

The Recognition and Protection of Informal Traders in COVID-19 Laws: Lessons from Asia



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Key Points

- Our analysis shows that the COVID-19 laws and policies in India, Malaysia, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam largely mirror existing laws that do not recognize informal traders as legitimate economic actors or the role that informal food vendors play in promoting food security. Very few of these Asian countries recognized self-employed workers generally, and street vendors in particular, in relation to the four policy areas that we considered: recognition of informal food vendors as essential service providers; social protection and other forms of relief; preventative health and safety measures; and social dialogue and workers' consultation.
- The COVID-19 response of countries included a range of instruments, both legal and non-legal policy instruments. Our analysis shows that governments passed few pieces of primary legislation in response to the pandemic, but did pass secondary laws and non-binding policy instruments.
- We observed differences in the type of laws used to legislate in different policy areas. There were also differences in how different levels (national, state or municipal) of government responded.
- Countries relied on public health laws, national disaster or state of emergency laws to impose restrictions.
- There was limited recognition of informal food vendors as essential service providers. Of the seven surveyed countries, only two designated informal food vendors as essential, and this was done through advisories and guidelines.
- Only two of the surveyed countries established dedicated social protection and other forms of support for self-employed workers or street vendors. Where support was offered, several factors hindered street vendors from accessing it, especially the eligibility criteria and application processes.
- Some occupational health and safety measures for informal traders, including screening procedures in markets, were taken by governments in four out of the seven countries.
- Despite the exclusion of informal traders from the countries' national COVID-19 response structures, governments in two of the surveyed countries mandated local authorities to consult with informal traders.

I. Introduction

Street vendors and market traders the world over often work in a “hostile legislative environment” (Roever and Skinner 2016). For decades, legal frameworks have not recognized street vending as a legitimate economic activity and have criminalized street vending and vendors (Bamu 2019). In addition, the laws that regulate public spaces are complex and difficult to navigate and their language is often inaccessible to street vendors (ibid). Moreover, street vendors are left out of the decision-making processes that shape the laws and policies that dictate the conditions under which they earn their livelihoods (ibid).

Most street vendors are self-employed and as a result are often excluded from the scope of labour law and social protection programmes. Occupational health and safety law places an obligation on employers to take measures to protect the health and safety of their employees, while social insurance laws often presuppose that employers and employees will both contribute and require the employer to administer this. Moreover, collective bargaining and social dialogue processes revolve around employers and trade unions, which predominantly organize employees.

It is in this context that we review the laws and regulations that were introduced as part of emergency measures to contain the spread of COVID-19. Countries imposed restrictions and changed rules governing many aspects of everyday life to curb the spread of the coronavirus. These restrictions significantly impacted informal workers, who form a significant portion of the workforce. In Southern Asia, 77.6 per cent of the non-agricultural workforce is informally employed and in Southeast Asia this is nearly 64 per cent (ILO 2018).

Informal traders such as street vendors and market traders, who constitute a sizable portion of the workforce in Asian cities, lost income through the reduction in foot traffic in public places following COVID-19 restrictions. In Hanoi and Ho Chi Minh in Vietnam, 11 per cent of workers are street vendors, while in Indian cities street vendors constitute 4.4–6.5 per cent (ibid). Street vendors and market traders together form more than 4 per cent of Thailand’s workforce and 2.7 per cent in Bangkok (Poonsab, Vanek and Carré 2019). Interestingly, in Thailand street vendors selling cooked food (street food) form a large proportion of all street vendors. Street vendors and market traders have always been an integral part of the social fabric of many Asian cities, providing accessible goods to the urban poor and forming an important part of the circular economy of these goods.

Informal food traders contribute towards food security by providing cheap and easily accessible food in urban areas (Roever and Skinner 2016). Despite street vendors and market traders being an integral part of everyday life in low and middle-income communities, we witnessed devastating impacts on their lives during the initial phase of the pandemic in 2020. Through this study, we examine how COVID-19 laws regulated informal traders in seven countries in South and Southeast Asia. We ask if the COVID-19 laws signal a shift towards better recognition of informal traders’ rights. In this respect, we rely on Recommendation 204 (R204) of the International Labour Organization (ILO) concerning the Transition from the Informal to the Formal Economy. R204 recognizes

and lays down rights for workers in the informal economy and gives member countries guidance on how to transition workers from the formal to informal economy.

This study is part of a series of studies on COVID-19 laws and their impact on informal workers in the global south. It follows WIEGO Law Programme's August 2020 edition of Law and Informality Insights, which analyzed the COVID-19 laws and their impact on street vendors in 51 countries across Africa, Asia and Latin America (WIEGO 2020a). The Law Programme also published an in-depth analysis of COVID-19 laws and their impacts on informal traders in Africa in December 2020 (Bamu and Marchiori 2020) and in Latin America in June 2021 (Marchiori and Assis 2021).

The study examines four key aspects that affected informal traders during the height of the pandemic:

- Movement restrictions and designation of essential services: *whether the laws recognized informal food traders as providing an essential service.*
- Social protection and stimulus measures: *whether there are specific provisions for informal traders.*
- Health and safety measures: *whether there are specific measures to prevent the spread of COVID-19 in informal trading areas.*
- Social dialogue: *whether the social dialogue process is inclusive of informal traders.*

The laws relating to these aspects and their implementation and impact on informal traders are analyzed and critical insights drawn on how lawmakers and decision makers largely ignored the interests, needs and challenges of informal traders. These workers are largely excluded from the scope of regulations and restrictions, the social protection measures, and the social dialogue processes.

Table 1 lists the surveyed countries. The main criterion for selecting the countries was the availability of official legal and policy documents in English. After initially identifying 14 territories, we excluded three countries (Mongolia, Myanmar and Nepal) from the analysis due to the dearth of official documents in English. We excluded four of the remaining territories (Hong Kong, Japan, Singapore and the United Arab Emirates), which have smaller informal economies than the seven South and Southeast Asian countries that we selected. We included some notable features of the COVID-19 response in the higher-income Southeast Asian territories of Hong Kong and Singapore to provide comparisons and highlight good practices.

Table 1 – Asian countries surveyed

| Region | Countries |
|----------------|--|
| South Asia | India, Pakistan, Sri Lanka |
| Southeast Asia | Vietnam, Philippines, Malaysia, Thailand |

The sources of law that we considered include legislation and judicial documents. Legislation comprises both primary as well as secondary legislation, which are also known as original and delegated legislation respectively. Primary legislation refers to legislation enacted by the national (or state/provincial) legislature. Their authority to legislate is derived from the country's constitution, which could be written or unwritten. Secondary legislation refers to laws (including regulations and executive orders) that

are passed by authorities, heads of state, or members of the executive in terms of a mandate from original legislation. For example, an Act of Parliament may authorize the Minister of Health to issue regulations or make an order on public hygiene during a pandemic. Primary legislation may mandate state or local authorities to pass laws or regulations. For example, a national law (passed in terms of the constitution) may mandate state or local authorities to regulate street vending within their jurisdiction.

Our survey shows that the governments of the surveyed countries passed very few primary laws. This is arguably because the crisis demanded a swift response that was mandated by primary legislation that empowers the government to act in such situations.¹ Governments largely passed secondary laws and non-binding policy in response to the crisis.

We also surveyed judicial documents, which include copies of court judgments and orders. Where relevant, we considered court documents including petitions and responses of the parties where they raised relevant issues and where judgment was yet to be passed. These process-related documents provided insights into the issues arising in litigation and are not binding sources of law. India and Pakistan appear to be the only countries in the study where COVID-19-related issues were litigated.

In addition, we analyzed a range of non-legal government documents that were issued by the executive (e.g. Minister) and administrative functionaries (e.g. Director or Permanent Secretary) within government departments such as policies, programmes and plans.² We further relied on communication within government departments, progress reports of relevant committees and government press releases and briefings. These documents were not necessarily binding in themselves, but either signalled that legislation had been or would soon be passed or indicated governments' policy intentions or commitments.

We also collected and analyzed relevant secondary literature, including committee reports, press briefings, news reports, submissions by worker and civil society organizations, and research studies and reports, news reports, website and internet resources. This helped to fill the gaps where certain law or policy documents were not available online.³ Secondary sources also provided insights into the trajectory and spread of COVID-19 and the situation of informal traders. For example, we drew on the reports from WIEGO's COVID-19 Crisis and the Informal Economy Study, which covered 12 cities including three in Asia: Bangkok, Thailand, and Ahmedabad and New Delhi in India.

¹ This is elaborated in Section II.

² Notably, the names of non-binding documents (e.g. guidelines) in some countries were similar to those of some forms of secondary legislation in other countries, which led to some confusion as to which documents were binding laws and which were not. Ultimately, the test was whether or not they were mandated by primary legislation with the intention that they would be binding secondary laws.

³ The challenge was that these did not provide complete information, such as the reference to the empowering provision, indication of the legal status of the document, or the identity of the authority that passed it.

The challenges relating to the use of secondary literature included the disparity of available information across the seven countries. It was difficult to find relevant secondary literature on the situation in Pakistan, the Philippines, Sri Lanka and Vietnam. There was limited information about informal workers' and other workers' organizations in these countries and about workers' experiences and organizations' responses during the pandemic. By contrast, there was much information about India, Malaysia and Thailand.

