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**SUB-NATIONAL GOVERNANCE AND THE PLIGHT
OF WOMEN WORKING IN PUBLIC SPACES
A FOCUS IN KENYA**

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ICJ Kenya has been at the forefront of National, Regional and Global campaigns calling for the decriminalization and reclassification of petty offences.

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The Factsheet can be downloaded here:

Fact Sheet: <https://dullahomarinstitute.org.za/acjr/fact-sheet-29-sub-national-governance-and-the-plight-of-women-working-in-public-spaces-in-south-africa.pdf/view>

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INTRODUCTION

Sub-national governance is a broad concept which comprises every level of government except the national government. This includes: provinces, regions, counties, municipalities and villages.¹ Sub-national governments play a crucial role in delivery of goods and services and implementation of policies within communities. However, in most African countries, the potential of sub-national governments to bring significant social, economic and political changes in a country is not appreciated.² Further, most sub-national governments face challenges such as: Inadequate funds, poor intergovernmental relations with the national government, food insecurity, climate change and infrastructural challenges.³ Kenya has a sub-national government in the form of a devolved government consisting of 47 constitutionally recognized counties.⁴ Each county has a county government whose functions and powers are encapsulated in the Constitution.⁵

Additionally, the County Government Act provides for the functions, powers and responsibility of county governments in Kenya.⁶ In carrying out their functions, county governments are guided by the principles of devolved government. These principles include: The application of democratic principles and separation of powers in county governments, that county governments shall have reliable sources of revenue to facilitate the delivery of services effectively and lastly, the requirement that the two-thirds gender rule be observed in the county government.⁷ To ensure effective delivery of services, county governments are further devolved into: Areas and cities within the county established in accordance with the Urban Areas and Cities Act (No. 13 of 2011); the sub-counties equivalent to the constituencies within the county established under Article 89 of the Constitution, the wards within the county established under Article 89 of the Constitution and section 26 of the County Government Act, such number of village units in each county as may be determined by the county assembly of the respective county and such other or further units as a county government may determine.⁸

Having established the form of subnational government that Kenya has, it is paramount to delve into the meaning of a public space and the categories of public spaces. Public spaces are all places which are publicly owned, of public use, accessible and enjoyable by all for free and without profit motive.⁹ There are three main public spaces categories: Streets (for example, sidewalks and footpaths), open public spaces (e.g. parks) and public facilities such as public markets. Good quality public spaces play an important role in the prosperity of cities and urban centres. Further they help define the social, cultural, and political functions of a sustainable city.¹⁰ This fact sheet highlights the challenges of women working in public spaces (including women traders and vendors) and also discusses principles to better law and policy making in Kenya.

In July 2024 the International Commission of Jurists (ICJ-Kenya) Dullah Omar Institute, the Commonwealth Human Rights Initiative Africa (CHRI Africa) co-hosted a two-day consultative workshop: Sub-national governance and the plight of women working in public spaces: A study of Kenya. Women working in public spaces were invited to share their experiences. Five discussion points were considered, namely; (1) general observations of their working conditions, including working hours, (2) knowledge of the law and policy-making processes, (3) engagements between public space workers and sub-national authorities especially the City Inspectorate known as Kanjos (4) law enforcement and sanctions, and (5) recommendations for reform. This factsheet focuses on the plight of particular groups of women working in public spaces in Kenya, namely; women traders, women hawkers, and vendors. All the factsheets are supplemented by the reflections stemming from the two-day workshop attended by women working in the public space.

¹ Herrera Gutierrez, Arturo. 2015. "What are we talking about when we talk about "subnational" governments?" World Bank Blogs, World Bank. <https://blogs.worldbank.org/governance/what-are-we-talking-about-when-we-talk-about-subnational-governments>

² Claudia N. Avellaneda and Ricardo A. Bello-Gómez, 'Introduction to the Handbook on Subnational Governments and Governance.'

³ Brookings: Subnational democracy and local governance in Africa, <https://www.brookings.edu/articles/subnational-democracy-and-local-governance-in-africa/> (accessed on 17th July 2024)

⁴ The Constitution of Kenya, First Schedule.

