



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

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Photo: Jonathan Torgovnik/Getty Images Reportage

Introduction

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

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

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

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

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

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

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

Still, street vending is, for many on the continent, the only way to make a living. And this is not just the case for the poor or the uneducated. For instance, the decayed state of Zimbabwe’s economy has forced many from the professional class into street vending due to a lack of job opportunities in a country increasingly dependent on the informal economy. Indeed, in Africa, 85.8 per cent of employment is informal (ILO 2018), and informal vending makes up 43 per cent of all informal non-agricultural employment. The percentage of street vendors within informal trade varies from city to city, going from 13 per cent in Dakar to 16 per cent in Abidjan, and 24 per cent in Bamako (Roever and Skinner 2016).

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

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

This brief, therefore, aims to compare civil law systems (prevalent in Francophone African countries) to common law systems (prevalent in Anglophone African countries) in relation to the issue of street vending. First, in order to explore the potential legal arguments that each system affords and the rights that might be provided (or denied) to street vendors in any given legal system, the brief describes civil law and common law systems. Then the brief outlines the legal recourses and remedies available to street vendors in each system.

The Composition of Civil Law and Common Law Systems

In most legal systems throughout the world, the main sources of law include the Constitution, statutes/ordinary laws passed by legislative bodies, and regulations issued by central/federal or local governments. The Constitution, statutes/ordinary laws, and regulations may each be referred to simply as laws.

However, civil and common law systems attach a different value to judicial decisions as a source of law. In common law systems, the law is not only made by the Parliament, but also by the courts. The court “makes” law in two ways: judges can interpret laws and regulations and thereby develop the law; or judges can interpret or develop the “common law” on which the legal system is based. The body of law created by courts is called case law or jurisprudence, and it holds the same authority as statute laws.² When the

² This does not mean that courts can override the power of the Parliament. As the Parliament represents the will of the people and is therefore supreme, Parliament may pass laws that override case law.

facts of a case are essentially the same, the judge is bound by precedent. This means that if a previous court has interpreted the law before, the judge is bound by that interpretation unless she/he can show that the facts are too dissimilar. This is what is called the doctrine of *stare decisis*. For a precedent to be binding, the precedent and the case before the court must present certain characteristics: (1) the central legal issue/question must be the same; (2) the significant facts of both cases must be the same; and (3), there must be no additional significant facts in the pending case (Rombauer 1978). Finally, while cases of higher courts are always binding on lower courts (where the conditions mentioned above exist), decisions of courts of the same level do not necessarily create binding precedents if the courts are not in the same state or province.

Not all court decisions, however, are a source of law. For example, magistrate courts, which are often the first point of access to justice for informal workers, are not a source of case law.

By contrast, decisions of civil law judges bind only the parties of the dispute. Judges must always rely on existing legal provisions, and if they fail to indicate which legal provisions that they have applied, their decision may be annulled. However, when a series of decisions by civil law courts on a particular legal matter agree on the interpretation of a legal provision, this is called “settled jurisprudence” (in French: *Jurisprudence constante*). Judges are expected to follow such settled jurisprudence, although they may—and often do—deviate from it. Indeed, even if decisions of higher courts (chiefly, decisions of the highest courts, such as the supreme court or the court of cassation) although not technically binding, hold a strong directive authority over decisions of lower judges, the latter may, and do, uphold a different interpretation of the law.

The Hierarchy of Laws

In both civil and common law systems, a hierarchy of laws exists. As noted above, while most legal sources rank identically in both systems, the role of judicial decisions is quite different.

1. The Constitution

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

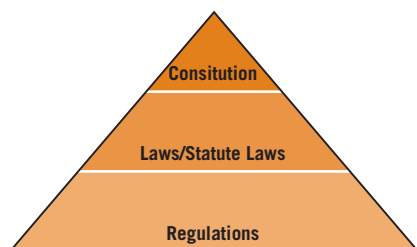
It used to be thought that the most striking difference between civil law and common law systems was that in the former, the Constitution was a written uniform document whereas in the latter, it was mostly unwritten and scattered across various laws. However, this is no longer the case as many common law jurisdictions around the world (such as in the USA, Nigeria, Ghana, India, and Canada) have written and codified Constitutions as well. Only the Constitution of the UK remains largely unwritten—it basically consists of statute laws passed by the Parliament, common law set forth by the courts, Parliamentary conventions, and scholarly works of authority.³

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

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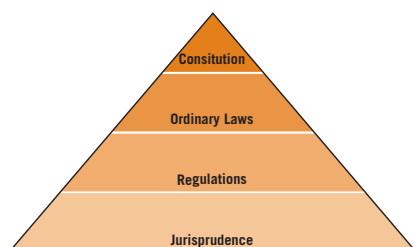
³ These are books, written by constitutionalists, that are considered to be authoritative guides to the functioning of the British Constitution.

Figure 1: The Hierarchy of Legal Norms in Common Law Systems



Court decisions hold a different place in the hierarchy of laws in common and civil law countries.

Figure 2: The Hierarchy of Legal Norms in Civil Law Systems



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

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

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

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

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

2. Laws

The next level of legal norms is statutes/ordinary laws, which generally emanate from elected legislative bodies (Parliament, Congress, etc.).

