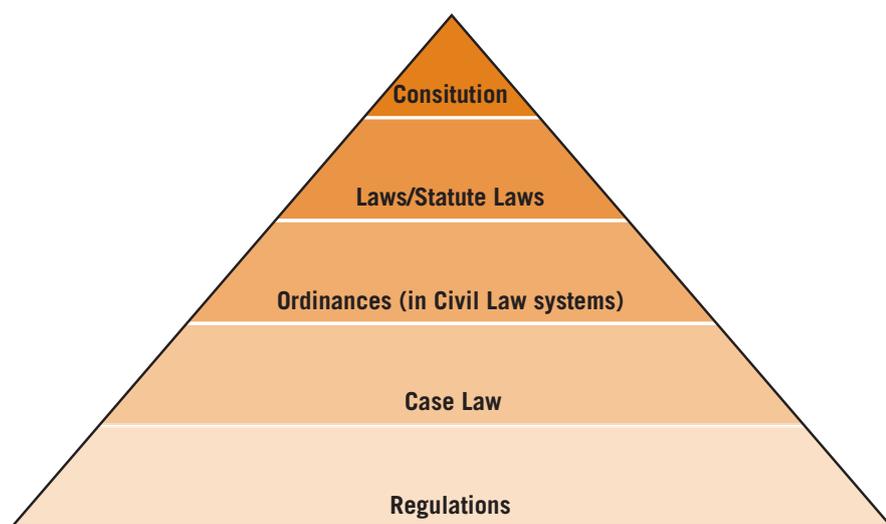
Judges are expected to follow such “settled jurisprudence”, but they may deviate from it. Furthermore, a settled jurisprudence may be overturned by the supreme court(s).

In Common Law systems, on the other hand, judges are usually bound by precedents. This means that the outcome of a lawsuit shall be governed by previous decisions in similar cases. This is what is called the doctrine of *stare decisis*.

The Hierarchy of Laws

In both Civil and Common Law systems, there is a hierarchy of laws.

Figure 1: The Hierarchy of Legal Norms



If laws contradict the Constitution, then the courts may declare such laws invalid.

1. The Constitution

In both Civil Law and Common Law systems, the Constitution is at the apex, or top, of the legal order. All laws must comply with the Constitution. If laws contradict the Constitution, then the courts may declare such laws invalid.

It used to be thought that the most striking difference between Civil Law and Common Law systems was that in the former, the Constitution was a written uniform document, whereas in the latter, it was mostly unwritten and scattered across various laws. However, this is no longer the case, as many Common Law jurisdictions around the world (such as USA, Nigeria, Ghana, India and Canada, for instance) have written and codified Constitutions as well. Only the Constitution of the UK remains largely unwritten – it basically con-

sists of statute laws passed by the Parliament, common law set forth by the courts, Parliamentary conventions, and scholarly works of authority.³

Even in Civil Law systems, the Constitution (or at least constitutional norms) may be scattered across numerous pieces of legislation; some of it may even be unwritten. In France, for instance, the Constitution consists of the Constitution itself and complementary constitutional norms (such as the famed 1789 Declaration of the Rights of Man and of the Citizen), which are both written and unwritten.

It is unlikely that any Constitution directly addresses the issue of street vending, as its main purpose is to organize a country's political institutions. However, most Constitutions (especially the ones developed most recently) provide citizens with a set of fundamental rights such as freedom of movement, human dignity or equal opportunity. In Common Law systems, such provisions are often referred to as a Bill of Rights.

The Nigerian Constitution, in Section 17 (3) (a), provides that: “all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment”.

Similarly, the Preamble of the Cameroonian Constitution states that “the State shall provide all its citizens with the conditions necessary to their development” and that “every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances”.

While the language used in Constitutions to outline fundamental rights may oftentimes seem self-evident and even mundane, these provisions can be turned into an effective weapon as they may, for instance, be invoked in courts by street vendors to defend their rights to conduct their businesses (most notably in the context of the judicial review of the laws and regulations, as will be outlined below) and to hold a government accountable for any abuses – physical or otherwise.

For instance, in South Africa, a Durban street vendor by the name of John Makwicana had his goods confiscated in 2013. He won a court case against the local authority on the basis that he had been deprived of his constitutional right to property.⁴

2. Statute Laws and Ordinances

The next level of law is Statute Laws, which generally emanate from elected legislative bodies (Parliament, Congress, etc.).