⁵ The Constitution of Kenya, Fourth Schedule, Part 2.

⁶ County Government Act.

⁷ The Constitution of Kenya, art 175.

⁸ County Government Act, ss 48.

⁹ UN Habitat Global Activities Report 2015: Increasing synergy for greater national ownership

¹⁰ Kim S. (2015) Public spaces - not a "nice to have" but a basic need for cities; Accessed at <http://blogs.worldbank.org/endpovertyinsouthasia/public-spaces-not-nice-have-basic-need-cities> (Accessed September 2024)

BACKGROUND

A field study done in Kenya in 2022 revealed that women street vendors generally worked in the evening hours, especially after 5 pm.¹¹ This is influenced by the fact that their potential clients are heading home in the evening and most enforcement officers have also gone home.¹² In Kisumu County, the Food and Agriculture Organisation (FAO) partnered with Kisumu County Government to provide women street vendors within the county with umbrellas to protect the traders from adverse weather conditions and aprons so as to improve hygiene during business operations.¹³

Women working in public spaces in Kenya, more so street vendors, face myriads of challenges. First, there is harassment from police and lack of proper legislation to protect the interests of women street vendors.¹⁴ Also, there are inadequate reporting structures, especially concerning sexual harassment against women hawkers. Furthermore, there are no specific policies catering for female vendors and hawkers. Many female vendors avoid public spaces to avoid paying bribes to law enforcement officers (popularly known as 'kanjos') or having their goods confiscated.¹⁵ The mode of tax collection has also proven to be a menace for women traders in Kisumu because that taxes are collected manually despite efforts of the Kisumu County Government to establish an electronic trade licensing system. Therefore, women are prone to facing discrimination from tax collectors.¹⁶

Studies indicate that Kenyan Women Street Vendors' incomes are relatively lower than that of their male counterparts.¹⁷ This is due to the fact that women undertake double roles of taking care of the household and handling the street vending business. This poses a challenge since female vendors cannot expand their businesses.¹⁸ The work-life balance is another challenge facing women working in the public space especially as street vendors. This entails taking care of children and the family and vending. Most street vendors are forced to go to their business stations with their children since they can't afford to pay a care-giver.¹⁹ In Kenya, most hawkers are single mothers, who have dynamic responsibilities such as taking their children to school, particularly those of school-going age. This dynamic has been recognized as another layer of complexity to their challenges. Statistics by The Kenya National Bureau of Statistics show that 58% of women in Kenya are at their childbearing age (15–49 years).²⁰ Women traders constitute 70% of the traders in the food trade. However, most of these women have no social security and therefore maternity leave is almost non-existent, typically lasting a maximum of two weeks due to financial necessity.²¹

Women trading in Kibuye and Jubilee markets in Kisumu County are no exception, and the reason behind their inability to go on maternity leave because they have to pay stall rent or daily taxes to maintain their trading posts.²² The eradication of the Linda Mama Initiative has also impacted the maternal health hawkers. Women working in public spaces, more so hawkers, face a challenge of time regulation on their hours of operation. For instance, the County Government of Nairobi imposed regulations that hawking must be conducted from 4pm on weekdays and throughout the day on weekends. Female hawkers were not satisfied with this regulation since it limits the earnings they make.

¹¹ Dudi Mercy et al (2023), Effectiveness of Street Vendors Associations among Women Street Vendors; A Case Study of Nairobi CBD, <https://www.researchgate.net/> (Accessed 01 October 2024)

¹² Ibid 11

¹³ Urban Food Agenda, "Enhancing Kisumu Women Street Food Vendors Operations" <https://www.fao.org/urban-food-agenda/news-events/news-detail/en/c/1675337/> (accessed on 20th July 2024)

¹⁴ Grace Nyonyintono et al (2013), Street Vendors in Nakuru, Kenya, Informal Economy Monitoring Study, <https://www.wiego.org/> (Accessed 01 October 2024)

¹⁵ Anne Marie Wairimu Mungai, "Role of Entrepreneurial Responses on the Growth of Women Street Vending in Kenya" 2021

¹⁶ Alal, M. (2018). Kisumu to upgrade markets at Sh1bn: Daily Nation.