In civil and common law systems, legislation is passed by the legislative authority and enforced by the executive power. There is also the particular case of laws directly passed by the government or by the Head of State (called ordinances, law-decrees, or legislative decrees) with the understanding that they have been authorized by the elected legislative body or that they will later be confirmed by the legislative body.

3. Regulations

Regulations are issued by government officials or administrative bodies (on a national or a local level) or by regulatory agencies. Their purpose is to give more precise details for the operationalization of ordinary/statute laws or to regulate matters falling within the competence of administrative authorities such as housing, education, waste management, safety, and use of public space.

In civil law systems, especially those that are inspired by French civil law, regulatory acts are called decrees, orders, ordinances, circulars, or regulations.⁵ In civil law systems, regulations are often used to enforce statutes/ordinary laws and/or to give greater specificity on when and how the statute/ordinary law applies. In Francophone Africa, an ordinary law is almost always accompanied by one or several Enforcement Decrees and one or several Ministerial Orders.

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

⁵ Circulars are usually issued by the Prime Minister (when one exists) or one of the country’s Ministers; circulars are merely an indication of how the government should function and often do not hold any regulatory value themselves.

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

In both civil and common law systems, regulations cannot contradict the Constitution. As the Supreme Court of Nigeria once put it, “all powers, legislative, executive and judicial must ultimately be traced to the Constitution.”⁶ Likewise, regulations may never contradict statutes/ ordinary laws. Therefore, street vendors can challenge regulations that contradict statutes/ordinary laws, most notably the Constitution.

Street vendors’ (both hawkers who move around and those vending from stalls and tables outside of markets) livelihoods are most often governed by regulations issued by local governments, often at the municipal level. As a consequence, different cities within the same country may adopt different approaches to street vending. From a legal standpoint, there are no fundamental differences between civil law systems and common law systems regarding the way in which regulations are used to control or ban street vending.

Often street vendors are regulated by several regulations that are designed to enforce nuisance, health, environmental or economic laws that are already in place. Sometimes these laws are ambiguous, making it difficult for street vendors to comply.

In Accra, Ghana, street hawking is regulated by regulations (called by-laws) that were issued in 2017 by the Accra Metropolitan Assembly (AMA). According to the by-laws, hawkers must apply for a licence, which must be renewed annually on 31 December. In order to obtain the licence, hawkers must pay fees as determined by the AMA. By-laws are not clear on whether, in addition to the vending licence, street vendors must obtain a permit in terms of the “Business Operating Permit By-law,” or the “Profession, Business and Trade Self-employed By-law,” or both. Vendors must produce “the licence on demand by an authorized agent of the Assembly.” In addition to a trading licence, vendors must have a permit to erect a stall or structure, and, if they are handling food, they must wear a special outfit. The by-laws prohibit street vending on the pavement of Accra’s main streets, in front of stores, on pedestrian walks, and in “such areas as the AMA may from time to time determine.” In addition, street vendors must comply with several other by-laws, ranging from business, trade, and cleaning by-laws to by-laws regulating temporary structures, push trucks, the abatement of noise, bakeries, public markets, and food safety and hygiene, among others.

In Senegal, “Law 67–50” of 29 November 1967 provides that “activities on the road and in public places or places open to the public, and in particular those of traders, whether or not itinerant, [...] can be regulated by decrees.” Currently, street vending is regulated by “Decree 76-018” of 16 January 1976, which outlaws itinerant vending while allowing *merchants tablier* (i.e., those vendors selling from stalls or tables). Street vending in Senegal is also regulated by a number of building, health, safety, and environmental regulations.

In Cameroon, the activity of street vendors falls under a Ministerial Order to regulate Itinerant Trade (in French: *Commerce Ambulant*) dated 15 November 1991.⁷ This regulation addresses all forms of itinerant trade (street vending



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

⁶ Independent National Electoral Commission and Another v. Musa and Others (2003) AHRLR 192 (NgSC 2003)

⁷ Ministerial Order No. 045/CAB/MINIDIC dated November 15, 1991 to regulate Itinerant Trade.

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

In the Democratic Republic of Congo (DRC), street vending is regulated by an "Ordinance-Law on Small-Scale Trade"⁸ dating back to 1979 and by a 1980 "Interdivisional Order on Small-Scale Trade."⁹

No specific regulation aimed at street vendors was identified in Ivory Coast, but the 2014 "Ministerial Order 4" from the Minister of Commerce, Craftsmanship and the Promotion of SMEs makes it illegal to sell bread in the streets.¹⁰ A Decree by the Council of Ministers dated 22 March 2017 forbids the sale of SIM cards in the streets (a similar regulation exists in Cameroon with a Prime Ministerial Decree dated 3 September 2015).

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

4. Court Decisions

Court decisions hold a different place in the hierarchy of laws in common and civil law countries. Depending on the weight that judicial decisions hold in a country, bringing cases to court yields different results.

As stated previously, in common law countries, court decisions rank higher than regulations. Therefore, a judgement that upholds the rights of street vendors to access public space overrides a regulation that outlaws street vending. For example, in a series of cases in India, despite regulations that prohibited street vending, the Supreme Court of India held that street vendors needed access to pavements to exercise their constitutional right to trade and carry on a business. In *Olga Tellis & Others v. Bombay Municipal Corporation & Others*, the Supreme Court of India interpreted the constitutional right to life to include a right to trade and to earn a living. In common law countries, strategic litigation has the potential to yield more significant and definitive results than in civil law countries because of the principle of *stare decisis*. Indeed, strategic litigation is a tool traditionally used to advance social and economic rights of the poor and marginalized.