In Civil Law systems, pieces of legislation are passed by the legislative authority and enforced by the executive power. There is also the particular case of ordinances, which are laws directly passed by the Head of State with the understanding that he/she has been authorized to do so by the elected legislative body, or that the ordinance will later be confirmed by the legislative body.

In Common Law systems, laws passed by the elected legislative body to address a specific matter are usually referred to as Statute Law.

3. Case Law

One of the main differences between Civil Law and Common Law systems is the binding force of precedents in Common Law. While Civil Law courts mainly decide cases by applying and interpreting relevant codified laws, Common

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³ These are books, written by constitutionalists, which are considered to be authoritative guides to the functioning of the British Constitution.

⁴ Details of this case are available at <http://www.wiego.org/wiego/durban-legal-victory>.

Law courts not only decide disputes between particular parties, but also provide guidance as to how similar disputes should be settled in the future.

However, Civil Law courts may also follow the guidance of the higher court and in certain areas such as administrative law, case law is widely used by the courts.

4. Regulations

Regulations are issued by government officials (on a national or a local level) or by regulatory agencies to give more precise details as to the interpretation and/or the enforcement of Statute Laws.

In Civil Law systems, especially those which are inspired by the French Civil Law, regulations present themselves in the form of:

- Decrees, which are usually issued by the Head of State or the Head of Government;
- Orders, which are usually issued by a Minister; and
- Circulars, which are usually issued by the Prime Minister (when one exists) or one of its Ministers; circulars are merely an indication of how the government should function and often do not hold any regulatory value themselves.

As stated earlier, local governments may issue regulations as well. For instance, a mayor may issue Municipal Orders enforceable within its municipal jurisdiction. Similarly, regulations may be issued by governmental regulatory agencies.

In Common Law systems, regulations may emanate from the executive branch of the government and are used to enforce legislation or to clarify policy choices. The most well-known form of regulation in Common Law systems is the Executive Order, issued by the head of the executive branch, which directs officers of the government and governmental agencies. Such a mechanism exists predominantly in the USA, but also in African countries with a similar form of government, such as in Nigeria and Ghana.

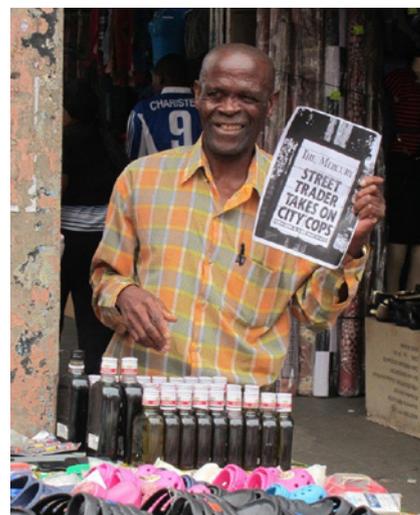
In Civil Law systems, the main purpose of regulations is to enforce broader laws and/or to define the terms and conditions under which such laws may be enforced. Especially in French-inspired Civil Law systems, a law is always accompanied by one or several Enforcement Decrees and one or several Ministerial Orders. As a result, regulations are not autonomous pieces of legislation and may only be deployed in support of, and in conformity with, a Statute Law.

Likewise, in Common Law systems, regulations cannot contradict a superior legal norm, most especially the Constitution but also Statute Law. As the Supreme Court of Nigeria once put it: "All powers, legislative, executive and judicial must ultimately be traced to the Constitution".⁵

From a legal standpoint, there are no fundamental differences between Civil Law Systems and Common Law systems regarding the way in which regulations are used to control or ban street vending.

As many African countries do not have specific legislation to organize street vending as a fully recognized economic activity, regulations are often used to control (or plainly outlaw) street vending. Such regulations are often designed as enforcement of nuisance, health or economic laws that are already in place.