We identified and analyzed specific legal and policy provisions targeted at informal traders as well as the implications of generally applicable COVID-19 law and policies on informal traders. With variations in how different levels of government responded to the pandemic, our analysis mainly focuses on national-level laws and policies. The exception is India, where we collected information on five states (Gujarat, Tamil Nadu, Odisha, Sikkim and Delhi).

II. Surveyed Asian Countries' Response to COVID-19

Like governments everywhere, most of the surveyed Asian countries invoked existing legal provisions to impose COVID-19 restrictions. It is important to analyze these laws because the use of emergency legal provisions reflected governments' understanding of the problem and gave them varying powers to impose movement restrictions, restrict economic activity, and impose penalties for violations. On the one end of the spectrum, countries invoked legislation on notifiable, quarantinable, transmissible or infectious diseases or public health emergency or health emergency laws. Governments in these countries had limited powers to regulate the pandemic and were largely restricted to measures to prevent the spread of the disease. On the other end were countries that framed the pandemic as a national disaster, a national emergency or state of emergency. The laws that governments invoked determined which authorities could lead the response and the nature of the measures they could take.

Table 2 below indicates the type of legal framework that six of the seven selected countries invoked. Sri Lanka was an exception in that it passed quarantine curfew orders and several health guidelines without formally invoking the Quarantine and Prevention of Diseases Ordinance of 1897 or its Public Security Ordinance (Ganeshathasan 2021). As a result, critics questioned the legitimacy and constitutionality of the measures (ibid).

Table 2 – Type of legal framework invoked

| Type of legal framework | Countries |
|--|---|
| COVID-19 as a notifiable or quarantinable/transmissible/infectious disease | Thailand , Pakistan, India (Tamil Nadu, Gujarat, Odisha, New Delhi), Malaysia |
| Public health emergency or health epidemic | Philippines, Vietnam |
| National disaster or state of calamity | Pakistan, Philippines, India |
| State of emergency or national emergency | Thailand, Malaysia |

Five countries – India, Malaysia, Pakistan, the Philippines and Thailand – shifted from invoking health legislation to invoking national disaster or national emergency laws. This is arguably attributable to these governments' changed understanding of the realities and the broader impact of the pandemic over time. For instance, India and Pakistan initially relied on a colonial law that regulated epidemic diseases (Gilani 2020). The Epidemic Diseases Act, 1897 in India gave state governments powers to issue regulations

to prevent the outbreak and spread of the disease. The central government's powers under this Act were limited to prescribing regulations for persons entering or leaving through ports. In the initial phase of the crisis, states were regulating by enacting state-specific COVID-19 regulations. To invoke nationwide measures however, the central government invoked the Disaster Management Act, 2005. Similarly, Pakistan invoked its National Disaster Management Act, 2010. Invoking these laws allowed countries to regulate the pandemic on the basis that it was a humanitarian and/or economic challenge as well as a health crisis.

Table 3 below shows which laws mandated which authorities to respond to the pandemic. The table, however, is not exhaustive as we observe reliance on other regulations for relief and social protection measures in some countries, including Vietnam and the Philippines.

Table 3 – Typology of secondary legislation

| Country | Primary legislation | Delegated law-maker | Form of secondary legislation |
|------------------------|---|---|--|
| India | Disaster Management Act, 2005 | National Executive Committee, State Executive Committee, District Authority, | Rules, regulations, notifications, guidelines, instructions, orders, schemes, by-laws |
| India | Epidemic Diseases Act, 1897 | State governments | Regulations |
| Malaysia | Control of Infectious Diseases Act, 1988 | Ministry of Health (also Prime Minister) | Order, regulations |
| Malaysia | Police Act, 1967 | King (also Prime Minister) | Orders |
| Malaysia | Emergency (Essential Powers) Act, 1967 | King/his delegatee | King: ordinance Delegatee: order, rules, by-laws |
| Pakistan | West Pakistan Epidemic Diseases Act, 1958, National Disaster Management Act, 2010 | Federal Government, provincial governments, Provincial Disaster Management Authority | Rules, regulations |
| Philippines | Philippines Disaster Risk Reduction and Management Act of 2010, Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act, 2019 | The President, Ministers, various government departments, bureaus and agencies | Presidential Decrees, Executive Orders, Memorandum Circular, Administrative Orders, Proclamations, etc., rules and regulations |
| Sri Lanka ⁴ | | Minister/government official Local authority, Ministry of Health and Indigenous services | Rules, regulations, orders By-laws |
| Thailand | Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) | King, Prime Minister, Minister | Royal Proclamations Royal Decrees Ministerial Regulations Orders Notifications Rules |

⁴ It is unclear which primary legislation Sri Lanka's government relied on during the initial phases of imposing restrictions.

| Country | Primary legislation | Delegated law-maker | Form of secondary legislation |
|---------|--|--|--|
| Vietnam | Law on Prevention and Control of Diseases 2007 | Prime Minister, President, Ministry of Health, National Assembly Standing Committee, Ministry of Information and Communication, Government, various Ministries | Regulations, Resolutions, Orders |
| Vietnam | Law on Organization 2015 | President, Prime Minister, Government, various Ministries, National Assembly Standing Committee | Legislation, Resolutions, Ordinances, Decrees, Orders, Decisions, Action Plans |

Restrictions imposed

After invoking the relevant legal frameworks, the countries took special measures to impose restrictions on movement, including closing international borders and imposing lockdowns. With the exception of Vietnam, which declared a national epidemic in February 2020, they initiated their emergency responses in March 2020. The emergency response continued for an extended period in some countries, for example, Thailand's lasted until January 2021.

Border restrictions: All the Asian countries studied restricted international travel and closed international borders either partially or fully. They restricted entry to citizens or residents and imposed a quarantine on those who entered. These restrictions were eased gradually by opening to business travel or setting up travel agreements with specific countries. Even at the time of publishing, countries still have international border restrictions.

Lockdowns: Most countries imposed lockdowns or restrictions on movement between March and June 2020. The severity of the restrictions changed over time, with the initial phases of the lockdowns generally being stricter than the later phases. All the surveyed countries imposed hard lockdowns, where public gatherings were prohibited or restricted, movement to and from certain regions was prohibited, and movement for all except essential workers was restricted. Further, governments imposed fines on those violating the restrictions. In almost all countries, the lockdowns significantly restricted the operation of businesses considered non-essential. Also, schools, cultural and recreational activities, and places of worship were closed.

These lockdowns required permits for the movement of even essential workers. For instance, in India, the regulations required essential workers and organizations handling nationwide supplies to obtain permits for commuting and other travel.

In the Philippines, self-employed people could travel to and from the National Capital Region provided they could show proof of their economic or business activity at checkpoints. The Sri Lankan Prime Minister, after the curfew was imposed, said, "Curfew has to be strictly enforced but please give the necessary permission for vegetables, fruits and coconuts to reach the economic centres" (Economy Next 2020).

Public transport was shut down, reduced in frequency or limited to specific times in the surveyed countries. Two things, in particular, affected informal traders during lockdowns – restrictions on transport and requirement of permits.

Easing Lockdowns: While easing the lockdowns, the countries took staggered approaches and gave different regions different restrictions depending on the level of infection. By September and October 2020, most countries had allowed most businesses to resume operations subject to restrictions including mask mandates, physical distancing rules and the requirement for temperature checks before entering public places. A few countries and territories, such as Vietnam (July) and Malaysia (January 2021), later reintroduced restrictions as they saw a resurgence in COVID-19 cases. During April and May 2021, all the countries were imposing more area-based lockdowns due to rising infections. These lockdowns were not as severe as the initial lockdowns.

III. The Recognition of Informal Food Trade as an Essential Service

During the lockdowns, the surveyed countries distinguished between essential services/activities and non-essential services/activities as a criterion for determining who could be exempted from movement restrictions. Essential services broadly included health care, public services such as police, local authorities, supply of daily necessities, food supply chains, banking, manufacturing, and some service establishments. All the countries designated the provision of food as essential. There was, however, some confusion in India as to what constituted essential food items. The central government, when queried by state governments as to what qualified as essential items, advised state governments to interpret “essential items” as food and groceries consumed by people on a daily basis.⁵ In this section, we analyze whether the surveyed countries recognized informal food traders as providing an essential service during lockdowns and consider the hindrances that the traders faced while continuing to provide the population with food in this period.

Countries took different approaches in recognizing informal food vendors as essential workers. Informal food vendors are vendors who sell fresh fruit and vegetables and/or cooked food. We summarize the different approaches to recognizing informal food traders in Table 4 below. Table 5 captures the position adopted at the height of lockdowns. Some countries shifted their positions or took varied approaches within the country even while restrictions were in place, which is why we mention them twice.