In civil law systems, while there is no principle of *stare decisis*, decisions of progressive judges may steer the interpretation of the law in directions favourable to street vendors, clarifying, strengthening, and even broadening their rights. While jurisprudence ranks below other sources of law in civil law countries, it can nevertheless be a powerful tool by which judges set in motion systemic legal change.

While law enforcement is a weapon too often turned against street vendors, the legal system may also be a powerful shield for street vendors.

⁸ Ordinance-Law No. 79-021 dated August 2, 1979 on Small-Scale Trade

⁹ Interdivisional Order No. 0029/80 dated April 7, 1980 on Small-Scale Trade

¹⁰ Ministerial Order No. 37 dated July 1st, 2014

Legal Recourse Available to Street Vendors before the Courts

1. Ensuring Laws are Consistent with the Constitution

As explained earlier, no legal norm (whether statute/ordinary law, case law, or regulations) may contradict the Constitution. In both civil law and common law systems, laws and regulations may be subject to a constitutional review (also known as a “control of constitutionality”) to ensure that they are consistent with the country’s Constitution.

In 2018, a legal case caught the spotlight in Malawi. A street vendor’s battle against colonial legislation took him all the way to the High Court of Malawi and ended with the demise of the country’s infamous “Rogue and Vagabond Law.” Mayeso Gwanda, who sells plastic bags in the Limbe Market in Blantyre, was arrested, beaten, and tried for being a rogue and vagabond under Section 184 (1) (c) of Malawi’s Penal Code. Under this law, a rogue and vagabond are described in the following way:

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

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

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

When Mayeso Gwanda was tried under the “Rogue and Vagabond Law” at the Blantyre Magistrate’s Court, he petitioned Malawi’s Chief Justice to determine the constitutionality of the law. The High Court declared the law unconstitutional and invalid on the grounds that it violated several constitutional rights, particularly the rights to dignity, security, freedom of movement, humane treatment, freedom, and to equal protection and non-discrimination under the law.

As this case shows, understanding the Constitution and the system of constitutional review can be important to defending street vendors’ rights. It is possible for anti-street vending legislation to be challenged before a court. If the court finds that the legislation is contrary to the Constitution, the court could strike down the law.

Countries in Africa have adopted different systems of constitutional review. An analysis of these systems suggests that challenging the unconstitutionality of a law might be a more accessible and useful tool in common law countries. This is because most common law countries, such as Nigeria and South Africa, have adopted a system of decentralized judicial review. In these countries, ordinary courts have the authority to review legislation or regulations and decide whether or not they are consistent with the Constitution. In Nigeria, for example, state high courts, federal high courts, courts of appeal and the Federal Supreme Court may all review laws and regulations to decide whether

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



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

they conform with the Federal Constitution. Magistrate courts are the only courts without this prerogative.

Civil law countries in Africa use a centralized system of constitutional review. This means that only the Constitutional court or council (usually seated in the national capital) has the authority to ensure that laws conform with the Constitution (Ferreress Comella 2004). Benin, Mali, Niger, and Gabon have a Constitutional Court. Cameroon has a Constitutional Council (although it is not yet operational and exists in law only; constitutional review duties are still carried out by the Supreme Court of Cameroon). Senegal also has a Constitutional Council.

Systems of constitutional review also differ with respect to the timing of the review. In some countries, the constitutionality of the law can be challenged only *before* the law is promulgated (*a priori* constitutional review) while other countries allow the constitutional review of laws *after* the laws have been promulgated (*a posteriori* constitutional review) either by a party in a specific case or in abstract when the challenge is unrelated to ongoing judicial proceedings. Some civil law countries, like Mali and Mauritania, only permit judicial review of laws and regulations *before* they are promulgated, which makes judicial review useless as a tool for informal workers whose rights are violated by an unconstitutional statute/ordinary law or regulation.

Benin is an example of an effective and responsive constitutional court in Francophone Africa. Benin's Constitutional Court may hear cases brought by the Head of State or by any member of Parliament before a law comes into force. After a law enters into force, the court may hear cases brought by any citizen either by way of an action or a by way of a preliminary objection.

Appendix 1 provides an overview of the different types of constitutional review in Francophone-Lusophone countries and Anglophone countries in West Africa in terms of the timing (*a priori* or *a posteriori*), type (concrete or abstract), and the normative instrument that can be subjected to review.

2. Ensuring that Regulations Conform with Statutes/Ordinary Laws

As mentioned above, in the same way that all laws must be written in accordance with the Constitution, regulations must be written in accordance with statutes/ordinary laws. This means that if the regulation is intended to spell out the operation of a statute, then its provisions may not contradict the provisions of the statute. If the scope and basic principles are set by an ordinary law, then the regulation must conform with such scope and principles. And if a regulation falls into the competency of a particular regulatory body or a local authority, it must conform with the mandate and powers of such body or authority as defined in ordinary laws or statutes. If the regulation does not conform with the legislation, then it is unlawful. If a person is affected by a decision or action by government authority in terms of a regulation, he/she can ask the court to decide whether the regulation is lawful or not.