¹⁷ Kebedea, G. F., & Odellab, F. (2014). The Economic Returns of Network Resources to the Urban Informal Economy: Evidence from Street Vendors in Addis Ababa, Ethiopia. *European Journal of Sustainable Development*, 3(3), 357–372.

¹⁸ Chakraborty, P. & Koley, "Socio-Economic Condition among the Women Street Vendors: Anthropological Study on a Street at Jamshedpur. (2018) *International Journal of Reviews and Research in Social Sciences*, 6 (4), 400–404.

¹⁹ [Ibid, n14]

²⁰ Kenya National Bureau of Statistics, "Women and Men, Facts and Figures 2022"

²¹ Battersby, J., & Watson, V. (2018). Urban Food Systems Governance and Poverty in African Cities. (2018) Retrieved from <https://www.mistraurbanfutures.org/sites/mistraurbanfutures.org/files/cup-policy-brief-no2.pdf>

²² Loice Loo, George Wagah, Noora-Lisa Aberman, "Implications of Food Trade Regulations in Kisumu City, Kenya.

Female hawkers also face specific challenges such as high bathroom charges, which are particularly burdensome during menstruation and unsanitary conditions leading to the risk of contracting urinary tract infections (UTIs) need to be considered into when policies and laws are enacted in respect of women hawkers. Finally, one of the barriers women face in food trade are the regulations put in place, which affect men and women differently. Women have challenges accessing capital and this is exacerbated by several regulations imposed when starting their enterprises. Most of these regulations increase transaction costs, thus reducing the profit that women make.²³ Also, access to loans from banks and sacco²⁴ for hawkers is challenging, as the institutions often deem them high-risk, leading them to rely on chamas,²⁵ which can be disbanded due to the operation of Kanjos who wield the power to revoke issued licenses arbitrarily, even after payment, without any reasons of justification.²⁶

Female hawkers are susceptible to lack of proper justice processes.²⁷ For instance, when women hawkers get arrested, detained they often lack legal advice before court appearances. The arrests of hawkers are more likely to occur on Fridays leading to extended time spent in holding cells over the weekend and unfortunately, most of the women cannot raise fines and consequently serve sentences. Unfortunately, when they are taken to court they often face discrimination in court proceedings due to lack of knowledge of court procedures. The lack of legal aid and education by organizations leave hawkers unaware of their rights, perpetuating a culture of fear and vulnerability.

The challenges described above are to a greater or lesser extent applicable to all women working in public spaces in Kenya. Although women street vendors face numerous challenges, they also have opportunities to improve their businesses. One such opportunity is through capacity building training sessions. A case in point is in Kisumu County wherein a capacity building training was held for Kisumu Women Street Vendors from the areas of Kondele, Nyalenda and Nyamasaria.²⁸

The training was carried out in 4 days and had an attendance of 56 women. The aim of the training was to increase women vendor's capacities to improve their businesses to deliver healthy food to the residents of Kisumu. The training was done by Green Cities Initiative and FAO in partnership with Kisumu County Government.²⁹

The training encompassed aspects such as: Food safety and business management legislation, public health law enforcement, food handling and processing, reducing food loss through value addition, urban planning aimed at equitable provision of public spaces that satisfy the needs of urban residents. The women gave feedback on the last day of the training. A majority of them admitted that before the training they lacked information on public health regulations, access to credit facilities requirements, formation of associations and food preservation methods.³⁰

Another benefit of being a female street vendor is that street vendors have associations which assist street vendors in addressing their challenges. The association responsible for vendors in Kenya is the Kenya National Alliance of Street Vendors and Informal Traders. Women street vendors who have joined associations may find it easier to get credit through the association as compared to formal financial institutions which don't recognize them. The association also offers soft loans to women street vendors.³¹