Table 4 – The regulation of informal food vending at the height of lockdown

| Issue | Countries |
|---|---|
| Expressly prohibiting informal trade | Weekly markets Sikkim (India) Street markets Vietnam |
| Sale of essential goods by registered/formal shops only | Vietnam, New Delhi (India), Odisha (India) |
| Sale of essential goods without mentioning formal or informal providers | Philippines, Malaysia |

⁵ There was a change in the stance of the Indian government, which in 2021 allowed states to decide what activities fall within essential activities.

| Issue | Countries |
|--|--|
| Allowing informal traders to operate, but without special designation as essential | Thailand Street vendors (mobile and stationary) Sri Lanka Markets Pakistan |
| Designating informal food vending/informal traders as essential service | Street vendors India (central government), Carts Tamil Nadu (India) Market vendors Philippines* |

*Shifted position during the pandemic

The regulation of informal trade falls along the following continuum:

(i) Expressly prohibiting informal trade

In Sikkim, India, weekly bazaars (markets) were expressly prohibited in the initial lockdown. Vietnam suspended street markets during the initial phase of restrictions.

(ii) The designation of formal establishments (such as supermarkets) for the sale of essential goods and the provision of essential services, which implicitly excluded informal traders as essential service providers

Vietnam expressly designated formal establishments as the providers of essential goods, which implicitly excluded informal traders as essential service providers. However, in Hanoi, street markets were considered essential, indicating that a different approach was adopted at the local level (Tilleke and Gibbins 2020).

In India, different state governments took different approaches towards informal food vendors. In New Delhi and Odisha, the regulations mentioned formal establishments only. For instance, in New Delhi during the fourth phase of lockdown, shops in markets were allowed to reopen on an odd-even basis: those with odd shop numbers and those with even numbers could trade on alternating days. This implicitly excluded the informal traders, who do not have designated spaces.

(iii) Listing essential goods and services without mentioning whether providers are formal or informal

Two countries' laws did not designate particular businesses as essential service providers, thereby implicitly recognizing that informal traders provide essential services. Malaysia and the Philippines allowed premises selling food to remain open but with only takeaway and delivery options. Malaysian regulations provided that, *"Any premises involved in food supply chain or selling food and beverages may continue to operate by way of drive through, take away and delivery only."*

(iv) Indirectly recognizing informal traders (e.g. by imposing hygiene rules in markets) without specifically designating them as essential service providers

In Thailand, markets and flea markets were closed except for those (traders/stalls) selling **fresh food, dry fish, takeaway food** and other necessities. In Sri Lanka, guidelines were issued setting out steps to be taken by municipal councils and street vendors while allowing vendors to operate. These guidelines said that spaces/areas should be allocated for both stationary and mobile vendors. Separate guidelines for mobile food vendors dealing with cooked and raw food were also issued. In Pakistan, there was

weak recognition, with guidelines related to managing stores mentioning that going to markets should be avoided. Further, in a case that the Supreme Court of Pakistan took up *suo moto* (of its own accord) regarding the closure of community markets, shops and markets during weekends, the court held that these restrictions were not reasonable.⁶

(v) Expressly recognizing informal traders as an essential service

In July 2020, the Philippines issued national guidelines to expand testing. These guidelines recognized market vendors as “frontline and economic priority workers” and required them to be tested every quarter.⁷ In the Indian state of Tamil Nadu, informal traders who use carts were allowed to operate during the second lockdown.⁸

In India, the central government shifted its stance from indirect to express recognition of informal street vendors. Guidelines that the Indian government issued in the initial lockdown expressly mentioned facilities in the supply chain involving “manufacturing, wholesale and retail” of goods through “local stores, large brick and mortar stores or e-commerce companies”. The same guidelines provided that people operating in “supply of essential goods in the unorganized sector” could operate with permission from their local authorities. It also allowed specifically for *mandis* (wholesale food markets) to continue to operate.

A week after allowing local authorities to permit informal traders to operate, India’s Ministry of Housing and Urban Affairs sent a letter to state governments that recognized the important role that street vendors play in supplying groceries, fruit and vegetables to citizens at affordable prices and acknowledged that they were at risk of losing their livelihoods during the lockdown. The Ministry requested that state authorities allow registered vendors who had the requisite identity cards or trading certificates to continue to operate to enable them to earn a living and to serve their customers through delivery to people’s homes during the lockdown. However, this advisory gave a mixed message since it provided that state authorities “may continue” to impose restrictions on street vendors. Further, many street vendors are not registered as their registration is dependent on compliance with the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, which is still not fully implemented (Bedi and Narang 2020).

Overall, the recognition of informal food vendors was limited in the countries surveyed. Where there was recognition of informal traders as essential workers, it was through

⁶ *Suo Moto Action Regarding Combating the pandemic of coronavirus COVID-19*. S.M.C 01/2020. (Supreme Court of Pakistan) Order 18/05/2020 Available at https://www.supremecourt.gov.pk/downloads_judgements/s.m.c._01_2020_18052020.pdf

⁷ Philippines identified different categories of people, such as health workers, people with critical symptoms, frontliners, people living in specific concern areas, economy workers etc for priority testing. Within the group frontline and priority economy workers, 11 categories were identified out of which Market Vendors were one category. The other categories include Education, Transport & Logistics, Food Retail, Financial Services.

⁸ India saw 4 phases of lockdown (March to May 2020), with the stringency of restrictions lessening with each phase and 4 phases of ‘Unlock’, where restrictions were eased, between (June-September 2020)

advisories or guidelines, and not laws. One exception was Sikkim, India, where the state government used a law (the criminal procedure code) to expressly prohibit informal trade.

There are instances where the law was silent on whether street vendors could operate or not and this created loopholes for law enforcement authorities or state/local governments to take a prohibitive stance. In the Philippines, several street vendors were arrested for setting up their stalls, even though the law did not expressly or implicitly prohibit them from operating (Maguidayao and Iltis 2021). In India, the issue was that while the central government advised (rather than mandated) state governments to allow street vendors to operate, leaving room for different states to adopt different rules. In New Delhi, where street vendors were implicitly excluded by the state government, there was increased harassment from police, though many vendors were reluctant to report it for fear of victimization (Chakraborty and Ahuja 2021). A study on the impact on street vendors in the state of Maharashtra elaborates on the severe losses vendors experienced, including the spoiling of their confiscated goods (Meher et al n.d).

Further, we observe that with governments encouraging online platforms, informal food vendors able to navigate these platforms and those selling cooked food seem to be on a better footing than other vendors. In Malaysia, for instance, “any premise in the food supply chain operating through takeout or delivery” was allowed to operate. In India, the central government established a partnership with a food delivery application to register street vendors.

However, vendors generally faced difficulties in accessing these platforms. For instance, while some cooked-food vendors in Thailand migrated to online sales and delivery, others were unable to do so because they could not afford the fees for online sales platforms or lacked internet access and the technical know-how (Cheng 2020; Thomson Reuters Foundation 2020; World Bank 2020; Tan 2021).

IV. Social Protection and Other Support Measures

As informal workers, street vendors form part of the “missing middle” when it comes to social protection (Alfers and Mousie, 2019). This means that they are “too poor” to participate in social insurance schemes and “too rich” to qualify for government-funded social assistance, which usually targets the poorest or most vulnerable of poor populations (ibid). COVID-19 has starkly demonstrated the consequences of excluding the majority of the world’s workers from social protection (ILO 2020c). Informal workers need income support to cushion them against the reduction or loss of income as a result of restrictions on movement and work during and after lockdowns; and the illness of the worker and/or family members. Informal workers also require health care when they or their family members become ill with COVID-19.

This section analyzes the laws and policies that the surveyed countries used to extend social protection to informal traders. It highlights the pandemic’s economic impact on street vendors, which demonstrates their need for social protection and other support. It then discusses the forms of support extended to the general population that self-employed workers could qualify for: cash and in-kind support and health care. It then considers the support that the surveyed countries extended to self-employed workers

or to street vendors in particular. It ends with a discussion of the factors that hindered vendors' access to the various forms of support.

The seven surveyed countries provided for social protection and other forms of relief to address the impact of the lockdowns on employment and livelihoods. Only three – the Philippines, Vietnam and India – used law to achieve this. India and Vietnam passed secondary laws on social protection and relief, while the Philippines enacted Republic Act No. 11494 or the Bayanihan to Recover as One Act. This Act established emergency subsidy programmes including *Tulong Panghanapbuhay sa Ating Disadvantaged/Displaced (TUPAD)*, which is specifically for informal workers, and an employment guarantee programme. In Vietnam, the government extended relief to individuals and businesses affected by COVID-19 in terms of secondary legislation – Government Resolution No. 42.

In India, many support programmes in response to the pandemic were based on existing social assistance schemes or extended through a myriad legal and non-legal instruments and documents. At the national level, the central government made use of secondary legislation such as orders and regulations to provide for social protection. In addition, the Supreme Court instituted a *suo motu* petition⁹ in response to reports of the severe difficulties that stranded migrant workers¹⁰ – with many street vendors among them – were experiencing. While the Court acknowledged the central and state governments' efforts, it found that some of their measures were inadequate and that implementation of some was also problematic. The Court passed orders and issued directives requiring the central and state governments to provide for migrant workers.

At the state level, states such as Odisha (through its Revenue and Disaster Management Department) issued orders and office letters to district collectors¹¹ and other functionaries either requiring or requesting that they establish support programmes or increase or modify existing support. While the orders qualify as secondary legislation in terms of India's hierarchy of laws, the letters do not necessarily constitute law but are arguably binding on the collectors and other functionaries.

