

Law & Informality Insights N° 2



Faustina Kai Torgbe stands out as a well-established vendor in Accra's East Legon neighbourhood.
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The Impact of COVID-19 Laws on Informal Workers: A Review of 51 Countries

The COVID-19 pandemic could be a turning point for the recognition of informal work. Have lawmakers recognized informal workers as they address the immediate challenges that the crisis presents? If so, there is an opportunity for a step to be taken towards labour and social protection for informal workers. Or are lawmakers ignoring informal workers and therefore perpetuating existing patterns of exclusion? Three international instruments— ILO Convention 189 concerning Decent Work for Domestic Workers, ILO Recommendation 202 concerning Social Protection Floors and ILO Recommendation 204 concerning the Transition from the Informal to the Formal Economy – recognize informal workers. However, in most countries, informal workers still do not enjoy fundamental worker rights and protections. This has come under the spotlight during the crisis.

The COVID-19 pandemic has ushered in wide-ranging changes to people's lives the world over. As the number of infections and deaths increased, governments around the world instituted lockdowns to avert contagion. Some countries declared a national state of emergency in terms of the constitution, state of emergency laws, or health emergency laws. Other countries declared a public health emergency in terms of public health legislation. In all these scenarios, the executive has wide discretion to take measures

it considers necessary to restore and maintain peace and order, or to protect the health of the public. These include executive orders and temporary regulations, which govern the conduct of the state and of citizens during the emergency. Regulations typically suspend certain rights and procedures or the operation of certain laws, and the executive may deploy security forces to enforce the emergency provisions. It is therefore common for emergency situations to open the door to serious human rights violations.

The gravity of states of emergency and public health emergencies means that governments rarely invoke them and that where they do, they do so in isolation or in tandem with only a few other (usually neighbouring) governments. This uncommon convergence of national emergencies presents a fertile site of study for a lawyer interested in almost any area of law. This edition of *Law and Informality Insights* analyses the COVID-19 laws with an informal worker lens, with a particular focus on domestic workers and street vendors.

WIEGO's Law Programme collected and collated the COVID-19 laws in some 51 countries in Africa, Asia and Latin America. We collected laws available in English, French, Portuguese and Spanish from government websites, legal databases, government media releases and social media. Where the laws were not readily accessible on the internet, the team obtained the laws directly from citizens and government officials in the relevant countries. The laws cover the period of 1 March until the first week of May, when many countries were still at the height of the lockdown. Table 1 shows which countries' laws were analysed.

The COVID-19 laws that are examined in this edition include a range of regulations, statutory instruments, policies, guidelines and protocols that other national government departments and local authorities have adopted in response to the pandemic.

According to the ILO, informal workers account for 90 per cent of employment in low income countries, 67 per cent in middle income countries and 18 per cent in high income countries. Yet, their work is invisible, undervalued and, for the most part, unprotected by labour and social protection laws. The scope of the COVID-19 laws is largely limited to paid employees who have an indefinite employment contract and work in conventional workplaces, like factories and shops. Most street vendors are excluded because they are self-employed. Domestic workers work in private homes, which often results in their exclusion from the definition of an employee or, if they are included, their employers seldom comply with the law and their work is therefore *de facto* informal.

Table 1: Countries surveyed in Africa, Asia and Latin America

Continent	Countries	Total
Africa	Angola, Botswana, Eritrea, Eswatini, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, South Sudan, Uganda, Zambia, Zimbabwe	22
Asia	Hong Kong, India, Japan, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Singapore, Sri Lanka, Thailand, United Arab Emirates, Vietnam	13
Latin America	Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay	16

We begin by outlining the broad nature of the lockdown provisions and the broad exceptions to the restrictions that they impose. We then consider the extent to which the COVID-19 laws designate informal trade and domestic work as essential services, which allows these workers to work, and whether they cover these occupational groups in the occupational health and safety (OHS) provisions that are aimed at preventing workplace transmission. In the last section, we consider the extension of social protection to informal workers.

Lockdown regulations and essential services

Lockdown provisions that restrict or prohibit movement and large gatherings are central to COVID-19 laws. In the 51 countries under review, these include the closure of national borders to international visitors, prohibiting nationals from leaving the country and putting limits on certain international cargo. Some governments also prohibit movement within and between localities as well as across provinces or regions. Many countries introduced night curfews, reduced public transport operating hours and limited passenger loads.