²³ Government of Kenya. (2013). The National Food Safety Policy (pp. 1-18). pp. 1-18. Retrieved from <http://www.kilimo.go.ke/wpcontent/uploads/2019/09/The-National-Food-Safety-Policy.pdf>

²⁴ Sacco Societies Regulatory Authorities, "Sacco is a special type of co-operative offering financial services with a primary focus on mobilisation of fund and provision of affordable credits to its members who are both the owners and users", <https://www.sasra.go.ke> (Accessed 30 September 2024)

²⁵ The Borgen Project, How Chamas in Kenya Fight Poverty, <https://borgenproject.org/how-chamas-in-kenya-fight-poverty/> (Accessed 30 September 2024)

²⁶ Kenya Union of Savings & Credit Co-operations Ltd, "Regulator orders Sacco to blacklist defaulters, outing from credit", <https://kuscco.com/> (Accessed 01 September 2024)

²⁷ National Gender and Equality Commission (2016), "Gender-Based Violence in Kenya: The Economic Burden on Survivors" <https://www.ngeckeny.org/> (01 October 2024)

²⁸ County Government of Kisumu, "Capacity Building of Kisumu Women Street Food Vendors on Food Safety and Quality Management under the Green Cities Initiatives" <https://www.kisumu.go.ke/capacity-building-of-kisumu-women-street-food-vendors-on-food-safety-and-quality-management-under-the-green-cities-initiative/> (accessed on 20th July 2024)

²⁹ Ibid 28

³⁰ Ibid

³¹ Ibid 11

Furthermore, through the association, women are trained on various aspects such as negotiation skills, business operations and savings.³² Women street vendors also acquire information about new legislative rulings through the associations.³³

1. Law and policy-making process and principles to improve policy-making

In Kenya, the policy making process has several steps. First, there is policy initiation which can be done by numerous stakeholders such as government Ministries, Departments and Agencies (MDAs), citizens, institutions, and other groups. Once the idea is generated by the proponent, they inform the County executive concerned who propels it to the ministerial level. The relevant MDA formulates policy guidelines, which is put into writing for discussion purposes within the MDA and other government departments.³⁴

Secondly is the research stage. During this stage, the respective MDA conducts comprehensive and comparative research on the matter to be regulated. In addition to the research, it is highly advisable that expert opinion on the subject matter is sought. The third stage is negotiation and public participation. At this stage, the substantive contents of the draft policy framework are debated and negotiated with various stakeholders, such as opposition parties, the public, non-governmental organizations and all other interest groups.³⁵ During this time, the MDAs prepare discussion documents on the policy or law to facilitate debate, comments and feedback.

Stakeholder participation may take different forms such as attending committee hearings, setting up meetings with departmental heads, and organizing workshops, seminars or retreats. Other channels of participation include using the media to outline the issues and similar entities to lobby, publication of extracts in newspaper articles or other online platforms and making contributions during public fora and submitting written opinions and memoranda.³⁶

Following the debate on the proposed policy as well as the crystallization of issues and options by the MDA, the policy is finalized by the relevant MDA. The next step is acquiring the approval of the County Executive Committee. Once the relevant County Executive Committee Member is satisfied that proper analysis has been conducted, different approaches have been identified and discussed, and that the policy document outlines the best option available to address the policy issue, he/she submits the policy to the County Executive Committee for approval.³⁷

Once the County Executive Committee approves, the policy document is published and tabled in the County Assembly for debate and approval. The policy document may be approved with or without amendments. Where significant changes are likely to be made on the policy, the views of the Executive may be invited for value addition and further clarification. Also, the policy may be subject to further public and stakeholder consideration.³⁸ The approved policy is sent to the County Governor to formally endorse, by affixing the County Seal and signing the policy. This process is called 'assent'. Upon assent, the policy is published as a White Paper. The Executive is expected to widely circulate the policy and to keep the public informed of the likely effects of the Policy. The White Paper is a statement of intent and a detailed policy plan, which often forms the basis of legislation.³⁹

A bill may be drafted if need be. Some policies are 'self-executing' policies, which means they are effective immediately without the need for legislation or any other implementing action. For other policies, it may be decided that a new law is necessary to achieve its objectives and aid implementation. The concerned MDA will commence the process of drafting the bill to give full effect to the policy directives. In its early stages it is called a legislative proposal. Once it has been tabled it is called a Bill.⁴⁰ The formulation of policies is guided by principles enshrined in Article 10 of the Constitution of Kenya.