The governments of Malaysia, Pakistan, Sri Lanka and Thailand extended relief, not in terms of law, but in terms of COVID-19 response and recovery plans. This reflected the position in Africa, where the vast majority of COVID-19 laws were aimed at regulating and punishing citizens' actions, as opposed to protecting them from the pandemic's economic impact (Bamu et al. forthcoming). One of the implications of the absence of laws to regulate the extension of benefits is that the benefits cannot be claimed as of right.

⁹ The Court instituted this of its own accord and issued a notice to central and state governments to submit their responses about the measures that they were taking to support migrant workers. See *Suo Motu Writ Petition (Civil) No. 6 of 2020 In Re Problems and Miseries of Migrant Workers* (Supreme Court of India) Order 26/05/2020.

¹⁰ This refers to internal as opposed to cross-border migrants.

¹¹ Each district has a collector who is the principal representative of the administration and principal revenue officer.



Street vendor in Ahmedabad, India. Photo: Marty Chen

Our key finding is that the surveyed countries' laws and policies to provide economic support and relief during COVID-19 largely reflected existing patterns of exclusion of informal workers, including street vendors. Laws and policies to protect workers' incomes were largely focused on formal workers: social insurance benefits such as unemployment were largely restricted to formal workers, and most governments' measures to protect workers' incomes were primarily aimed at employees in private companies. In addition, informal workers were largely excluded from the scope of laws and policies that governments introduced to support micro and small enterprises, which required proof of formal registration.

The pandemic's economic impact on street vendors

Indian, Sri Lankan and Thai street vendors who resumed their trade after lockdowns reported that their post-lockdown income levels fell far short of their income levels before the pandemic (Meenakshi 2021; Vaffoor and Tissaaratchy 2021; Khan and Mansoor). Bangkok street vendors reported that their average daily earnings in June and July 2020 were only 64 per cent of their December 2019 earnings, with earnings of non-food vendors being much lower than those of food vendors (WIEGO 2021). Ahmedabad street vendors were earning less than one-third of their pre-lockdown income a few months after the lockdown officially ended (WIEGO 2020b).

The pandemic has negatively impacted street vendors' operations and incomes in three broad ways. The first relates to the lockdowns, which restricted street vendors' ability to operate and therefore their income. The second relates to the fact that some street vendors did not return to their normal levels of operation and earnings after the easing of lockdowns. The third relates to the broader economic factors that have reduced their sales and profitability.

The lockdown regulations prohibited some street vendors from operating either in terms of the law, or because enforcement officers misinterpreted or ignored laws allowing them to operate and evicted them or confiscated their goods. Curfews and restrictions on movement also limited their working hours and reduced the numbers of customers with less pedestrian traffic. Street vendors were also affected by disruptions in supply chains for their products or inputs. Another challenge was increased competition during the lockdowns. In India, for example, fruit and vegetable vendors faced greater competition when non-food vendors resorted to selling fruit and vegetables because the lockdown provisions prohibited them from selling non-food items (Meher et al n.d.).

The easing of lockdowns did not automatically free street vendors to go back to work. In some countries they were not immediately allowed to resume their operations, even though most businesses were allowed to do this. For example, in August 2020, the Maharashtra government in India prohibited street vendors from resuming trade for fear that they would spread COVID-19 (Chaudhari 2020). In Delhi, local authorities closed markets and informal trading areas (Chakraborty and Ahuja 2021). In Penang, Malaysia, some night markets were not reopened even after the authorities decreed that they could (Ramli and Jafri 2021). These authorities also prevented some traders from returning to their original positions or moved them away from natural markets to less visible trading spaces (ibid). Moreover, street vendors in Bangkok and Ahmedabad reported that they were working fewer and shorter days than they had before the lockdowns (WIEGO 2021; WIEGO 2020b).

The economic downturn that has resulted from the pandemic has affected informal workers, with street vendors encountering a decrease in consumer demand (Chakraborty and Ahuja 2021). In India and Thailand, workers who lost their jobs in other sectors and turned to street vending also posed a threat to existing traders' operations (ibid; WIEGO 2021). Increased competition forced street vendors to maintain or reduce their prices despite increases in the cost of their stock (Thomson Reuters Foundation 2020; Meher et al. n.d).

Female street vendors have been disproportionately affected by the pandemic, in part because women are over-represented in the informal sector (SSHAP 2020). Their domestic chores and care duties have increased with more family members at home for prolonged periods (Gulati 2021; Chakraborty and Ahuja 2021). Women informal workers who are unable to work due to care responsibilities are also at greater risk of domestic violence (Günther et al 2020; SSHAP 2020). In India, women traders are usually stationary traders and were less able to move around to sell their wares when markets were closed (Chakraborty and Ahuja 2021). These women have continued to struggle to go out and work as before, even after governments eased lockdowns (ibid).

The above discussion demonstrates street vendors' need for cash and in-kind support both during and after the pandemic.

Social protection and other support and relief for the general population

Five of the seven surveyed countries (India, Malaysia, the Philippines, Thailand and Vietnam) provided cash benefits for citizens and (in some countries) for permanent residents. Governments provided once-off grants or (as in the Philippines and Thailand)

extended cash benefits for a few months. In most of the countries, the benefits were reserved for low-income beneficiaries (India, Malaysia, the Philippines and Vietnam). India's cash grants were largely based on the extension of its many existing social assistance programmes, which are based on legislation such as the National Food Security Act, Mahatma Gandhi National Rural Employment Guarantee Act and on-going government schemes.

One country, the Philippines, provided benefits for people directly affected by or infected with the virus. Patients who were quarantined in accredited facilities were entitled to a USD270 health package, while those who tested positive for COVID-19 were entitled to a USD580 package.

A few countries also provided in-kind benefits. For example, Malaysia provided free internet for its citizens, subsidies for utilities such as electricity, and exemptions from paying rent in public housing.

India established several food ration programmes that provided rice, cooking oil and other basic foods. Many were directed at the beneficiaries of existing schemes. The country also provided for the distribution of liquid petroleum gas, which many low-income households rely on for cooking. India's central and state governments' regulations and orders provided accommodation, food and medical assistance for internal migrants who were stranded and unable to work during lockdowns. In seeking to address inadequacies in implementation, the Supreme Court of India issued directives requiring the government to provide migrant workers with this support and allocating responsibility (central government, government of the state of residence or receiving state) for delivery.¹² The Court directed the government to speed up the process of registering migrant workers and to establish help desks for registration in places with many stranded migrant workers.

Free COVID-19-related health-care services provided by some of the surveyed countries enabled financially strained street vendors to save on expenses that they would otherwise have incurred for themselves and their families.

None of the surveyed countries provided free comprehensive COVID-19 treatment to all residents. India, the Philippines and Thailand provided a limited range of health services. A few countries provided free COVID-19-related health services. India's state of Tamil Nadu launched a mobile application to allow people in home quarantine to receive medical advice, covered the costs of COVID-19 tests done in private labs and provided for door-to-door screening and disinfection of houses within containment zones. Also in India, the city of Ahmedabad provided for the testing of pregnant women in containment areas and labour camps (some of which house informal traders) whether or not they were symptomatic. The Philippines, Thailand and some states in India provided mental health care in recognition of the pandemic's psychological impact (Almendral 2020).

¹² *Suo Motu Writ Petition (Civil) No. 6 of 2020 In Re Problems and Miseries of Migrant Workers* (Supreme Court of India). Available at https://main.sci.gov.in/supremecourt/2020/11706/11706_2020_34_24_22239_Order_28-May-2020.pdf

Support and/or for self-employed workers and/or street vendors

Of the surveyed countries, only the Philippines and several states in India and Malaysia targeted benefits specifically at self-employed workers, including street traders. Several Indian states gave cash support to self-employed workers and, in some instances, the laws or policies specifically mentioned informal traders. Tamil Nadu provided a cash benefit for registered street vendors, and Gujarat extended cash grants to workers in the informal sector. Additionally, some Indian states provided grants to self-help groups, some of which comprise street vendors. In a speech about the State of Odisha's response to COVID-19, a government official reported that the Odisha government had provided cash grants of about USD40 for 65,000 registered street vendors.

The Philippines established a public works initiative through the Tulong Panghanapbuhay sa Ating Disadvantaged/Displaced (TUPAD) programme in terms of the Bayanihan Heal as One Act. This initiative enabled self-employed workers to conduct public works for a minimum wage, which helped compensate for loss of income during lockdowns. In Malaysia, several states launched stimulus packages, which provided financial relief for street vendors by exempting them from paying trading fees, in March 2020.

Two countries (India and the Philippines) provided in-kind support. In India, some programmes provided food rations and cooked meals for workers, including the self-employed. The state of Gujarat established a programme to give umbrellas to fruit and vegetable vendors to protect their produce in bad weather. In the Philippines, the Pantawid, Pamilya Pilipino programme was extended to provide vouchers or goods for households of self-employed people either directly or through local government units.

Although they were not among the surveyed countries, some of the wealthier Asian territories - Hong Kong and Singapore - adopted noteworthy good practices in relation to self-employed workers, and hawkers in particular. These were largely extended under COVID-19 response plans and programmes and not in terms of laws. The Hong Kong government provided for a hawkers' subsidy of USD645 and a subsidy for tenants of cooked or light food refreshment stalls that were managed by public markets. Singapore's stimulus plans provided for self-employed people to receive funds under the March 2020 Resilience Budget. Under the Solidarity Budget of April 2020, self-employed workers earning below a threshold were eligible for a once-off payment in April and other payments in May, July and October.