In civil law systems, there are courts that specialize in reviewing whether regulations conform with ordinary laws. They are called administrative courts. In common law systems, regulations may be reviewed by every court except magistrate courts.

We could not find a case in Francophone Africa where a street vendor has challenged the lawfulness of a regulation before the administrative courts. However, it is possible to gain an idea of how such challenges would likely be construed by looking at an example from France.

Under France's General Local Authorities Code, it falls upon the mayor to regulate all matters concerning public safety and the convenience of road, streets, roadside, and public space traffic.¹¹ As such, mayors regulate the exercise of itinerant trade within the borders of their town. However, French administrative courts have stated time and again that such regulations are not absolute and that there are core principles that must be considered when regulating the activities of street vendors, most notably the freedom of commerce and industry as proclaimed by a law dated 2 and 17 March 1791, otherwise known as "*Décret D'Allarde*."¹² Indeed, the Council of State (the supreme administrative court) found that a municipal regulation that regulates street vendors' activities cannot be framed in such a way that it impinges upon vendors' rights to exercise their freedom of commerce and industry.

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



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

Box 1: South African Traders Win Back the City

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

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

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

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

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

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

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

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

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

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



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

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

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

3. Challenging Administrative Actions

An administrative action is an action performed or a decision made by an administrative body or public official as part of their public duties. When public officials grant or deny a licence or permit, demand payments of fees, evict workers from their workplace, or seize their merchandise, they are performing an administrative action. While laws grant administrators the authority to perform these actions, they also indicate how administrators must act and what procedures they must follow in order for their actions to be lawful. When administrative actions or decisions do not comply with the principles of legality prescribed by the law, affected individuals may challenge them as unlawful and ask that the decision or action be set aside.

Administrative justice is the branch of the law that lays out the principles of lawful administrative actions as well as the recourses and remedies available to the public where state bodies or officials fail to adhere to administrative law principles. Administrative justice guarantees citizens the right to administrative actions that conform to the law authorizing them and that are fair, reasonable, and respect due process, including the right of affected citizens to be heard and given reasons for a decision.

Sometimes these principles are written in the Constitution of a country. For example, in South Africa, section 33 of the Constitution states the following:

1. Everyone has the right to administrative action that is lawful, reasonable, and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must—(a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; [...]

Likewise, the Constitution of Ghana (Art. 23) enshrines the rights of citizens to fair and reasonable administrative action and to seek redress in a court of justice against any such actions infringing their rights. In order to make this right actionable, the Constitution provides for the establishment of a Commission on Human Rights and Administrative Justice:

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions have the right to seek redress before a court or other tribunal.

Article 47 of the Constitution of Kenya entitles every person to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.

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

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

In countries where there is a constitutional right to just administrative action, there is usually a law that operationalizes the Constitutional right by setting out the requisites of lawful administrative actions and the recourse and remedies available to individuals when public bodies and state officials violate administrative justice principles. In South Africa, this law is called the “Promotion of Administrative Justice Act” (PAJA). In Kenya there are two laws: the “Commission on Administrative Justice Act” of 2011 and the “Fair Administrative Action Act” of 2015.

In general, two paths are available for street vendors to challenge an administrative decision or action that undermines their livelihoods: first, an internal appeal to the authority that made the decision or took the action; and second, a judicial review, which is an appeal to a court to set aside the administrative decision/action because it did not conform with the law or regulation that authorized the decision/action and/or it did not fulfil the requirements of legality of administrative decision/action.

By filing an internal (administrative) appeal, street vendors whose livelihoods have been undermined by an unlawful administrative action or decision ask the same administrative authority that performed the action or made the decision or its hierarchical superior to review the action or decision. In this case, the authority will look at both the process and the merits of the administrative action or decision, and may set the action/decision aside and replace it. The procedures regulating the internal administrative appeal are not significantly different in common and civil law systems.

Judicial review of administrative actions and decisions involves bringing a case before a court. The remedies available to the court include the following:

- First, to annul (set aside) the action. This is usually accompanied by an order to the public body or official to reconsider the matter and make a new decision.
- Second, payment of damages. The plaintiff would have to quantify the damages that the official’s decision or action has caused her. For example, if an officer confiscates a street vendor’s stock, the damages suffered by the vendor would include the cost of replacing the stock and the average sales for the days that the vendor could not trade because she did not have any stock.
- Third, where the public body or official’s action or decision is of such a nature that it has the potential to affect the party bringing the case in a way that could not be remedied by the court annulling the decision or by the award of damages, the plaintiff can ask the court to grant an urgent measure such as an interdict that prohibits the authority or official from making the decision or taking the action or instructs the relevant authority or official to act in a particular way. For example, a court may order a local authority to desist evicting street vendors and may instruct the local authority to consult with street vendors on a suitable alternative site for trading.

While the principles that govern lawful administrative actions and decisions are similar, the procedures that citizens must follow when challenging the action or decision are different. In civil law countries, judicial review of administrative actions or decisions is a matter of administrative procedure, and the review is heard by an administrative court, which is distinct from civil and criminal courts. In common law systems, ordinary courts perform judicial review of administrative actions or decisions, and they follow ordinary procedure.