³² Doibale, M. K., Mohite, S. D., Sawase, G. B., & Pagadal, P. H. (2019). Study of socio-demographic profile and causes of street vending in urban areas, Aurangabad, Maharashtra. *International Journal of Community Medicine and Public Health*, 6(9), 4005-4010.

³³ Kinyanjui, M.N.(2014). *Women and the informal Economy in Urban Africa, From the Margins to the Centre*. London: Zed Books.

³⁴ Kenya Law Reform Commission "A Guide to the Legislative Process in Kenya" <https://www.klrc.go.ke/> (Accessed 01 October 2024)

³⁵ Ibid 34

³⁶ Pharmacy and Poison Board, Stakeholder Consultation, <https://web.pharmacyboardkenya.org/> (Accessed 01 October 2024)

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ [Ibid]

The principles include: accountability, transparency, equality and participation. The County Government Act stipulates that citizens must be furnished with information to facilitate their participation in the formulation of policies.⁴¹ Furthermore, in exercising its powers, the county government shall adhere to the principles of efficiency, effectiveness, inclusivity and participation of the people.⁴²

The procedure of developing by-laws is enshrined in the Local Government Act. First, the local authority proposing the by-law gives a notice of intention to make the by-law. The notice is made fourteen days before making the law. The notice shall also be printed in one or more local newspapers circulating in the area to which the by-laws are intended to apply.⁴³ A copy of the proposed by-law shall be deposited at the offices of the local authority which intends to make the by-laws at least fourteen days before the making of any by-law and shall at all reasonable hours be open to public inspection without payment, and the local authority shall on application by any person furnish to such person a copy of such proposed by-laws for which in its discretion, the local authority may make a charge of such amount, not exceeding fifty cents for every hundred words thereof, as it may determine.⁴⁴

Any objection to the proposed by-laws shall be made in writing with the local authority within twelve days after the date on which the notice, or the latest notice where there is more than one, of the intention to make such by-laws was given under section 203(1) or within such longer period as may be specified in such notice: Provided that where a longer period is specified in the notice such by-laws shall not be made until at least two clear days have elapsed after the expiration of such longer period.⁴⁵ After any by-law has been made by a local authority, it shall be submitted to the Minister for his approval. Every by-law submitted for approval under section 204(1) of this section shall be accompanied by: A certified copy of the minutes of the meeting of the local authority at which the by-law was adopted, a certificate by the clerk that section 203 of this Act has been complied with and copies of any objection to the adoption of the by-law which has been lodged in writing with the local authority, or, if no such objection has been lodged, a statement to that effect. The Minister may approve, with or without alteration or reject any such by-law.⁴⁶

Upon the approval of the Minister of any by-law, the clerk of the local authority which made such by-law shall cause the by-law, or a notice stating that the by-law has been approved, to be published in the Gazette: Provided that the Minister may exempt any town council, county council or council of a county division from compliance with the requirements of the foregoing provisions of this subsection in respect of its by-laws generally or in respect of any class of by-laws or any particular by-laws. Subject to any other written law (including the other provisions of this Act) every by-law shall have the full force of law within the area to which it applies on the date of publication of the by-law or of the notice, as the case may be, or, in the case of a by-law exempted from publication in the Gazette, on the date on which it is communicated to the inhabitants under subsection (3) or, in either case, on such other day as may be expressed in the by-law as being the date on which the same is to come into operation and, if another date is so expressed, the notice, where a notice is published under subsection (1), shall so state, Submission of by-laws for approval.⁴⁷