Like some Malaysian states, Singapore's government waived food vendors' rental fees for one month. Singapore also created a cash incentive programme to promote contactless payment and online sales platforms. Hong Kong also provided benefits for contributors to a social insurance scheme: self-employed workers who had consistently contributed towards the employee provident fund in the prior 15 months were eligible for a cash grant of USD967. However, it is unclear whether street vendors and hawkers were contributing to and therefore qualified.

Factors hindering street vendors' access to benefits and support

This section discusses barriers to access to social protection and other forms of support that street vendors experienced. The eligibility criteria were restrictive and

some application processes directly or indirectly excluded street vendors or limited the number of potential benefits. In addition, several factors hindered the implementation of laws and policies establishing the benefits. Another challenge was street vendors' perceptions of the support programmes, the processes and government capacity, which affected their willingness to seek access. Street vendors adopted various coping strategies in the absence of social protection and other government support and these are described here.

The most significant barrier was the direct or indirect exclusion of street vendors in some of the eligibility criteria and application processes in the laws and policies establishing the benefits. This challenge was manifested in several ways. First, while some of the laws and policies that established programmes for citizens generally provided for universal benefits, they often targeted low-income households or specific demographic groups. For example, the Indian state of Odisha issued an office letter asking all district collectors to provide indigent and destitute people with food during lockdowns. Arguably, these laws and policies failed to take into account the devastating economic consequences for many households, including those of informal workers (Shaikh 2020). The Odisha government appeared to recognize this in its subsequent letter to district collectors requesting them to provide food to the stranded migrant workers and others in distress – with street vendors in both groups – in addition to existing beneficiaries.

Second, the prerequisites in terms of the laws and policies that established the support programmes for the general population were out of touch with street vendors' realities and indirectly excluded them from support programmes. For example, many street vendors in large Indian cities are internal migrants and were ineligible for most cash or food benefits in their host cities and towns because they lack the requisite ration cards or proof of income (Chowdury et al 2020;¹³ Sangini Gender Resource Centre 2020; Meher et al n.d).

In India, Kerala's regulations specifically excluded street vendors from benefits extended to low-income workers who were not covered by existing relief measures. Several parties filed petitions to challenge this in the Kerala High Court.¹⁴ While this is not mentioned in the court order, it is possible that street vendors and/or street vendors' organizations instituted these petitions.

In response to one of these petitions,¹⁵ the High Court expressly prohibited discrimination against street vendors: "In the distribution of relief material, including financial aid, and while extending vending privileges to vendors, the street vendors shall not be discriminated [against], either on account of the nature of their activities or on account of their status as migrants from another State." The court ordered the state to

¹³ Chowdury et al (2020) report that most internal migrants who were interviewed had been living in the surveyed city for close to two decades, but continued to be excluded from social protection programmes in the cities in which they live and work.

¹⁴ Jamal.K.M versus State of Kerala and Others, Writ Petition (Civil) No 21401 of 2019 (A) Order dated 20/04/2020.

¹⁵ This was instituted by a Jamal K, but the Court did not provide any details about the petitioner. The Court noted that it had been inundated with similar petitions and suggested that its decision on one such petition would apply to the other petitions.

include registered street vendors' families at their nearest community kitchen and to provide them with rations. It further ordered the state to include street vendors who were below the poverty line in benefits.

Third, laws and policies that provided for support for self-employed workers and street vendors in some countries set eligibility criteria that excluded some street vendors. For example, India's Tamil Nadu restricted benefits to registered street vendors. This excluded potential beneficiaries because many street vendors in India do not have vending certificates, given that most urban authorities have not taken the statutory measures to issue these certificates (Pandey and Jaani 2020).

In India and Pakistan, the laws and policies that established relief and support programmes determined eligibility on the basis of pre-pandemic income thresholds, which did not take street vendors' income loss into account (Bussolo et al 2020).

Fourth, the application procedures established in terms of the laws and policies for the support programmes put them out of reach of many street vendors. Inability to read and lack of internet access made it very difficult for some workers to make the necessary online applications. In Vietnam and Thailand, the complex registration and screening procedures resulted in many applicants (including informal workers) failing to access benefits and support (Almendral 2020). One study (Komin et al 2020) found that the Thai government support reached fewer than half the country's informal workers. In India and Thailand, workers including street vendors had to rely on their organizations and civil society organizations to complete their applications (Komin et al 2020). Street vendors in South Asian countries were unable to receive the funds because they did not have bank accounts (World Bank 2020; Bussolo et al; WIEGO 2021).

Governments encountered administrative and logistical challenges in delivering social assistance, some of which related to pre-existing gaps in documenting and/or compiling data on informal traders. In the Philippines, workers complained about long delays in receiving the grants. Poor official data made it difficult for some governments to identify all support programme beneficiaries. Only 33 per cent of India's towns have statutory town vending councils and less than half of these have registered vendors (Pandey and Jaani 2020). In Thailand, about one-quarter of applications were rejected because the applicants were not listed on government databases or were misclassified as farmers (Komin et al 2020). The Pakistani authorities did not have reliable databases to identify eligible informal workers (Pakistan Workers' Federation 2020). In India and Thailand, some people were unable to access rations because they could not travel to collection points (SEWA, 2020b, WIEGO 2021), suggesting poor planning for the distribution of relief packages.

Some street vendors did not apply for support. In many cases, they were unaware that the programmes existed, had reservations about the complexity of applying, or lacked confidence that the government would deliver the benefits (Kadir and Mukundan 2020). These were among the reasons for not applying for benefits cited by street vendors who participated in the Bangkok and Ahmedabad surveys for WIEGO's COVID-19 Crisis and the Informal Economy Study.

In the absence of adequate social protection and other forms of support, street vendors experienced challenges including hunger, inability to pay rent or for their children's online studies, or to buy medicine (Chakraborty and Ahuja 2021). Informal traders have experienced stress and anxiety (Almendral 2020). Some street vendors in countries including Pakistan defied lockdown regulations to continue working, risking eviction by police (Iftikhar and Shahid 2020).

To cope with their difficulties, some informal traders have sought financial and in-kind support from family and friends. Some received cash and in-kind support from their organizations, community groups and through crowd-sourcing initiatives (Günther et al 2020; Kadir and Mukundan 2020; WIEGO 2021). In India and Thailand, street vendors tried to find work in other sectors, including domestic work (Chakraborty and Ahuja 2021; WIEGO 2021). Street vendors in different countries have also adopted adverse coping mechanisms, such as borrowing from loan sharks and, in some cases, selling their assets and even forcing their children into the labour market (Komin et al 2020; Chakraborty and Ahuja 2021; Shaikh 2020).

Although it was passed after the 2020 lockdown period, the Indian Supreme Court decision of June 2021 signals potential progress in addressing some of the factors that hindered access to social protection benefits and other forms of support.¹⁶ This case was taken up *suo motu* by the court to consider the problems of internal migrant workers, including street vendors. The court raised this in response to newspaper reports on distress faced by migrant workers, letters and representations “from different sections of the society” and in connection with a petition filed by Bandhua Mukti Morcha, a labour rights organization.¹⁷

The Supreme Court issued several directions for the central and state governments, including:

- Make dry rations available to migrant workers who do not have ration cards.
- Run community kitchens for migrant workers while the pandemic continues.
- Ensure the implementation of the central government's One Nation, One Ration Card scheme by the end of July 2021. This allows a person to access the Public Distribution System from a place other than their home state. Many states and territories have introduced the scheme but the progress in implementation is unclear.
- Complete the portal for registration under the National Database for Unorganised Workers and complete the entire process by the end of December 2021. The court underlined the importance of this process to facilitate migrant workers' access to welfare schemes.

¹⁶ *Suo Motu Writ Petition (Civil) No. 6 of 2020 In Re Problems and Miseries of Migrant Workers* (Supreme Court of India) with Writ Petition (C) No. 916 of 2020 *Bandhua Mukti Morcha v Union of India and Others*, accessed at https://main.sci.gov.in/supremecourt/2020/11706/11706_2020_36_1501_28166_Judgement_29-Jun-2021.pdf

¹⁷ *Bandhua Mukti Morcha v Union of India and Others* *Suo Motu Writ Petition* No. 6 of 2020 (Supreme Court of India), accessed at https://main.sci.gov.in/supremecourt/2020/11706/11706_2020_34_42_22217_Order_26-May-2020.pdf

V. PREVENTATIVE HEALTH AND SAFETY MEASURES

Informal traders face greater exposure to work-related health and safety risks than formal workers (Schwettmann 2020). Yet, local authorities the world over regulate informal trade on the basis that it is a public nuisance and a threat to public health (Bamu 2019). Our analysis of the COVID-19 situation in Africa and Latin America shows that informal traders have long been blamed for the spread of communicable diseases, and that the COVID-19 pandemic is no different.