In Cameroon, for instance, the activity of street vendors falls under a Ministerial Order to regulate Itinerant Trade (French: *Commerce Ambulant*) dated November 15, 1991.⁶ This regulation addresses all forms of itinerant trade



Durban street vendor John Makwicana had his goods confiscated in 2013. He won a court case against the local authority on the basis that he had been deprived of his constitutional right to property. Photo: Tasmi Quazi, Asiye eTafuleni

⁵ Independent National Electoral Commission and Another v. Musa and Others (2003) AHRLR 192 (NgSC 2003)

⁶ Ministerial Order No. 045/CAB/MINIDIC dated November 15, 1991 to regulate Itinerant Trade



Street vendor, Benin - After a law enters into force, Benin's Constitutional Court may hear cases brought by any citizen. Photo: WIEGO

It is important to understand that in addition to regulating or prohibiting activities, the Law provides citizens with rights.

(street vending being viewed as one such form of itinerant trade) and enforces Cameroon's 1990 Law on Commercial activity. (This law has since been replaced by the 2015 Law on Commercial Activity, but the 1991 Regulation is still in force.)

In the Democratic Republic of Congo (DRC), street vending is regulated by an Ordinance-Law on Small-scale Trade⁷ dating back to 1979 and an Interdivisional Order on Small-scale Trade from 1980.⁸

No specific regulation aimed at street vendors was identified in Ivory Coast, but a 2014 Ministerial Order⁹ from the Minister of Commerce, Craftsmanship and the Promotion of SMEs makes it illegal to sell bread in the streets. A Decree by the Council of Ministers dated March 22, 2017 forbids the sale of SIM cards in the streets (a similar regulation exists in Cameroon with a Decree dated September 3, 2015 from the Prime Minister).

Similarly, in Rwanda, the city council of Kigali issued a directive in July 2016 under which anyone who is caught vending on the street or buying the products of a street vendor shall be fined. In Kampala (Uganda), all street vending activity has been banned since 2011, with new enforcement measures issued by the Kampala Capital City Authority (KCCA) in 2016, notably over the suspicion that some street vendors were perpetrators of iron bar attacks.

It is important to understand that in addition to regulating or prohibiting activities, the Law provides citizens with rights. The next step is to know what legal recourses are available to citizens in general, and street vendors in particular, when such rights are impeded by their governments; such legal recourses are to be exercised before the courts.

Legal Recourses Available to Street Vendors before the Courts

Ensuring Laws are Consistent with the Constitution

As explained earlier, no legal norm may contradict the Constitution. In both Civil Law and Common Law systems, laws and regulations may be subject to a judicial review (also known as a "control of constitutionality") to ensure that they are consistent with the country's Constitution.

Judicial review may be centralized within a single institution (Ferreress Comella 2004), often a constitutional court, which reviews the content of a law to determine if it is consistent with higher laws.

Many Francophone African countries use a similar system of constitutional review. For instance, Gabon has a Constitutional Court. Cameroon has a Constitutional Council (although it is not yet operational and exists in law only; constitutional review duties are still carried out by the Supreme Court of Cameroon). Senegal has a Constitutional Council, too.

On the other hand, judicial review may be decentralized; all courts have the authority to review legislation or regulation and decide whether or not it is consistent with the Constitution. However, they may only do so while reviewing a particular case through which the constitutionality of a law, a specific provision of a law, or a regulation is challenged.

⁷ Ordinance-Law No. 79-021 dated August 2, 1979 on Small-scale Trading

⁸ Interdivisional Order No. 0029/80 dated April 7, 1980 on Small-scale Trading

⁹ Ministerial Order No. 37 dated July 1st, 2014

This system of judicial review is more common in English-speaking countries. For instance, it is used in Nigeria and in South Africa.

Some African countries, however, use a mixture of both systems of judicial review. In these systems, the judicial review is centralized but concrete; only one court or judicial institution performs such a review, but it only does so while reviewing a particular case. This type of system is in use in Ghana and in Malawi.

Understanding the functioning of a Constitution and the system of judicial review can be important to defending street vendors' rights. It is possible for an anti-street vending piece of legislation to be challenged before a constitutional court. If the court finds that the legislation is contrary to the Constitution, it could strike down the law.

Judicial review appears to be a far more useful tool in Common Law jurisdictions than it is in Civil Law jurisdictions. In Civil Law jurisdictions, the conditions under which a constitutional court or its equivalent may review legislation are often very restrictive.