Countries have taken different approaches to enforcing restrictions. Most of the 51 countries analysed, impose strict lockdowns that make it an offence to move or gather in contravention of the provisions. Anyone found guilty of an offence may be imprisoned for a maximum of six months to two years and/or required to pay a fine. In a few countries, such as Japan, the lockdown provisions are merely guidelines. Nicaragua stands out for not imposing any restrictions on movement and gatherings.

Most countries' laws make exceptions for people to move and travel for personal (buying food and medicine, seeking medical treatment and attending funerals) and work-related reasons. With respect to work-related exceptions, most countries have listed occupational groups and entities that are performing essential work or providing essential services. Some countries, including Angola, Chile, Costa Rica, Eswatini, Namibia and South Africa, require essential service workers to apply for and carry permits.

The determination of essential services is the starting point for establishing how lockdown provisions impact on informal workers. While, in theory, informal workers who are designated as essential are allowed to work, several factors (for example accessing permits, reduced pedestrian traffic for traders, curfews and transport restrictions) may prevent them from working or may reduce their incomes in reality. Most governments recommend that non-essential workers should work from home. Most informal workers who are not designated as essential workers do not have the luxury of working from home, like skilled and professional workers who can work virtually, implying a loss of income.

Domestic workers

Only 8 out of the 51 countries surveyed designate domestic workers as an essential service, either by express reference (Angola, Brazil and South Africa) or by referring to their care (Colombia, Ecuador and El Salvador) or cleaning roles (Paraguay and Guatemala). Live-out domestic work is prohibited in almost 85 per cent of the surveyed countries. The International Domestic Workers Federation (IDWF) reports widespread job losses amongst live-out domestic workers across the three regions. The limited recognition of domestic workers means that live-in domestic workers who were not at work when the lockdown started, would find it difficult to return to work. In the case of migrant domestic workers who returned to their home countries, host governments have refused to allow them to return to work.

Live-in domestic workers do not need to be designated as essential workers to work, provided they were in the employer's house at the beginning of the lockdown and stay there. Domestic workers are caring for children whose parents are essential workers, or who are working from home. They also care for the elderly, the sick, invalids and COVID-19 patients in their households. Their employers may send them to do shopping and errands to avoid exposing themselves to the virus. Moreover, domestic workers bear the burden of cleaning and disinfecting homes to protect the household members from the coronavirus.

In most countries, domestic workers are excluded from OHS protection, either because the law does not recognize them as employees or because of the challenges of securing compliance where the workplace is a private home. Nine of the 51 surveyed countries have introduced provisions to regulate OHS in employment relationships under COVID-19. These nine countries (Colombia, Costa Rica, El Salvador, Malawi, Namibia, Peru, South Africa, United Arab Emirates and Uruguay) require employers to provide workers with personal protective equipment (PPE), provide sanitizing supplies and to train workers on good health and safety practices. However, domestic work may not be covered by these provisions if the law of the country does not include domestic workers in their definition of employee. Three countries (Malawi, Peru, UAE) specifically state



Lucy Mokhele's physically demanding workday in a private home involves cleaning and cooking for her elderly employer and other family members in Johannesburg.

Photo credit: Jonathan Torgovnik/Getty Images Reportage

that OHS provisions only apply to private or commercial establishments, which lets employers of domestic workers off the hook.

Domestic workers are at a **high risk** of COVID-19 infection because there may be limited room for social distancing in a household and they have limited control over who they come into contact with in the household. They may have limited knowledge about the virus and how to protect themselves, and little or no access to personal protective equipment (PPE). In addition, employers may withhold information about the COVID-19 status of members of the household.

Reports suggest that employers are not training domestic workers about health and safety or providing them with PPE. As a result, workers in Hong Kong, Singapore and South Africa and Turkish, Myanmar and Indonesian migrant domestic workers have been infected with COVID-19 at work. In addition, domestic workers have experienced respiratory problems and burns on their hands and feet because of exposure to harsh COVID-19 cleaning products. Domestic workers' health and safety vulnerabilities have thus been exacerbated during the COVID-19 crisis.

Informal food vendors

Informal traders operate in three distinct places of work: in markets, on streets and from their own homes. Studies show that all three categories **contribute towards food security**, especially for low income communities, and that they provide convenient access to a range of necessary everyday goods in convenient quantities. This suggests that informal traders should be recognized as essential workers, particularly in developing countries. Although all the countries in this survey recognize the sale of food, medicine and other necessities as an essential service, just over a third (18) of these 51 countries recognized informal food traders as providing an essential service.