In India, municipal authorities, the police and resident welfare associations blame and evict street vendors every time there is a surge in COVID-19 infections (Chakraborty and Ahuja 2020). According to a worker leader in Ahmedabad, the perception that street vendors are super-spreaders had a detrimental effect on their livelihoods: “Vegetable vendors are also included in the super-spreader and it was believed that corona spreads due to vendors. This was also a big challenge due to which nobody bought vegetables, vendors were not allowed to enter the [residential] societies.” (Interview 1, 2020).

In August 2020, Maharashtra’s state government prohibited street vendors from resuming their trade after lockdown, arguing that they were part of the unorganized sector and “are most dangerous in terms of spread of the virus” (Sequeira 2020). The government had allowed formal enterprises to resume operations but claimed that it did not have the institutional capacity or human resources to enforce health and safety regulations to curb the spread of COVID-19 in the context of informal trade.

Malaysia provided a different example of discrimination in the street vending sector. In May 2020, the government banned wholesale market vendors from employing foreign-national assistants, on the basis that there were several cases of COVID-19 among non-nationals in the country (Jun 2020). This directive was based on assumptions that foreigners were to blame for the spread of the virus and that citizen vendors and assistants would not infect others.

Promoting health and safety and preventing the spread of COVID-19 in workplaces is an important regulatory issue to consider in national COVID-19 responses. All of the surveyed countries passed binding secondary legislation and/or issued non-binding COVID-19 health and safety protocols for workplaces. Our overall assessment of the COVID-19 laws is that they contained limited provisions to promote health and safety and prevent COVID-19 infection and transmission in vending areas. The vast majority of these instruments refer to the duties of employers and employees, indicating that they are focused on formal workplaces, including shops, factories and offices. Pakistan and Sri Lanka passed guidelines for specific sectors, occupations and workplaces, including health care, hotels, seaports, child-care centres and construction.

All seven countries recognized the need to regulate health and safety for self-employed workers and/or work or other activities taking place in public spaces controlled by local authorities. The provisions were contained either within secondary legislation or non-binding policy documents that are of broad application, or in those specific to street vendors. Notably, the scope of the provisions was much narrower than those for formal workplaces and, with the exception of Sri Lanka, was confined to informal traders in markets with no mention of those operating on streets.

Table 5 summarizes the nature of the instruments introduced and shows that two countries expressly provided for street vendors in the context of instruments with broader application (general instruments), and two countries passed or adopted special legal or policy instruments for street vendors (special instruments). Three countries did not mention street vendors in their legal and policy instruments, but the analysis below considers general provisions regulating activities in public spaces, which would arguably apply to street vendors. Our analysis shows that only one country – Thailand – regulated health and safety for street vendors in terms of binding legislation. Three countries – India, Malaysia and Sri Lanka – accommodated street vendors in policy instruments and government decisions.

Table 5 – The regulation of informal food vending at the height of lockdown

| Name of country | Legal or non-binding instrument | General or special instrument |
|--|--|---|
| India (Ahmedabad City, Gujarat state, Delhi, Sikkim) | Non-binding standard operating procedures, non-binding statement in court decision | General, with special rules for street vendors |
| Malaysia | Non-binding instrument | Special |
| Pakistan | Non-binding government decision | General |
| Philippines | Non-binding guidelines | General |
| Sri Lanka | Non-binding instructions | Special |
| Thailand | Binding Prime Minister's regulation | General, with special provisions for street vendors |
| Vietnam | Non-binding guidelines | General |

The following discussion outlines measures adopted in relation to interactions in public spaces in general or the work of street vendors in particular, with the health and safety provisions divided into seven categories.

(i) Screening on entry into markets – one country: The state government of Gujarat, India, introduced screening requirements and recommended that district administrations use thermal guns in public places, including agricultural markets and market yards. Thailand issued regulations requiring body temperature checks of all workers and customers entering markets.

(ii) Restrictions on trading days and/or hours – one country: In Delhi, India, markets, market complexes and shops were initially required to open on an odd-even basis, while shops that sell essential goods could operate on all days.

(iii) Wearing of masks (and in some cases gloves) – four countries: This is required in India, Malaysia, the Philippines and Sri Lanka. In India, the central government mandated the wearing of masks on all transport and in workplaces. The Ahmedabad Municipal Corporation started distribution of 3.5 million masks and sanitizers to vegetable vendors and made it mandatory for them to wear masks. The Philippines imposed a mask mandate for all people in public places and workplaces, which would arguably apply to informal trade in public places. Malaysia and Sri Lanka require that street vendors and their customers wear masks and that the vendors wear gloves when handling food.

(iv) Measures to promote physical distancing – four countries: These included re-configuring spatial arrangements, extending the space in which street vendors can operate, and limiting the number of traders who can operate in markets at any given

time. In Sikkim, India, Pakistan and Vietnam, the regulations required a physical distance of 1.8 metres (6 feet) in shops and other public places, although they do not specify how this is to be implemented for informal trade. In Thailand, regulations required that market vendors and customers observe physical distancing, particularly when payments are being made.

The Philippines provisions encouraged local government units “to adopt reasonable schemes to ensure compliance with strict social distancing measures”, which would arguably apply to activities in public spaces, including street vending. In Sri Lanka, the instructions stipulate a minimum physical distance of one metre and require local authorities to allocate adequate space to allow street vendors to observe physical distancing.

(v) Observe hand hygiene – at least two countries: Sri Lanka and the Indian City of Ahmedabad required that street vendors and their customers observe hand hygiene by washing their hands or disinfecting with hand sanitizer. In Pakistan, governments established hand-washing facilities in public places, which likely included trading areas.

(vi) Control of entry and exit at markets – one country: Thailand issued regulations requiring this.

(vii) Free COVID-19 tests for informal traders – four countries: The Philippines provided for the quarterly testing of market vendors in recognition of their role as “frontline and economic priority workers”. In Sri Lanka, there are reports that police randomly test street vendors for COVID-19, although the laws have not identified them as a priority group for testing.

In India and Malaysia, the testing of street vendors has been sanctioned outside of the legislative process. In India, after a petition for free testing for all was filed in the Supreme Court (10816 of 2020), the court asked the Ministry of Health to consider providing testing for groups including low-income informal workers and beneficiaries of direct-benefit transfers. Subsequently, the Ministry of Health requested urban territories to test grocery workers, street vendors and other vendors on the grounds that they could potentially infect large numbers of people (Swarajya 2020). In Malaysia, the authorities identified markets for testing after conducting contact tracing in COVID-19 ‘hot spots’ (Malay Mail 2021).

Although they were not part of the survey, it is significant that wealthier Asian territories, including Singapore and Hong Kong, recognized the importance of testing hawkers and vendors as a separate category from an early stage of the pandemic. Singapore’s government has free testing for targeted groups including workers in hawker centres and markets, arguing that they are at high risk of infection due to their frequent interaction with large numbers of people. The Hong Kong Food and Environmental Hygiene Department offered free once-off COVID-19 tests to workers in catering services, including licensed cooked food and refreshment sellers.

The testing of street vendors is a double-edged sword. On the one hand, testing recognizes street vendors’ exposure to high risk in workplaces with limited sanitation facilities and water, and where they may not be able to afford sanitizers or observe physical distancing. It also recognizes that informal traders are at high risk where they

live in crowded housing with limited amenities including water. In Malaysia, some street vendors welcomed targeted testing as a means of ensuring that they were healthy enough to continue or resume trading (The Star 2020). On the other hand, government officials' statements that street vendors spread the disease suggest that, at least in some cases, efforts to single out street vendors may be driven by prejudice and reinforce their stigmatization. One Sri Lankan trader expressed his resentment about the testing drive thus: "The police randomly conduct... tests as if we were the only vulnerable crowd" (Vaffoor and Tissaaratchy 2021).

Overall, the government responses of the seven surveyed countries include a narrower range of preventative provisions for informal traders than those we identified in African countries. Very few countries require national or local governments to take steps or provide facilities to prevent the spread of COVID-19 in relation to informal trade. An example from several African countries is the requirement that local authorities should provide hand-washing facilities and/or water in markets, and should regularly disinfect trading areas. The only Asian example we could find was in Delhi, where the regulations require that the Municipality Corporation regularly sanitize vending spaces for the sale of essential items such as fruit and vegetables, but this only applied to containment areas.¹⁸ In Malaysia, there were reports that local authorities were disinfecting markets and trading areas, although the COVID-19 laws did not expressly require this.

Sri Lanka stood out among the surveyed countries because its Ministry of Health issued instructions specifically to govern street vendors. These called on municipal councils, environmental protection authorities or health departments to take measures to prevent the spread of the virus in the sector. In addition to the duties outlined earlier, the Sri Lankan instructions require the relevant authorities to:

- Establish a division in municipal councils to address street vendor matters.
- Establish a division or committee to inspect and allocate space for stationary trade and areas for mobile vending.
- Develop a registration system and record the contact details of all vendors.
- Ensure that informal traders take necessary precautions, including hand hygiene, respiratory etiquette and wearing of face masks.
- Conduct frequent educational programmes about COVID-19 and related preventative measures, including physical distancing.