Indeed, in many Francophone African Countries, cases may only be brought before constitutional courts prior to the entry in force of a law – that is, in the period from the moment it is passed by the legislative authority to the moment it is signed into law by the Head of State. Depending on what the Constitution requires, cases may be brought before the constitutional courts by a certain number of legislators and some institutions of the civil society. Furthermore, because of the concrete nature of judicial review in such jurisdictions, the courts are usually barred from reviewing the facts of a particular case.

A rare example of an effective and responsive constitutional court in Francophone Africa is that of Benin. Prior to the entry in force of a law, Benin's Consti-

A street vendor's battle against old colonial legislation took him all the way to the High Court of Malawi and ended with the demise of the country's infamous "Rogue and Vagabond Law".

Box 1: Street Vendor in Malawi Challenges an Old Law

Earlier this year, a legal case caught the spotlight in Malawi. A street vendor's battle against old colonial legislation took him all the way to the High Court of Malawi and ended with the demise of the country's infamous "Rogue and Vagabond Law". Mayeso Gwanda, who sells plastic bags in the Limbe Market in Blantyre, was arrested, beaten and tried for being a rogue and vagabond under Section 184 (1) (c) of Malawi's Penal Code. Under this law, a rogue and vagabond are described as:

"Every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal and disorderly purpose."

This law is derived from Section 4 of the 1824 English Vagrancy Act, which was also inherited by several former British colonies throughout the continent. From a mere technical standpoint, the deliberate imprecision and broad writing of this law would elicit rightful dismay from any legal practitioner today.

But for the people of Malawi, the consequences of this law were very real and palpable, as Section 184 (1) (c) was used by police officers to assault or detain ordinary citizens in order to make them pay for their freedom. Street workers of any kind, particularly street vendors, were targeted, abused and jailed under peculiar pretences.

When Mayeso Gwanda was tried under the "Rogue and Vagabond Law" at the Blantyre Magistrate's Court, he petitioned Malawi's Chief Justice to determine the constitutionality of the law. The High Court declared this law unconstitutional and invalid on the grounds that it violated several constitutional human rights, particularly the right to dignity, security, freedom of movement, humane treatment, freedom and the right to equal protection and non-discrimination under the law. Indeed, Section 184 (1) (c) was a dated law (it was enacted in 1934); it had been allowed to continue to exist in Malawi's legal order despite the fact that a thorough Bill of Rights was now enshrined in the Constitution of Malawi.¹⁰

¹⁰ Gwanda v S (Constitutional Cause No. 5 of 2015) [2017] MWHC 23 (10 January 2017)



Street vendor, South Africa – In Johannesburg, the High Court found that the city could not impede registered street vendors’ “undisputed rights” to occupy their trading spots. Photo: Tanya Zack

tutional Court may hear cases brought by the Head of State or by any member of Parliament. *After* a law enters into force, the court may hear cases brought by any citizen, either by way of an action or by way of a preliminary objection.

Administrative Litigation

As mentioned above, in the same way that all laws shall be written in accordance with the Constitution, regulations shall be written in accordance with laws/statute laws. If an action is brought against or involves a regulation, the relevant courts may decide if the regulation is legal or not.

In Civil Law systems, there are courts that specialize in this particular task; they are called administrative courts. In Common Law systems, regulations may be reviewed by every court.

No case could be found in which street vendors have challenged the lawfulness of a regulation before the administrative courts in Francophone African countries. However, it is possible to gain an idea of how such challenges would be construed by looking at an example from France.

Under France’s General Local Authorities Code, it falls upon a mayor to regulate all matters concerning public safety and the convenience of road, street, roadside and public space traffic.¹¹ As such, mayors are entitled to regulate the exercise of itinerant trade within the borders of their town.

However, French administrative courts have stated time and again that such regulations are not absolute and that there are some core principles that must be considered when regulating the activities of street vendors, most notably the freedom of commerce and industry proclaimed by Law dated March 2 and 17, 1791, otherwise known as “*Décret D’Allardé*”.¹² Indeed, the Council of State (the supreme administrative court) found that a municipal regulation regulating street vendors’ activities cannot be framed in a way that impinges upon vendors’ rights to exercise their freedom of commerce and industry.