In addition, while common law judges may only decide on the lawfulness of the action or decision (i.e., whether or not the principles of legality of administrative actions and decisions have been followed), civil law courts may—at least to a certain extent—review the action or decision’s merits (i.e., reconsider the factual elements of the case).

In general, two paths are available for street vendors to challenge an administrative decision or action that undermines their livelihoods: first, an internal appeal [...]; and second, a judicial review.

Box 2: Administrative Law in Common and Civil Law Countries

Administrative law is one area of the law that significantly impacts the work and livelihood of informal workers. The term, however, means different things in common law and civil law systems.

Administrative law was developed in the nineteenth century in France and in other civil law countries to regulate the growing number of administrative offices (the bureaucracy), their powers, and their obligations to the public. Administrative law became a separate area of law with a separate administrative court system and special procedures (administrative procedures), different from ordinary procedures (civil procedures) in ordinary courts.

Administrative justice was part of the administration (the executive part of the government) rather than of the judiciary. For this reason, because they were themselves administrators, when administrative judges reviewed administrative actions (i.e., when the court decided whether or not an administrative action was lawful), their decision focused more on the merits of the action (whether the action was appropriate given the facts) rather than its process. Over time, administrative law developed into a complex body of laws and regulations, including the following:

1. General administrative law, or the rules defining what administrative bodies do and how they function.
2. Procedural administrative law, or the rules that regulate the way citizens can challenge administrative action.
3. Special administrative law, or that body of regulations that regulate specific areas, such as waste management and access to public space, under the competency of local (administrative) authorities

In common law systems, administrative law developed in a different way, and today it still has a different structure than do civil law systems. In common law countries, administrative law remains part of the “common law,” which means there is no separate system of administrative justice and that cases involving administrative actions are heard by ordinary judges. In these countries, judicial review of administrative decisions and actions focuses on whether the administrator has acted in compliance with the principles of legality of administrative action such as whether the action is in accordance with the law or regulation upon which it is based (i.e., it is “lawful”), reasonable, and procedurally fair. Here, the judicial review is not concerned with the merits of the decision (i.e., whether, given the facts, the decision was correct) in strict observance of the principle of separation of powers.

Finally, in common law systems, regulations covering matters that are relevant for informal workers, such as the use of public space, health, safety, and the environment, are therefore considered part of ordinary law (sometimes referred to as by-laws).

Differences between common law and civil law are fading as some common law countries have set up separate administrative units within ordinary courts and some civil law countries adopt laws enshrining administrative fairness and due process as a right of all citizens and a ground of judicial review.

Finally, it is worth noting that the difference between civil and common law systems in the weight they attach to jurisprudence as a source of law is less striking in administrative justice than in other areas of law. In fact, the decisions of administrative courts hold more weight as precedents than those of ordinary courts, and sometimes they fill normative gaps.

[In civil law countries] the decisions of administrative courts hold more weight as precedents than those of ordinary courts.

It's unclear which of the two systems is more beneficial to the citizen seeking to challenge unlawful administrative action. On the one hand, a specialized judge whose professional focus is administrative law might guarantee a better-quality decision. On the other hand, the review through ordinary courts offered in common law systems means that courts are more accessible because in civil law countries there are fewer administrative tribunals than in ordinary courts, and they are usually located only in district capitals.

Reparation of Harm and Damages

Both civil and common law countries have a branch of law that deals with the wrongful harm that one party may cause another, which is called Civil Responsibility or Tort (and in some countries it is called Delict). Street vendors can use tort law to claim damages from local authorities or police

officers who have unlawfully deprived them of their freedom or have unlawfully confiscated their goods.

For instance, Nigerian courts routinely require the police force to pay damages to the street vendors they have unlawfully imprisoned on the grounds of false imprisonment. The damages may include compensation for emotional suffering as well as the actual costs of lost days of work and loss of perishable or unreturned goods.

In certain civil law jurisdictions, governments may be sued for damages directly before the administrative courts if it is established that their actions caused harm to an individual, notably from a physical or an economic standpoint. However, it may be the case the law does not provide for such possibility. Here, the plaintiff may use the mechanism of “*voie de fait administrative*” (which roughly translates into “administrative assault”) to sue a government for damages.

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

In Cameroonian case law, a prime example of the use of *voie de fait administrative* can be found in the 1968 decision of the now defunct Federal Court of Justice in the case of *M. Mve Ndongo Abraham*.¹⁶ M. Mve Ndongo was the Divisional Officer (Prefect) of the Boumba-Ngoko Division in the East Region. By his own account, he had ordered the local *gendarmerie* to seize 3,782 kg of cacao and other goods belonging to M. Ngaba Victor, a trader operating in the small town of Yokadouma, on the grounds that that M. Ngaba owed 400, 000 Central African Franc (XAF) in taxes to the State.¹⁷

The Federal Court of Justice noted that there was a judicial procedure for seizing goods for non-payment of taxes, which had not been followed. Furthermore, the Court noted that even though he was a representative of the State, it did not fall under M. Mve Ndongo’s jurisdiction to unilaterally seize a taxpayer’s goods. Not only had he violated the law by exercising a power that was not his to exercise, he had also violated it in such an egregious way that his actions were deemed to be a “*voie de fait administrative*.”¹⁸

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

Similarly, in the previously mentioned case of John Makwicana, the Durban High Court not only held that the provisions of the city by-laws that enabled the metro police to confiscate Makwicana’s goods without notice violated the Constitution, but it also awarded him 775 Rand (ZAR) in damages, plus costs and interest, to be paid by the Durban municipality.¹⁹

It should be noted that street vendors or their families may also sue the government for damages in case of bodily harm. At the time of this writing, in



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

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

¹⁷ 400,000 XAF is equal to US \$680 as of 24 July 2019.