In addition, the Ministry of Health adopted instructions for mobile food vendors who sell raw foods and foods that need washing. These cover door-to-door vendors and those with wayside stalls who sell meat, fish, vegetables, fruit and dry rations. The instructions, directed at both vendors and their customers, are:

- Street vendors must operate at or follow one designated route; weigh and pack items before beginning operations and price items in round figures to avoid giving change.
- Customers must select one young, healthy family member to do the shopping; take minimal time to shop; and take their own shopping bags or baskets.

¹⁸ Areas that are declared to have high numbers of infections.

The Sri Lankan instructions are also unique in requiring local authorities to educate street vendors' customers about how COVID-19 is spread and how to prevent this. The regulations also require street vendors to stay at home if they are unwell. In addition, they require street vendors to complete an assurance form, in which they commit to complying with the stipulated guidelines.

Despite going further than most countries, Sri Lanka did not require the local authorities to engage with informal traders' organizations before adopting or implementing these measures. Overall, there appeared to be limited government interest in collaborating with workers' organizations on the appropriate measures to be taken or their implementation in the surveyed countries. The only examples of engagement with street vendor organizations were in Odisha in India and Kuala Lumpur, Malaysia, which are discussed further below.¹⁹

The surveyed countries' health and safety provisions for employees required employers to provide masks, gloves, washing facilities, sanitizers, thermometers, disinfectants and other materials and facilities. In addition, they held employers responsible for ensuring that their employees observe the protocols. This means that formal workers did not bear the costs and responsibility for health and safety measures in the workplace. For street vendors, who are mostly self-employed, the situation was different. The provisions did not indicate who would be responsible for providing the materials and facilities to promote health and safety. Except for Sri Lanka, none of the surveyed countries allocated responsibility for ensuring that street vendors and customers take the necessary precautions.

In the absence of detailed provisions, workers and their organizations used their resources to protect themselves from the virus and control its spread. In India, street vendors reported that they were using hand sanitizers and masks and observing physical distancing rules (Meher et al n.d.). Street trader organizations in India and Thailand provided their members with masks and hand sanitizers (WIEGO 2021; Interview 1, 2020). The COVID-19 pandemic places into sharp relief the reality that, despite being essential workers, street vendors in many Asian countries do not have access to running water, sanitation facilities and personal protection equipment and must often bear the burden of costs of accessing them (Chakraborty and Ahuja 2020; Meher et al n.d).

As COVID-19 continues to be a threat in Asia, it will be prudent to consider what measures informal vendors, local authorities and other stakeholders must take regarding workplace reconfiguration, hygiene practices, testing, vaccination and other matters. Central to this will be determining the allocation of the related costs, bearing in mind street vendors' important socio-economic contribution, their low incomes and the absence of an employer to bear the costs of protecting their health and safety.

¹⁹ See the discussion on the consultation of informal traders' organizations under Section V on Social Dialogue.

VI. Social Dialogue and Worker Consultation

Lockdowns, curfews, limitations to public transportation and school closures have severely affected informal workers' livelihoods. Undoubtedly, they are stakeholders whose interests must be considered in the formulation and implementation of the COVID-19 response. In this section, we discuss the means by which workers' organizations were included in decision-making structures established to steer national responses to the pandemic.

Social dialogue refers to consultation and negotiation among representatives of the social partners – government, employers and workers – on economic and social policy issues (ILO, undated). Tripartite cooperation among the social partners is a hallmark of ILO decision-making processes. At the national level, social dialogue may be conducted in tripartite forums or on a bipartite basis (employer-worker, government-worker or government-employer). Typically, stakeholder engagement about street vending – with most vendors being self-employed workers – takes place between local government authorities and street vendor organizations. Because it is not institutionalized in most countries, such engagement does not constitute social dialogue in the strict sense.

This section considers the consultation of workers' organizations in COVID-19 decision-making structures and processes. We discuss how workers' organizations have used existing spaces or created their own spaces for negotiation, or used other measures to promote their constituents' interests. We begin by discussing the direct inclusion of street vendor organizations in these structures and processes. Our analysis also considers whether trade unions – which are more likely to have the ear of the government at the national level – represented street vendor organizations' interests, as was the case in Africa (Bamu and Marchiori 2020).

The surveyed countries established COVID-19 structures in terms of the law or by government decision. In India and Vietnam, the Prime Minister established the National COVID-19 Task Force and the National Committee on COVID-19 Prevention and Control, respectively, without reference to laws. The Philippines House of Representatives adopted a resolution to establish the Defeat COVID-19 Ad Hoc Committee. In Thailand, the Prime Minister issued an order establishing the Centre for COVID-19 Situation Administration.

Overall, our analysis of the COVID-19 laws and the realities in the surveyed countries shows that governments did not prioritize social dialogue in determining the composition of national COVID-19 response and recovery committees (ITUC AP 2020). COVID-19 decision-making structures comprise government officials and technical experts and, to a limited extent, representatives of civil society and formal business organizations. The laws did not include trade unions or informal-workers' organizations in national COVID-19 response structures. Only in Odisha did laws provide for the consultation of street vendor organizations in local level decision-making about the response to COVID-19. Notably, local authorities in other Indian states, as well as in Malaysia and Thailand, consulted street vendor organizations about the response to COVID-19, but this was not mandated by the laws.

Engagement with street vendor organizations

While the COVID-19 laws of the surveyed countries do not include informal workers' organizations in the composition of national structures that the countries formed to coordinate the overall response to COVID-19, COVID-19 laws in a few countries required governments to consult with street vendor organizations about specific issues. These engagements took place outside formal COVID-19 structures.

Only in Odisha did the COVID-19 regulations expressly require local authorities to engage in dialogue with street vendor organizations and with local vendors. The regulations required local authorities to persuade street vendor organizations to follow the rules aimed at preventing the spread of the virus. They also required the local authorities to communicate with local vendors. The state's COVID-19 laws establish a state-level monitoring unit to enable traders and transporters to air and resolve their issues. Although these regulations allowed for consultation, street vendor organizations' participation was limited to promoting compliance and complaints mechanisms, as opposed to influencing decision-making on the content of the rules.

In Malaysia, Thailand and some Indian cities, state and local governments engaged with street vendor organizations even though the law did not expressly require them to do so. This was largely a result of street vendor organizations' demands for recognition as stakeholders in decision-making processes and/or their demands in relation to specific issues relating to the COVID-19 response.

In May 2020, the Federal Territories Minister urged the City of Kuala Lumpur, Malaysia, to negotiate with organizations representing open-air market traders to develop standard operating procedures (SOPs) to guide the resumption of trade. The authorities admitted that they took this decision as a result of street vendors' demands for dialogue (Ravindran 2020a). The Minister stated that it was best "that the community themselves, together with [the City of Kuala Lumpur], come up with a SOP that complies with Health Ministry guidelines." The leader of one of the associations welcomed this proposal, arguing that street vendors "know what rules can be implemented and those that will not work" (Ravindran 2020b). City officials and street vendor associations established a whatsapp group for communicating about matters affecting street vendors in the context of COVID-19 (Babulal 2020). Street vendor organizations in Malaysia subsequently made other demands. In December 2020, the Federation of Malay Hawkers and Petty Traders Association of Malaysia demanded that the government allow night markets to operate in areas that it had placed under the second Movement Control Order (Bernama 2020).

Street vendor organizations in Thailand and some Indian cities approached local authorities and presented their demands regarding the COVID-19 response. They successfully negotiated measures for income support and other forms of protection for informal workers, including street vendors. The Federation of Informal Traders in Thailand also facilitated dialogue between the Bangkok Metropolitan Authority and local street vendor leaders about restoring access to vending areas and markets through the National Health Security Office platform. Leaders in the Indian city of Ahmedabad successfully negotiated with the local authority to return the carts that they had confiscated from traders (Interview 2, 2020).

National or local governments in India, Malaysia, Thailand and the Philippines recognized and negotiated with informal workers' organizations before the pandemic. Informal workers' organizations influenced national laws and policies regulating all informal workers (HomeNet in Thailand) and street vendors in India (SEWA and NASVI). In India, street vendor organizations were instrumental in drafting the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, which seeks to institutionalize dialogue on street vending issues through town vending committees comprising stakeholders including street vending associations. In addition, the City of Kuala Lumpur has a history of negotiating with the Federal Territory Malay Hawkers and Petty Traders Association (Malay Mail 2019).

This history may have emboldened workers' organizations in India, Thailand and Malaysia to approach governments for recognition and with their specific demands, and may have made national government and local authorities more receptive to their demands. But in the Philippines, where the Cebu City United Vendors Association has a history of negotiating with Cebu City authorities, there was no evidence that street vendors' organizations were recognized by national or local governments during the pandemic (Nguyen 2012).

Engagement with trade unions

This section considers whether and how trade unions supported informal workers' organizations to make their COVID-19-related demands or included informal workers' concerns in their demands. The COVID-19 laws of the seven surveyed countries did not expressly include trade unions as members of the formal COVID-19 response structures and processes. Trade unions in Malaysia and the Philippines criticized the government for failing to consult the social partners before adopting the COVID-19 laws and policies and demanded participation in decision making (Lim 2020; ILO 2020b) .