In Strasbourg, France, for instance, the mayor had banned street vending from 10 a.m. to 8 p.m. in several streets and squares of the city; this was actually a complete banning of street vending in disguise. The Mayor in that city had also tried to impose a requirement forcing vendors to obtain a license for their street vending activities, specifically that of itinerant trade. The State Council found that the Mayor had violated the freedom of industry and commerce by trying to impose a 10-hour ban on street vending on the streets. The State Council also found that while the Mayor has the power to regulate sedentary street vending, no law or regulations entitled him to regulate the activity of an itinerant trader.¹³

In another case, the Mayor of Marseille issued a Municipal Order that imposed a parking tax on street vendors. They would have to pay such tax even if they had just stopped for a minute or so to complete a sale. The State Council struck down that regulation by stating that under the Tax Law, no parking tax could be imposed on itinerant traders.¹⁴

In a third case, the Mayor of Méribel issued a Municipal Order that banned street vending in the entire city. The State Council struck down the regulation, stating that a municipal regulation cannot prohibit the exercise of itinerant trade in the entire city without harming the citizen’s exercise of the freedom of commerce and industry.¹⁵

¹¹ Section L 222-12-2 of the General Local Authorities Code

¹² This was reaffirmed by Circular No. 74-34 dated January 16, 1974 from the Minister of Interior (*Ministre de l’Intérieur*)

¹³ Council of State, March 28, 1979, “*Ville de Strasbourg*”

¹⁴ Council of State, March 15, 1996, “*Syndicat des artisans fabricants de pizzas non sédentaires Paca*”

¹⁵ Council of State, April 26, 1993, “*Commune de Méribel*”

Criminal and Civil Proceedings

1. Criminal Proceedings

In criminal proceedings, there is a significant difference between the approach in Civil Law and Common Law.

Common Law often uses an adversarial system, in which the opposing sides (the accused and the prosecution) compete to convince a judge (or as the case may be, a jury) that their version of the facts is the most convincing. In this system, the judge is merely a moderator between the parties.

In an inquisitorial system, favoured in Civil Law systems, the role of the judge is not to hold the balance between the contending parties, but to find the truth. The most defining of such a justice system is the intervention of an investigative judge (the “*juge d’instruction*”) who investigates the case and eventually brings the formal charges against the accused.

A deeply shared principle between Common Law systems and Civil Law systems is the lawfulness of criminal proceedings. Illegal actions on the part of the authorities on such proceedings are usually grounds enough to dismiss the entire procedure.

For instance, in the case of Mayeso Gwanda, described in Box 1, one of Gwanda’s arguments was that he was arrested without any good reason when he was going about his business and detained for several days with no formal charges

Box 2: South African Traders Win Back the City

In 2013, the City of Johannesburg in South Africa put together an initiative called the “Inner City Clean Sweep”. The reality hidden within this fine-sounding name was far less positive. The initiative was in fact, a major crackdown on street vendors.

Under its 2009 Informal Trading Policy, the City of Johannesburg was entitled to regulate street vending, mostly by demarcating the areas on which licensed street vendors (i.e., vendors to whom the City had issued a permit) could operate. But in a strange turn of events, the Clean Sweep initiative ended up targeting street vendors who were registered with the City under the 2009 Informal Trading Policy.

Municipal officials cited the city’s wish to address several issues it blamed on street vending, such as dumping and littering, building invasions in the inner city, illegal electrical connections and, last but not least, a “lack of civic pride and ownership”. The city also cited a number of falsified and fraudulent permits, which the city claimed had become so disproportionate that the City could no longer distinguish between the legally registered street vendors and those it intended to target through this initiative. Thus, it decided to oust all the street vendors.

Roughly 6,000 street vendors and 30,000 dependents were left without any source of income as a result of this initiative.

The South African National Traders’ Retail Alliance (SANTRA) made an urgent application before the South Gauteng High Court, asking it to issue a temporary order that would allow street vendors to work until a legal ruling could determine whether the initiative was legal. The application was rejected on November 27, 2013.

SANTRA subsequently appealed that decision before the Constitutional Court. On December 5, 2013, the Constitutional Court overruled the High Court and ordered that the local authority could not interfere with the applicants’ trading until the case against the City of Johannesburg was tried in court.