Public participation is a significant principle of governance. Public Participation refers to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participates in the legislative process.⁴⁸ The Court of Appeal states that the purpose of permitting public participation in the law-making process is to afford the public the opportunity to influence the decision of the law-makers. This requires the law-makers to consider the representations made and thereafter make an informed decision. Law-makers must provide opportunities for the public to be involved in meaningful ways, to listen to their concerns, values, and preferences, and to consider these in shaping their decisions and policies. Were it to be otherwise, the duty to facilitate public participation would have no meaning.⁴⁹

⁴¹ County Government Act, ss 87

⁴² County Government Act, ss 7(6)

⁴³ Local Government Act, ss 203(1)

⁴⁴ Local Government Act, ss 203(2)

⁴⁵ Local Government Act, ss 203(3)

⁴⁶ Local Government Act, ss 204

⁴⁷ Local Government Act, ss 205

⁴⁸ Robert N. Gakuru & Others vs. Governor Kiambu County & 3 Others [2014] eKLR

⁴⁹ Legal Advice Centre & 2 others v County Government of Mombasa & 4 others [2018] eKLR

The principles of public participation were set out in the case of *Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others*.⁵⁰ The case provides for five principles. First, it is mandatory that the government agency or public official involved, to fashion a programme of public participation that accords with the nature of the subject matter. It is the government agency or Public Official who is to craft the modalities of public participation but in doing so, the government agency or Public Official must factor in both the quantity and quality of the citizens to participate in the public participation. However, the government agency enjoys some considerable measure of discretion in fashioning those modalities. Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single regime or programme of public participation can be prescribed and the Courts will not use any litmus test to determine if public participation has been achieved or not. The only test the Courts use is one of effectiveness.

A variety of mechanisms may be used to achieve public participation. Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information. Fourth, public participation does not dictate that everyone must give their views on the issue at hand. To have such a standard would be to give a virtual veto power to each individual in the community to determine community collective affairs. A public participation programme, must, however, show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must consider the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and considered. Fifth, the right of public participation does not guarantee that each individual's views will be taken as controlling; the right is one to represent one's views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or Public Official involved to take into consideration, in good faith, all the views received as part of the public participation programme. The government agency or Public Official cannot merely be going through the motions or engaging in democratic theater so as to tick the Constitutional box. Sixth, the right of public participation is not meant to usurp the technical or democratic role of the office holders but to cross-fertilize and enrich their views with the views of those who will be most affected by the decision or policy at hand.⁵¹

The process of making by-laws as enshrined in the Local Government Act does not adhere to the principles above for the following reasons. First, the proposed by-laws are only deposited at the offices of the local authority which intends to make the by-laws. The case of *Republic vs The Attorney General & Another ex parte Hon. Francis Chachu Ganya* (JR Misc. App. No. 374 of 2012, the court stated that, "Participation of the people necessarily requires that the information be availed to the members of the public whenever public policy decisions are intended and the public be afforded a forum in which they can adequately ventilate them."⁵² By depositing the proposed by-laws in the offices of local authority, citizens are not given a platform to articulate their concerns. Public participation can be done in public avenues such as town halls, the market or parks.

One of the challenges, however, is that the process does not engage members who will be most affected by the by-law. This infringes on the right to equality and freedom from discrimination. For instance, if the local authority is making a by-law whose primary beneficiary is women, it calls for them to seek the views and opinions of women so as to make a by law that does not have a negative impact on women.

Urban authorities associate street vending with insecurity and congestion therefore, local by-laws are used by the city officials to legitimize repressive policies on the vendors. This leads to consistent harassment and evictions.⁵³ This challenge is heightened by the city's limited number of open-market spaces and the lack of an all-inclusive licensing policy. Street vending is a legal activity under the laws applicable to the City of Nairobi. Inconsistencies in the regulatory framework at various levels of power between the central government and the local government are being exploited to the detriment of street vendors.⁵⁴ There are two national texts, that is, Urban Areas and Cities Act 2012 which contradicts the local city by law. This causes a general nuisance by law. This law allows the city and county officials to arrest anyone they deem to be a general nuisance in public place. By law, this local city by-law legitimizes the eviction of street vendors from the streets of Nairobi.