This must be considered against the backdrop of the Asian countries' limited commitment to respecting freedom of association and promoting collective bargaining, as evidenced by the dearth of ratifications of the relevant ILO core conventions.²⁰ Many Asian governments systematically undermine the independence of trade unions (Malaysia and Vietnam), persecute their leaders, limit trade unions' rights to collective bargaining and curtail their right to strike (Vietnam), and either ignore (Malaysia) or pay lip service to social dialogue. Union density is low in South and Southeast Asia, where most workers work in the rural or informal economy (ILO 2016) .

India, Pakistan and Sri Lanka are exceptions with respect to having systems that allow for more autonomous workers' organizations and well-established national institutions that engage in social dialogue on a wide range of labour issues (ILO 2020a, Solidarity

²⁰ Only three of the selected countries (Pakistan, the Philippines and Sri Lanka) have ratified both the ILO Convention concerning Freedom of Association and Protection of the Right to Organize, 1948 (No. 87) and the Convention concerning the Right to Organize and Collective Bargaining (No. 98), which relate to fundamental workers' rights that are essential for social dialogue. Two countries (India and Thailand) have not ratified any of the conventions, while two (Malaysia and Vietnam) have ratified Convention 98 only.

Center 2013).²¹ The governments of these three countries engaged with trade unions during the crisis, albeit to different degrees. Sri Lanka established a tripartite COVID-19 task force comprising members of its National Labour Advisory Council (ILO 2020a). According to the ILO and the International Trade Union Confederation (ITUC), the council's deliberations focused on employment-related issues such as wage payments, paid leave and retrenchments during the lockdowns (ILO 2020a, ITUC 2020). The Sri Lankan trade union federation does not appear to have placed the concerns of informal workers and street vendors on the agenda.

The governments of India and Pakistan did not include trade unions in formal COVID-19 response structures, but they invited trade union federations to discuss the implications of COVID-19 for workers (ILO 2020a). The federations in both countries expressly mentioned informal workers in their demands. In India, 10 trade unions demanded that the government provide income protection for vulnerable workers and secure the livelihoods of informal workers (ILO 2021). Although there was no direct response from the government, these demands may have influenced the adoption of relief measures for street vendors. In Pakistan, the Pakistan Workers' Federation demanded that the government extend income protection measures to street vendors (Pakistan Workers' Federation 2020). The Federation's efforts appear to have been unsuccessful, given that the Pakistani government did not establish relief measures for either formal or informal workers.

Overall, trade unions appear to have made a marginal contribution towards promoting the interests of street vendors. With a few exceptions, such as India's Self-Employed Women's Association,²² there is limited evidence that trade unions in the surveyed countries organize workers in the informal sector, represent their interests or collaborate with their organizations (ILO 2016; ILO 2020a). Also, regional trade union structures including ITUC-Asia have not placed informal workers' concerns high on their agenda before or during the COVID-19 pandemic.

The position in Asia differs from the situation in Africa, where trade unions are generally stronger and where more countries have institutionalized social dialogue (Bamu and Marchiori 2020). Several African trade unions, for example in Ghana, Malawi and Zimbabwe, have a long history of organizing or collaborating with informal workers' organizations. In addition, ITUC-Africa called on African trade unions to support informal workers' organizations in making their demands and to promote their participation in COVID-19 decision-making structures. These factors – and the greater proportion of traders among informal workers in Africa – have arguably contributed to greater prominence being given to African street vendors' concerns during COVID-19 discussions.

VII. Conclusion

This paper analyzed whether and how COVID-19 emergency laws in seven surveyed Asian countries recognized the needs and rights of informal traders and food vendors, who provide an essential service. This conclusion summarizes our key conclusions and

²¹ A recent report on South Asia indicates that social dialogue institutions in India, Pakistan and Sri Lanka had become dormant or were operating sporadically before the crisis. See ILO 2020a.

²² This is a trade union that organizes women in the informal economy, including street vendors.

makes recommendations for the recognition of street vendors and informal workers in the Asian countries.

We made some general observations about the surveyed countries' use of the law in the response to the pandemic. First, the COVID-19 response consisted not only of primary and secondary legislation, but a range of non-legal policy instruments as well as decisions that determined the trajectory of the COVID-19 response. Second, in some countries, (especially India) we noted divergent positions in the laws and policies adopted at different levels of government.

Third, the surveyed countries made use of laws to regulate certain policy areas more than others. For example, governments enacted laws to entrench the rules that regulated the public's conduct during lockdowns and attached penalties for contravention, but (with few exceptions, such as the Philippines) rarely used laws to establish programmes for social protection and other forms of relief and support. This suggests that governments reached for hard law in cases where it needed to control the movements of its citizens and relied on the criminal justice system for enforcement, but in policy areas such as social protection, they relied on policy rather than creating legal entitlements that citizens could claim as rights entitlements.

Fourth, in addition to advocating and campaigning for legal and policy change, street vendor organizations and their allies may approach the courts for the recognition of their rights. Indian courts directly recognized the rights of street vendors, particularly in relation to access to COVID-19 testing, community kitchens²³ as well as access to food rations and other benefits for all citizens. India has a long tradition of human rights litigation, extensive pro-poor jurisprudence and procedures allowing courts to examine and decide on issues affecting society of their own accord. The viability of using the courts in other countries will depend on the legal and political context.

Our analysis shows that the COVID-19 laws and policies largely mirror existing laws that do not recognize informal traders as legitimate economic actors and the role that informal food vendors play in promoting food security. The existing laws do not include informal traders as partners in the development of labour and socio-economic policy, or as workers who should enjoy social protection or occupational health and safety protection. We found that very few countries recognize self-employed workers generally and street vendors in particular in relation to the four policy areas that we considered.

Only two of the seven countries expressly designated informal food vendors as essential services (India and the Philippines). Two (again, India and the Philippines) established dedicated social protection and other forms of support for self-employed workers or street vendors. Governments took measures to address occupational health and safety for informal traders in four countries (Ahmedabad City, Gujarat state, Delhi and Sikkim in India; Malaysia; Sri Lanka; and Thailand). Although none of the surveyed countries recognized street vendors as stakeholders to be represented in national COVID-19 structures, governments in two countries (Kuala Lumpur, Malaysia; and Odisha, India) mandated local authorities to consult informal traders about specific issues. Our studies

²³Jamal. K.M versus State of Kerala and Others, Writ Petition (Civil) No. 21401 of 2019 (A),
In re Problems and Miseries of Migrant Labourers Suo Motu Writ Petition (Civil) No. 6 of 2020.

of COVID-19 laws in Africa and Latin America showed that countries in those regions paid greater attention to the plight of informal traders and did more to recognize the essential role of informal food vendors than the surveyed Asian countries.

The recognition of street vendors in the COVID-19 laws, in recovery plans and in court decisions has been the exception rather than the norm. This suggests the need to intensify efforts to recognize and strengthen the rights of informal workers including street vendors in the seven countries. The ILO Recommendation concerning the Transition from the Informal to the Formal Economy, No. 204 (2015) outlines the legal and policy measures that ILO member states should take to protect and address the needs of informal workers. Although this is not a convention that creates binding obligations, it is a comprehensive international instrument that provides all ILO member states with guidance on the regulation of the informal economy.

Informal workers' organizations and their allies need to continue to spread awareness about their socio-economic contribution to influence a shift in the authorities' perception of informal traders and the value that they attach to informal workers (Chen 2020). Informal traders and their allies should advocate for the recognition of informal food vendors as essential workers to enable them to operate during future restrictions. This is crucial in addressing the discriminatory aspects of the laws that regulate street vendors. The remainder of this conclusion draws on R204 to make recommendations in the four policy areas considered in this paper.

While national recovery plans in the surveyed Asian countries recognize the need to include self-employed workers or informal traders in social protection programmes, they do little to fundamentally shift the recognition and regulation of informal traders. These plans largely fail to address the root causes of the plight of informal workers, which include weak labour protection. ILO Recommendation 204 will be instructive in guiding Asian countries in regulating possible further lockdowns as well as national recovery processes. This calls for fundamental changes to social protection systems to tailor social insurance systems to the needs of informal traders and to ensure that minimum social protection floors include self-employed workers, including informal traders, as Recommendation 204 calls for.

As COVID-19 continues as a threat, national and local governments of the Asian countries must take deliberate measures to protect informal traders and prevent the spread of the virus in their trading areas. These measures will be positive steps towards the implementation of ILO Recommendation 204, which calls on governments to address unsafe and unhealthy working conditions in the informal economy and to promote and extend occupational health and safety protection to workers in the informal economy.

In terms of social dialogue, governments should be guided by ILO Recommendation 204, which urges member states to consult with and promote the active participation of member-based organizations of workers in the informal economy before designing, implementing and evaluating legal and other interventions relevant to the informal economy. Meaningful social dialogue and collective bargaining will only be possible if there are strong, democratic street vendor organizations that collaborate with credible allies, including trade unions and civil society organizations.

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About WIEGO

Women in Informal Employment: Globalizing and Organizing (WIEGO) is a global network focused on empowering the working poor, especially women, in the informal economy to secure their livelihoods. We believe all workers should have equal economic opportunities, rights, protection and voice. WIEGO promotes change by improving statistics and expanding knowledge on the informal economy, building networks and capacity among informal worker organizations and, jointly with the networks and organizations, influencing local, national and international policies. Visit www.wiego.org