On April 4, 2014, the High Court found that the city’s actions were illegal. While the High Court acknowledged that the initiative encroached on a number of constitutional rights (notably the right of dignity as it is understood to include the right to a livelihood), the focus of its judgment was the fact that the city was not only in violation of its own policies and by-laws, but also the provisions of the 1991 Businesses Act. The court further found that the city could not impede registered street vendors’ “undisputed rights” to occupy their trading spots just because it found it more convenient in the bigger picture.



Street vendor, Uganda: It is unlikely that the formal sector will be able to provide enough jobs to feed rapidly growing urban populations. Photo: Jane Barrett

brought against him at the time. Both of these actions were illegal. Therefore, his arrest was unlawful; this resulted in the whole procedure being illegal.

2. Civil Proceedings

In Civil Law as well as in Common Law, there are branches of law which deal with the reparation of the harm one party may cause to another. These branches of law are called Civil Responsibility and Tort Law, and may be used against the governmental authorities by a street vendor who has been unlawfully deprived of his/her freedom or has had his/her goods unlawfully confiscated.

For instance, Nigerian courts routinely require the police force to pay damages to the street vendors who they have unlawfully imprisoned, on the grounds of false imprisonment.

In certain Civil Law jurisdictions, government(s) may be sued for damages directly before the administrative courts if it is established that their actions caused harm – notably physical or economic harm – to an individual. However, it may be that such a possibility is not specifically provided for by the Law. In such a case, the plaintiff may use the mechanism of “*voie de fait administrative*” (which roughly translates into “administrative assault”) to sue a government(s) for damages.

This concept is used to describe an administrative action which so badly infringes on an individual right or an individual freedom (such as property rights) that it ends up losing its administrative nature and can be considered an assault of sorts. When that happens, the case against the government shall no longer be tried before the administrative courts, and moves to the ordinary courts.

In Cameroonian case law, a prime example of the use of this concept is a 1968 decision of the now defunct Federal Court of Justice in the case of *M. Mve Ndongo Abraham*.¹⁶ M. Mve Ndongo was the Divisional Officer (Prefect) of the Boumba-Ngoko Division in the East Region. By his own account, he had ordered the local gendarmerie to seize 3,782 kilograms of cacao and other goods belonging to M. Ngaba Victor, a trader operating in the small town of Yokadouma, on the grounds that M. Ngaba owed taxes to the State.

The Federal Court of Justice noted that there was already a judicial procedure for seizing goods for non-payment of taxes, which had not been followed in this instance. Furthermore, the court noted that even though he was a representative of the State, it did not fall under M. Mve Ndongo’s jurisdiction to unilaterally seize a taxpayer’s goods. Not only had he violated the law by exercising a power that was not his to exercise, he had also violated it in such an egregious way that his actions were deemed to be a “*voie de fait administrative*”.¹⁷

This case shows that if a law-abiding street vendor (that is, a street vendor operating with the necessary permits and authorizations) has their goods unlawfully confiscated by an administrative authority, he/she may sue the government and seek damages before the courts. However, the vendor would have to prove that he/she had indeed suffered a damage that was the direct result of the government’s actions.

Similarly, in the abovementioned case of John Makwicana, the court did more than state that the provisions of the city by-laws which enabled the metro police to confiscate Makwicana’s goods without notice violated the Constitution. The Durban High Court also awarded him 775 rand¹⁸ in damages, plus costs and interest, to be paid by the Durban municipality.

¹⁶ Decision No. 10/CFJ-AP, October 17, 1968, “*Mve Ndongo Abraham*”

¹⁷ Federal Court of Justice, A/P no. 10, October 17, 1968, *Mve Ndongo, Chief Prosecutor v. Ngaba Victor*

¹⁸ 775 rand was equivalent to approximately US\$73.21 at the time of the court’s June 2014 decision (mid-market exchange rate from www.xe.com).

It should be noted that street vendors or their families may also sue the government for damages in case of bodily harm. At the time of this writing, in Uganda, Rose Nalujja, the daughter of a street vendor, has brought KCCA and the Attorney General before the civil division of the High Court. She is seeking over 800 million shillings¹⁹ in compensation of the death of her mother, Oliver Basemera.

Oliver Basemera, an illegal street vendor, drowned in the Nakivubo Channel in Kampala after having tried to escape KCCA enforcement officers who allegedly threatened her life and her property. According to Rose Nalujja, “the persistent pursuing of [her] mother forced her into Nakivubo Channel in order to save her life and her business, causing her to drown, which KCCA is liable for damages.”