⁵⁰ *Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others* [2015] eKLR

⁵¹ *Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others*. [2017] eKLR

⁵² *Republic vs The Attorney General & Another ex parte Hon. Francis Chachu Ganya* (JR Misc. App. No. 374 of 2012.) eKLR

⁵³ Joshi, K. Conditional citizens? hawkers in the streets (and the courts) of contemporary India (2018) *Journal of Urban Research*, 17-18.

⁵⁴ Racaud, Sylvain & Kago, Jackson & Owuor, Samuel. (2018). "Contested Street: Informal Street Vending and its Contradictions." *Articulo - Journal of Urban Research*. 17-18. 1-16. 10.4000/articulo.3719.

2. Engagements between public space workers and subnational authorities

In Mombasa County, operations by street vendors have been ameliorated through the automation of Single Business Permits. This has addressed the issue of vendors having the necessary documents to start a business. The effect of this is that the revenue collection by the county has increased by 30%. Furthermore, street lights were installed in Kongowea market to promote the security of traders and buyers. Lastly, the government reduced various trading fees by 40%, thus encouraging women, youth and people with disabilities to start enterprises.⁵⁵

One of the challenges faced by street vendors is eviction. In 2021, General Mbadi, who was the head of the Nairobi Metropolitan Services in Nairobi County, proposed an eviction of street vendors from the CBD to Utalii College. This proposition posed as an impediment to vendors who easily access customers within the Nairobi CBD. Further, street vendors have to constantly be on the lookout for enforcement officers, popularly known as “kanjo”, who chase them from their set-ups.⁵⁶ This was also experienced in Kisumu County where the city manager in Kisumu has banned hawkers from vending within the CBD, stating instead that vendors will operate from the Uhuru Business Park complex.

The Nairobi City County Pop-up Markets and Street Vendors Bill 2019 was proposed to create a legal framework for established regulation and recognition of pop-up markets and street vending in Nairobi County.⁵⁷ However, the Bill was never implemented, and to date, there is no policy regulating street vending in Nairobi. The interests of street vendors can be accommodated by enacting laws and policies that consider the impediments faced by female street vendors, conducting capacity building trainings to enable women’s business grow and making access to microfinance services easier for women. Furthermore, to ensure the security of female traders working at night, county governments should ensure that adequate infrastructure such as street lights, ablution facilities and waste removal are provided for all informal traders.

3. Law Enforcement and Sanctions

Sanctions imposed on vendors and street vendors mainly involve arrests and payment of fines. This has been highlighted in Bills such as the Nairobi City County Pop-up Markets and Street Vendors Bill 2019. In addition to this, Confiscation of goods during enforcement is a common occurrence. Vendors may also experience physical assault during enforcement. Moreover, women avoid open spaces during the day so as not to pay bribes to local authorities.⁵⁸ The Local Governance Act provides that the council of the county division have power to enforce by-laws made by the council of the county.

Vulnerable groups who engage in street vending or work in public spaces are usually targeted by enforcement officers. They are victims of harassment, extortion and solicitation of bribes.⁵⁹ The Constitution recognizes vulnerable groups to include: women, youth, people with disabilities and children.⁶⁰ Hawkers in the city centers face more discrimination compared to those operating in affluent areas. The issues of arbitrary arrest without any justification persist, causing considerable distress among hawkers who often find themselves paying bribes to avoid further harassment or detention.

When hawkers get arrested, they are often unable to pay cash bail because they are deemed to be excessively high, making it difficult for hawkers to secure their release.⁶¹ It is a general observation that judicial decisions on hawking tend to be inconsistent, depending on the mood of the presiding judge.