¹⁸ Federal Court of Justice, A/P no. 10, October 17, 1968, *Mve Ndongo, Chief Prosecutor v. Ngaba Victor*

¹⁹ 775 Rand was equivalent to approximately US \$73.21 at the time of the court’s June 2014 decision.

Uganda, Rose Nalujja, the daughter of a street vendor, has recently brought KCCA and the Attorney General before the civil division of the High Court. She is seeking over 800 million Ugandan Shillings (UGX) in compensation of the death of her mother, Oliver Basemera.²⁰

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

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

4. Criminal Proceedings

Just like administrative actions, criminal procedures must follow due process.

At times, authorities may accuse street vendors of crimes and arrest them. In these cases, criminal law and procedure applies. Just like administrative actions, criminal procedures must follow due process. Otherwise, the affected individual may challenge the proceedings as illegal.

Indeed, illegal actions on the part of the authorities in such proceedings are usually grounds enough to dismiss the entire procedure. For instance, in the Malawian case of Mayeso Gwanda described above, Gwanda's arguments in challenge to the “Rogue and Vagabond Law” included that he was arrested without any good reason and that he was detained for several days with no formal charges brought against him at the time. Both of these actions were illegal, which also rendered legal actions against him illegal.

In criminal proceedings, there is a significant difference between the approach in civil law and common law. Common law often uses an adversarial system in which the opposing sides (the accused and the prosecution) compete to convince a judge (or a jury) that their version of the facts is the most convincing. In such a system, the judge is merely a moderator between the parties.

In an inquisitorial system, favoured in civil law systems, the role of the judge is not to hold the balance between the contending parties but to find the truth. This type of justice system is defined most by the intervention of an investigative judge (the *juge d'instruction*) who investigates the case and eventually brings formal charges against the accused.

²⁰ 800 million Ugandan Shillings is equivalent to US \$216,484 as of 24 July 2019.

Box 3: Applying Legal Mechanisms

This brief has outlined four legal mechanisms street vendors and their organizations can use when faced with legal challenges. The following list contains some practical considerations in application:

1. **Constitutional reviews of laws and regulations.** Laws or regulations violating constitutional norms or rights can be struck down as unconstitutional. Before bringing an action for a constitutional review of legislation or a regulation, street vendor organizations need to check the following:
 - a. **When** does the country allow constitutional review? Before the legislation is enacted (*a priori review*), after it is enacted (*a posteriori review*), or both before and after?
 - b. Can one challenge the constitutionality of the law in abstract or **must there be a concrete case in which the law was applied?**
 - c. **Where** does one take a case of constitutional review? Is there a special court (a Constitutional Court or Council), or can the issue of constitutionality be decided by an ordinary court?

African countries have adopted different systems of constitutional review. Common law countries tend to offer easier access for constitutional review, allowing *a posteriori*, concrete review and giving ordinary judges—rather than one court or council—the power to declare the unconstitutionality of a law. However, some common law countries, like South Africa and Ghana, opted for a centralized constitutional review system while a number of civil law countries, such as Benin, Guinea, and Senegal, allow *a posteriori* constitutional review of laws and regulations, which shows that the divide between common and civil law traditions is not rigid.

2. **Judicial Review of regulations to ensure conformity with statutes/ordinary laws.** Regulations must conform to the statutes/ordinary laws they are meant to implement, those setting their basic scope or principles, and with the mandate or powers of such bodies or authorities adopting the regulation. Otherwise, those affected by a regulation can ask the court to decide whether the regulation is lawful or not. While in civil law systems special administrative tribunals review whether regulations conform with ordinary laws, in common law systems, regulations may be reviewed by every court (with the exception of magistrate courts).
3. **Appeal/review of administrative actions and decisions.** Street vendors may challenge administrative actions or decisions in two ways:
 - a. **Internal appeal.** A street vendor may ask the same or the hierarchical superior of the authority responsible for a decision or action to review the actions or decisions in terms of lawfulness, reasonableness, or procedural fairness. Internal appeal may lead to the repeal and replacement of the decision or action.
 - b. **Judicial review.** Street vendors can initiate court proceedings. Judges may set aside the decision or action and order the competent public authority to replace it. When the decision or action is likely to have irreversible consequences, the judge may issue urgent measures stopping the public authority from making the decision or performing the action.

Finally, when the decision or action has caused an economic loss, the vendor may ask that the public authority pays damages. Street vendors will need to calculate and provide evidence of the damages suffered, which may include lost income (in the case of unwarranted arrest or eviction) or loss of goods (when seized goods are not returned to their owner). In some civil law jurisdictions, the law provides the possibility of claiming damages in administrative courts. When this is not the case, the street vendor may use the mechanism of *voie de fait administrative* to sue a government for damages. In these instances, the case is heard by the ordinary courts rather than administrative courts.