Of the countries that designate informal food vending as an essential service, only South Africa expressly recognized all three categories of informal food trade as an essential service. Eswatini and Zimbabwe recognize informal food vending more generally. Market trading is most widely recognized as an essential service, followed by street vending and trading in private homes. Several countries expressly prohibit informal trade, particularly on streets and in markets. In other countries, the laws implicitly



Market vendor Vida Ofori stands proudly at her tomato stand in Makola Market, Accra, Ghana.
Photo Credit: Jonathan Torgovnik/Getty Images Reportage

exclude informal traders by listing registered retail outlets, such as supermarkets, as essential services. It is worth noting that African countries have been most explicit in its provisions about informal trade, compared to the other regions.

With few exceptions, Latin American countries have not specifically mentioned informal trade. Three Latin American countries have allowed the

sale of essential goods including food, provided they do so via e-commerce or home delivery. These requirements effectively exclude most informal traders unless they partner with local authorities and food delivery services, as is the case in Malaysia.

Table 2 shows how countries have regulated informal food vending.

Table 2: The regulation of informal food vending as an essential service

Issue	Countries
Sale of essential goods only by registered/formal shops	Japan, Nigeria, Philippines, Sudan, United Arab Emirates
Sale of essential goods only via e-commerce and home delivery	Brazil (Rio), Colombia, Ecuador
Prohibition of informal trade	Markets: Liberia, Malawi, Kenya (Nandi County) Gambia, Streets: Kenya (Nandi County), Liberia, Malawi Informal trade generally: India
Designating informal food vending as essential service	Markets: Angola, Ghana, Mali, Mozambique, Myanmar, Namibia, Nigeria (Lagos), Rwanda, South Africa, Thailand, Uganda, Uruguay (Montevideo), Zambia, Streets: Angola, Kenya, Mozambique, Namibia, South Africa Home shops: Botswana, South Africa Informal trade generally: Eswatini, Zimbabwe
Requiring informal traders to acquire an essential service permit	Eswatini, Namibia, South Africa, Zimbabwe

It is worth noting that six of the countries that recognize informal food trade as an essential service (Botswana, Eswatini, Kenya, Namibia, South Africa and Zimbabwe) initially excluded informal food vendors from their essential service provisions. Their later inclusion suggests that the authorities realized their significant role in food security. In South Africa and Zimbabwe, this was due to pressure from informal trader organizations and their allies.

The COVID-19 laws in 13 countries (Angola, Costa Rica, El Salvador, Ghana, Kenya, Malawi, Mozambique, Namibia, Pakistan, Peru, South Africa, Thailand, and the city of Montevideo in Uruguay) specifically regulate health and safety in relation to informal trade. These rules are largely designed to limit human interaction and exposure to the virus. Apart from Malawi and Peru, these

countries expressly recognize informal food trade as an essential service.

Health and safety regulations can be divided into 5 categories. First, *limits on the number of customers*, as in Angola, Pakistan and Thailand. Second, *time limits for trading and shopping*. Angola's laws limit the number of days and hours during which markets may be open. In Namibia and the city of Montevideo in Uruguay, customers may only spend a short amount of time in public markets, so here the limit is on the customers rather than the traders, as is the case in Angola. By contrast, Malawi's laws require informal traders to extend their trading hours, presumably to avoid overcrowding associated with shorter trading hours.

Third, *decentralizing markets*. In Accra, Ghana, the large, central markets have to remain closed,

while the local authority permits existing local markets to trade or establishes temporary satellite markets. Fourth, *requiring the use of masks and gloves*. Angola, Mozambique, the city of Accra, Pakistan and Costa Rica require market traders and customers to wear face masks and/or gloves while they are in markets. Markets in Accra are required to prominently display signs that read “No mask, no entry” at all market entrances.