In this case, Rose Nalujja is suing KCCA not only for failing to properly fence and cover up the channel, hence putting the public in danger; but also, allegedly, because KCCA’s Security Manager and his team intentionally failed to rescue her mother while she was drowning. The outcome of this case should be interesting for street vendors in any regard.

Conclusion

It is undisputable that there is great economic and social value in street vending for African countries. For many people in these countries, street vending is often the only way to pull oneself from unemployment and poverty and to ensure a livelihood and an education for one’s children.

Furthermore, African urban areas are rapidly growing. And, as stated by Nataliey Bitature, owner of the Ugandan Street food company Musana Carts, it is unlikely that the formal sector will be able to provide enough jobs to feed such rapidly growing urban populations. As a result, street food may very well become a key component of the African urban diet (Bitature and Lavaud 2017), and informal street vending may become an even more significant contributor to livelihoods and the economy.

Of course, there are rightful concerns relating to street vending on the side of governments. It is normal and expected that a government should take the necessary steps to protect public safety and public health; and at times, street vending interferes with such duties. There is also a concern from business owners, who may feel it unjust that street vendors are not subject to the same requirements as they are, particularly from a taxation standpoint.

However, the popular notion that street vendors are not subject to taxation has been widely disproven. As pointed out by Sally Roeber and Caroline Skinner, “recent research shows that street vendors commonly pay a variety of taxes, fees and levies that contribute to local and national government revenue” (2016, p. 362). They note that sometimes these payments, which may be permit and licences fees or special taxes on street food, amount to a significant proportion of vendors’ incomes.

In addition to contributing to the public coffers, street vending allows large portions of Africans to earn a livelihood where finding employment in the formal sector is challenging. Unfortunately, street vendors are not as valued in terms of employment policies as they should be, even though street vendors clearly are economic assets to cities and “in most regions of the global South, informal employment accounts for more than half of total employment, and self-employment outweighs wage employment” (Roeber and Skinner 2016: 359).

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¹⁹ 800 million Ugandan shillings was equivalent to approximately US\$220,434 in December 2017 (mid-market exchange rate from www.xe.com).



Street vendor, Dakar, Senegal: In Civil Law as well as in Common Law, there are branches of law which deal with reparation of harm one party may cause to another. Photo: Gabriella Tanvé

Street vending plays a vital role in cities across Africa and indeed, around the globe. For this reason, street vending should absolutely be regulated. This would provide rights to street vendors, but also impose duties upon them for the sake of public interest and to ensure accountability on both the vendors and the governments.

The development of street vending outside of the confines of the Law should not be encouraged – because what is unlawful cannot be protected under the law. Too often and in too many places, law enforcement is used as a weapon against street vendors, yet it has the potential to shield these workers from abuses of authority.

Where street vending is outlawed, necessary steps must be taken by all (politicians, activists, members of civil society) to ensure bans are lifted and replaced with sensible regulations. Where street vending is not expressly forbidden, existing laws governing business and commerce might be complemented by comprehensive national or local regulations regarding street vending.

As explained in this Brief, there are variations in the way that such issues would be tackled in both Civil Law systems and Common Law systems. Such variations stem from the differences that still exist between such systems, particularly with regards to the legal recourses available to street vendors, where Common Law systems tend to be a bit more liberal when it comes to the control of constitutionality of laws. However, as we have also explained, those differences are increasingly fading.

In any case, it is essential that street vendors are awarded strong legal protections and recognized for their contributions. They should be allowed to thrive, and their countries to thrive with them.

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WIEGO Legal Briefs examine how laws can be used by informal workers and their organizations to improve livelihoods. Some Legal Briefs analyze international instruments that can be used for national advocacy or to hold states and corporations accountable at the global level. Others describe laws that recognize informal workers’ rights and precedent-setting cases that have extended entitlements to informal workers, and the associated political struggles.

About WIEGO: Women in Informal Employment: Globalizing and Organizing is a global research-policy-action network that seeks to improve the status of the working poor, especially women, in the informal economy. WIEGO builds alliances with, and draws its membership from, three constituencies: membership-based organizations of informal workers, researchers and statisticians working on the informal economy, and professionals from development agencies interested in the informal economy. For more information see www.wiego.org.