Judicial review of an administrative action differs in common and civil law countries. In common law systems, ordinary judges preside over cases involving public authorities while in civil law countries, special administrative tribunals (usually located only in district or regional capitals and following a special procedure) with exclusive jurisdiction preside over cases involving public authorities. Because this difference is slowly changing, however, it is important to check the court system in each country.

4. **Criminal justice.** When public authorities accuse a street vendor of a crime, they must comply with due process requirements set by criminal procedure laws. If they fail to comply, then the action is unlawful, and it can be struck down by a judge. This recourse can be very effective in cases where vendors are harassed by the police and unlawfully arrested, such as in the Mayeso Gwanda and the “Rogue and Vagabond Law” case.

A table summarizing the main differences between common and civil law systems can be found in Appendix 2.

Conclusion

Street vending holds indisputable economic and social value for African countries. For many people in these countries, particularly for women, street vending is often the only means to escape unemployment and poverty and to ensure a livelihood and an education for their children. Indeed, “in most regions of the global South, informal employment accounts for more than half of total employment, and self-employment outweighs wage employment” (Roever and Skinner 2016).

Street vendors are economic assets to cities (Roever and Skinner 2016): they help ensure food security for vast groups who otherwise have limited access to food distribution, and they contribute economically to city and national government revenue through “a variety of taxes, fees and levies” (Roever and Skinner 2016).

Of course, governments hold legitimate concerns relating to street vending. It is normal and expected that a government should take the necessary steps to protect public safety and public health, and, at times, street vending interferes with such duties. Business owners also hold understandable concern; they may believe it unjust that street vendors are not subject to the same requirements as they are, particularly from a tax standpoint.

The path to creating an enabling environment for street vendors can be found in regulated access to public space, where street vendors can thrive and affirm their role as productive and contributing members of society who have both rights and responsibilities. Such a solution is two-fold. It includes progressive, enabling legislation, and, when the local authority does not respect the principles of administrative justice, it includes access to justice through accessible and meaningful recourses and remedies.

Because what is unlawful cannot be protected under the law, street vending outside of the law’s confines should not be encouraged. However, existing regulations in African countries (and elsewhere) that govern the use of public space are often outdated, ambiguous, or simply do not reflect the realities of informal traders’ work, which makes it impossible for street traders to comply with regulations. In Accra, Ghana, for example, as many as 13 bylaws cover street vending, and it is not clear which kind of permit street vendors need to operate. In Dakar, Senegal, street vending is regulated by an “umbrella” law dating back to 1967, by an array of building, health, security, and environmental regulations, and by fee and tax requirements that are very difficult to navigate and almost impossible to comply with. Local authorities exploit the ambiguity created by the law to harass street vendors (i.e., in the case of Mayeso Gwanda).

Too often and in too many places, law enforcement is used as a weapon against street vendors. Where street vending is outlawed, necessary steps must be taken by all (politicians, activists, and members of the civil society) to ensure that bans are lifted and replaced with sensible regulations. Where street vending is not expressly forbidden, existing laws that govern business and commerce might be complemented by comprehensive national or local regulations to enable street vending. A good example of such legislation is India’s “Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act” of 2014. The Act sets up a system of participatory governance, creating key decision-making bodies, called Street Vending Committees (SVC), of which at least 40 per cent of members must be leaders of street vendors’ associations and one third must be women. According to the Act, all existing street vendors—as surveyed by SVCs every five years—must be given a

Where street vending is outlawed, necessary steps must be taken by all [...] to ensure that bans are lifted and replaced with sensible regulations.

certificate to vend. If vendors sell their goods according to the terms of the certificate, the police may not prevent them from selling. The Act also details street vendors' responsibilities, and it prescribes a clear process for relocating street vendors from one trading site to another.²¹

As differences between common law and civil law countries fade, countries should seek to adopt procedures and create an institutional and legal framework that broaden rather than limit access to justice for street vendors, breaking free from the mold of traditionally diverging legal systems.

Rights of access and use of public space, clear principles of lawful administrative action, accessible complaint mechanisms, and effective remedies are all essential in making the law a useful tool for street vendors.

In both civil law and common law countries, street vendors must be awarded strong legal protections within an enabling legal environment that recognizes them and their contributions. Street vendors should be allowed to thrive and their countries to thrive with them.

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²¹ See von Broembsen, Marlese, "The New Urban Agendas and social exclusion: Street vendors' participation in decision making about the use of public space" for more information about the Act.

Appendix 1

Types of Constitutional Review and Normative Instruments Subject to Control in West Africa

Table 1: Types of Constitutional Review and Normative Instruments Subject to Control in Francophone and Lusophone West Africa