Fifth, *markets must provide hand washing facilities*. The laws in Costa Rica, Kenya, Malawi, Namibia, Pakistan and South Africa state that handwashing stations should be present in markets and that markets should be frequently disinfected. For the most part, these laws use the passive tense, making it unclear as to who bears the burden of providing washing facilities and for disinfecting the spaces. This means that food vendors in most countries must make their own arrangements and assume the costs of providing these facilities. Only the laws in Namibia and South Africa clearly impose this burden on local authorities. Namibian law goes furthest in clearly articulating local authorities’ obligations to promote health and safety in relation to informal trade, which include the following:

- Local authorities must ensure that traders and customers observe social distancing and handwashing rules.
- Local authorities may draw up a roster for traders, to ensure that social distancing is observed and to provide all traders an opportunity to operate.
- Local authorities must clearly demarcate stalls to ensure compliance with social distancing regulations and must keep a database of all traders in a market or trading area.
- Local authorities must limit and monitor access to the market or informal trading areas to ensure compliance with the rules and, where possible, ensure separate exit and entry points.
- Local authorities should educate traders about the regulations.

Despite being a vital part of food chains, food vendors have long been regulated on the basis that they constitute a public nuisance or a threat to public health. The COVID-19 pandemic has forced governments to recognize food vendors’ significant contribution to food security and several countries have recognized their work as essential. Cooperation between informal traders and local authorities in some countries suggests that this could be the first step towards the adoption of a more facilitative and developmental

approach to regulating informal trade. However, the many recent reports of **evictions, demolitions, arrests and confiscations** indicate that it will take more than a crisis to dislodge the systemic marginalization and abuse of informal traders. The stigmatization of informal traders as vectors of disease continues and traders must take measures to promote social distancing and hygiene, often in the absence of a duty on the part of local authority to provide the necessary infrastructure and facilities to make this possible.

Social protection

The work of the vast majority of informal workers, including most informal traders and domestic workers, is not deemed essential and, therefore, they are unable to work. Even informal traders and domestic workers who are designated essential, face the prospect of reduced earnings due to transport and travel restrictions, restrictions on trading times, reduced consumer spending, failure to obtain necessary permits and licenses, and, in the case of domestic workers, their employers’ inability or unwillingness to pay their wages.

COVID-19 has rendered visible the implications that most of the global workforce –2 billion people– enjoys little to no access to social protection. For many, the options are to **starve to death under lockdown, or defy movement restrictions and die** from the virus.

Social protection debates recognize that informal workers constitute the **‘missing middle’**. On the one hand, because of their low and unstable incomes and their employment status they either cannot afford or are ineligible to join social insurance schemes. On the other hand, most often they are not considered vulnerable or poor enough to qualify for social assistance grants. As a result of the current crisis, many governments’ COVID-19 measures target the **‘missing middle’**. Their **modalities for the delivery of social assistance** include: providing universal benefits to the entire population; excluding formal workers and those who are registered on social insurance and social assistance schemes (‘targeting out’); and directly targeting informal workers (‘targeting in’).

Most of the 51 countries surveyed have introduced universal and targeted interventions to provide cash, food, and health care measures that have reached informal workers to differing degrees. These relief measures are funded primarily by government funds and national social security funds. Some countries have introduced measures that enable both individuals and businesses to contribute directly to relief efforts.

Botswana, Ghana, Kenya, Panama and South Africa have established national COVID-19 funds. Colombia's "Share my energy" contribution plan allows citizens to make voluntary contributions to subsidize electricity fees for those who cannot afford to pay.

Social protection for self-employed workers

Hong Kong, Mauritius, Namibia, South Africa, Sri Lanka, Peru, the Philippines and Uruguay have extended cash benefits to self-employed workers. Some refer specifically to informal traders. In Peru, informal traders were initially excluded and later included, in response to their advocacy efforts. In Hong Kong, vendors who sell cooked food and light refreshments in public markets receive a subsidy. The Philippines' cash grants are conditional on recipients cleaning and disinfecting their homes and immediate vicinity.

Some governments have also reduced trade-related fees. Sri Lanka has provided for once-off relief on lease payments for the self-employed, including drivers of three-wheelers and trucks. Both national and local governments in Honduras, Colombia (Bogota) and Uruguay (Montevideo) have suspended trade-related rentals, fees and taxes, including for informal traders.

Social protection for domestic workers

Domestic workers may be protected by employment-related provisions in countries that recognize them as employees. For example, Colombian laws make employers liable for employees' wages during lockdown if they are

unable to work. The Philippines' COVID-19 grants are likely to include domestic workers. It is giving cash benefits to overseas Filipino workers in high-risk countries in the Middle East, Africa, Europe, the Americas, Asia and the Pacific who are unable to work because of COVID-19. The International Domestic Workers Federation (IDWF) has established "Care for Those Who Care for You", which calls on employers to continue paying their domestic workers' salaries and social insurance contributions even if they are unable to work. The IDWF has also established the IDWF Solidarity Fund to support domestic workers during COVID-19.

Many of the 51 countries surveyed introduced additional non-social protection relief measures. First, 9 jurisdictions introduced measures to control the prices of essential goods, including groceries and PPE. Second, 7 countries provided rental relief by suspending evictions for non-payment of rent during the crisis. Hong Kong went further by providing rent relief for low-income citizens and India provided free shelter and food for migrant labourers unable to return to their homes because of the lockdown. Third, 19 countries introduced measures related to ensuring continued access to public utilities. These include laws that prohibit public utility providers from disconnecting electricity, water and gas supplies, -and, in some cases, telephone, internet and television services, for customers who are unable to pay their bills during the crisis. They also include laws for the provision of free or subsidized access to water and electricity and that prohibit fee increases during the crisis. Table 3 lists the countries that have adopted these additional relief measures.

Table 3: Additional relief measures by country

Nature of the measure	Countries
Price controls	Angola, Argentina, Botswana, Colombia, Eritrea, Mauritius, Mozambique, Nigeria and Panama.
Prohibition of evictions	Angola, Costa Rica, Honduras, India, South Africa, Paraguay and Zimbabwe.
Prohibition of disconnection of basic utilities	Angola, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Kenya, Mozambique, Namibia, Peru, Paraguay and Uruguay. Telephone and internet services: Argentina and Chile.
Free or subsidized utilities	Colombia, Costa Rica, Guatemala, Honduras, Hong Kong, Panama, Peru, Paraguay and El Salvador. Free water: Eswatini, Kenya, Namibia and South Africa.
Prohibition of utility fee increases	Colombia, Costa Rica, Eswatini, Guatemala, El Salvador.

While the above measures provide informal workers with immediate relief, they do not cover all informal workers and are temporary. Moreover, in many countries, limited institutional capacity, resource constraints and lack of political will means there is an implementation gap.

Conclusion

The analysis in this edition has shown that informal food vendors have received much wider recognition as essential workers than domestic workers. Only a few countries recognize the need to protect informal traders and domestic workers against the OHS risks that have emerged during the crisis. A few countries under review have specifically recognized street vendors and domestic workers in their relief efforts. In addition, these workers may benefit from universal social assistance grants and from additional forms of relief that have been extended to the citizens and residents. On the whole, the COVID-19 laws in the 51 countries under review recognize and address the specific issues of informal workers to a limited extent. This mirrors the position under labour and social protection laws that largely exclude these workers from the scope of their protection.

Informal workers have used COVID-19 to show that the continued exclusion of informal workers is unsustainable, and to demand meaningful change. On the 1st of May, the **International Domestic Workers Federation** (which has 74 affiliates in 57 countries), **StreetNet** (which has affiliates in 53 countries), five Regional **Home-base worker Organizations** and the **Global Alliance of Waste Pickers** issued a **Global Solidarity Platform**. This platform calls on governments to include informal worker organizations in decision-making, both now and in post-COVID-19 reconstruction, and it calls for economic transformation at both national and global levels.

The Director-General of the ILO, **Guy Rider**, has emphasized the particularly devastating implications of the pandemic for the world's 2 billion informal workers. Even the IMF is calling for a “**new deal**” for informal workers. The recognition in many countries of informal workers' social and economic contribution and their inclusion in COVID-19 social protection grants, represents an important political gain.

Informal workers constitute the majority of the workforce in low and middle income countries and must be represented in local (city level), national and global decision-making fora, including

tripartite structures. Their representation is crucial both in the medium-term as countries reopen their economies and recover from COVID-19, and in the longer term post-COVID-19 reconstruction.

Informal workers' **long term income recovery** requires macro-economic stimulus packages that recognize informal workers as part of the 1economy and that cater to their needs: it requires their long-term inclusion in social protection systems; and it requires governments to desist from actions that undermine their fragile livelihoods. For street vendors, this means a moratorium on evictions and confiscations and an adherence by local authorities to the principles of **administrative justice**, meaning that their actions and decisions are authorized by law, are reasonable and rational, and are procedurally fair.

Mexico leads the way with a post-coronavirus response that addresses domestic workers' exclusion from legal and social protection. Globally, **one in 25 women in the world who is a domestic worker**. On 3 July 2020, Mexico ratified **ILO Convention on Decent Work for Domestic Workers', No.189** as a first step to their inclusion in the country's labour laws.