	Timing and type of review			Normative instruments
	<i>A priori</i> (pre-promulgation)	Concrete/incidental (<i>a posteriori</i> by nature)	Abstract (no case involved)	
Benin	Yes	No	No	Internal rules of procedure
	Yes	Yes	Yes	Statutes
	Yes	Yes	Yes	Regulatory acts
	Yes	No	No	Treaties
Burkina Faso	Yes	No	No	Internal rules of procedure
	Yes	Yes	No	Statutes
	No	Yes	Yes	Regulatory acts
	Yes	No	No	Treaties
Cape Verde	No	Yes	Yes	Internal rules of procedure
	Yes	Yes	Yes	Statutes
	Yes	Yes	Yes	Regulatory acts
	Yes	Yes	Yes	Treaties
Cote d'Ivoire	Yes	No	Yes	Internal rules of procedure
	Yes	Yes	Yes	Statutes
	Yes	Yes	Yes	Regulatory acts
	Yes	No	Yes	Treaties
Guinea	No	Yes	Yes	Internal rules of procedure
	Yes	Yes	No	Statutes
	Yes	Yes	Yes	Regulatory acts
	Yes	No	No	Treaties
Guinea Bissau	Unclear	Unclear	Unclear	Internal rules of procedure
	No	Yes	No	Statutes
	No	Yes	No	Regulatory acts
	Yes	No	No	Treaties
Mali	Yes	Yes	Yes	Internal rules of procedure
	Yes	No	No	Statutes
	No	No	No	Regulatory acts
	Yes	No	No	Treaties
Mauritania	Yes	No	No	Internal rules of procedure
	Yes	No	No	Statutes
	No	No	No	Regulatory acts
	Yes	No	No	Treaties
Niger	Yes	No	Yes	Internal rules of procedure
	Yes	Yes	No	Statutes
	Yes	Yes	No	Regulatory acts
	Yes	No	No	Treaties
Senegal	Yes	No	No	Internal rules of procedure
	Yes	Yes	No	Statutes
	No	Yes	No	Regulatory acts
	Yes	No	No	Treaties
Togo	Yes	No	Yes	Internal rules of procedure
	Yes	Yes	No	Statutes
	Yes	No	No	Regulatory acts
	Yes	No	No	Treaties

Source: Reprinted and adapted from *Judicial Review Systems in West Africa A Comparative Analysis*, Bockenforde, M., Babacar Kante, Yonhiwo Ngege, H.Kwasi Prempeh, International IDEA, Stockholm:2016, p, 93

Table 2: Types of Constitutional Review and Normative Instruments Subject to Control in Anglophone West Africa

	Timing and type of review			Relevant constitutional/organic law provisions
	<i>A priori</i> (pre-promulgation)	Concrete/incidental (<i>a posteriori</i> by nature)	Abstract (no case involved)	
The Gambia	Yes (but consultative)	Yes	Unclear	Articles 5(1), 37(1), 127 (constitution)
Ghana	No	Yes	No	Articles 2(1), 33, 130 (constitution)
Liberia	Yes (but consultative)	Yes	Yes	Articles 26(1), 66 (constitution)
Nigeria	Unclear	Yes	Unclear	Articles 4(8), 46(1), 233(1), 241(1) (constitution)
Sierra Leone	No	Yes	Unclear	Articles 124, 127(1), (constitution)

Source: Reprinted and adapted from *Judicial Review Systems in West Africa A Comparative Analysis*, Bockenforde, M., Babacar Kante, Yonhiwo Ngenge, H.Kwasi Prempeh, International IDEA, Stockholm:2016, p, 99

Appendix 2

Main Differences between Common and Civil Law Systems

	Common law	Civil Law
Value of court decisions	<ul style="list-style-type: none"> • Court decisions are sources of law • Strategic litigation is a powerful tool and it is traditionally used to defend social and economic rights of the poor and marginalized • However, not all court decisions are sources of case law (magistrate courts do not make case law) 	<ul style="list-style-type: none"> • Court decisions are not sources of law • Strategic litigation is increasingly used to foster systemic change but is less powerful than in common law systems because court decisions are not sources of law • Settled jurisprudence has interpretative value and judges are likely to follow it, although they may disregard it
Constitutional review of laws and regulations	<ul style="list-style-type: none"> • <i>A posteriori</i> (review is allowed after promulgation of the law or regulation) • <i>A priori</i> (review is allowed only before laws are promulgated) • Concrete review (review is allowed when the issue of constitutionality arises in the context of a pending case) • Abstract review (review is allowed unrelated to ongoing judicial proceedings) allowed in some countries • Diffuse system of review (ordinary courts may review questions of constitutionality of laws and regulations) 	<ul style="list-style-type: none"> • <i>A priori</i> (review is allowed only before laws are promulgated) • <i>A posteriori</i> (review is allowed after promulgation of the law or regulation) • When a <i>posteriori</i> review is allowed, concrete review (when the issue of constitutionality arises in the context of a pending case) and abstract review (unrelated to ongoing judicial proceedings) are allowed in most countries. • Centralized system of review (one court – such as a Constitutional Court of Council – has the authority to review the constitutionality of laws and regulations)
Administrative Law	<ul style="list-style-type: none"> • Sanctions the right of the public to legal administrative actions and decisions • Indicates the principles of legality of administrative actions and decisions • Cases are heard by ordinary judges following ordinary procedure • Judges review the procedure rather than merits of a case 	<ul style="list-style-type: none"> • Sanctions the right of the public to legal administrative actions and decisions • Indicates the principles of legality of administrative actions and decisions • Complex body of law including: <ul style="list-style-type: none"> • General administrative law (functioning and organization of administrative bodies) • Administrative justice • Special administrative law (includes regulations on access and use of public space) • Separate court system and procedure
Criminal justice	Usually follows adversarial system where judge serves as a mediator between the parties and decides on the case	Usually follows inquisitorial system, where an investigative judge investigates the case and brings the formal charges against the accused

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

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