Apart from women, waste pickers are another category of people working in public spaces who encounter the same challenges as women working in public spaces. In addition to the aforementioned challenges, waste pickers suffer from poor and hazardous working conditions, criminalization and law enforcement officials use sub-national laws dealing with nuisance or urban zoning to arrest waste pickers.⁶²

⁵⁵ <https://www.mombasa.go.ke/trade-tourism-and-investments/> <accessed on 23th July 2024>

⁵⁶ <https://www.the-star.co.ke/counties/nairobi/2021-03-25-hawkers-own-cbd-can-badi-clear-them-out/> <accessed on 19th July 2024>

⁵⁷ Nairobi City County Pop-up Markets and Street Vendors Bill 2019

⁵⁸ [Ibid, n13]

⁵⁹ Janelle Mangwanda and Kristen Petersen, “Sub-national governance and the plight of people working in public spaces” (2024)

⁶⁰ Constitution of Kenya, art 21

⁶¹ Kenya Law Reform Commission, Bail and Bond Decision Making, <https://www.klrc.go.ke/> (01 October 2024)

⁶² Janelle Mangwanda, “Sub-national governance and the plight of people working in public spaces” (Dullah Omar Institute, 14th November 2023)

RECOMMENDATION AND CONCLUSION

The recommendations below are made based on the gaps in addressing the plight of women working in public spaces in Kenya, particularly with female street vendors.

Firstly, it is a general observation that public participation is paramount in the law-making process. Thus, all by-laws and policies made by subnational governments should factor in the constitutional tenet of public involvement. Therefore, we recommend the amendment of the Local Government Act, specifically, Section 203 which provides for the process of making by-laws. The section should incorporate the mechanisms of how public participation can be carried out. Issues of consideration in policy making which should be factored in include: the issue of time restriction for hawking activities which severely limits the earning potential of hawkers and their livelihoods, arbitrary arrests and the physical assault against hawkers during arbitrary arrests.

Furthermore, in cases of detention, the law should be amended to include weekends in the forty-hour (48) detention limit to prevent prolonged detention periods. Upon arrest, it is recommended that there should be proper storage of goods to prevent the loss or theft of hawkers' belongings. It is also prudent for police officers to wear uniforms to facilitate their identification by hawkers. It is also recommended that hawkers should be involved in the development and amendment of policies that affect them to ensure their interests are represented. Lastly, there should be proper and respectful handling of hawkers during arrests to ensure their dignity and safety.

The Constitution stipulates that every person has the right to form, join and participate in the activities of an association.⁶³ This constitutional provision also applies to women working in public spaces. Thus, it is recommended that women join street vending associations since they are beneficial to women in various ways, and it is pertinent that these associations actively engage in the lawmaking process especially during public participation.

It is important to note that most counties in Kenya do not have any regulations for street vending. In Nairobi County, we would recommend that the Nairobi City County Pop-up Markets and Street Vendors Bill 2019 is enacted. The county government should consider the input of female vendors and implement solutions to their problems. Furthermore, existing legal frameworks should be amended to be in tune with present challenges experienced by traders. For instance, the City Inspectorate Services Act does not address hawking in the present time. In addition to this, the Sexual Offences Act should be reviewed to cover sexual harassment beyond formal spaces. Upon the enactment or amendment of legal frameworks, the legal frameworks such as statutes should be simplified to ensure that hawkers can understand and comply with them. In addition to this, it is necessary to strengthen and continuously disseminate the legal framework to end-users, including new hawkers.

Moreover, there is need for the establishment of hawkers' committees to channel robust engagement with the authorities on issues faced by hawkers. Hawkers also need more capacity building, education and awareness on the law, and regulations through formulation of programs that will empower them. Furthermore, it is necessary to have several channels and platforms like community radios to vocalize issues and concerns regarding public space and the treatment they encounter while carrying their trade activities.

There is also a need for fixed structures to accommodate hawkers to protect them from harsh weather conditions. In Nairobi, market allocations should be within the Central Business District (CBD), with priority given to women, especially those with children. The establishment of day-care facilities within markets for children of women traders is necessary, at subsidized rates. It is noted that the Morero market has a space for children to play and lactation rooms. The workers further advised the need to review the allocated trading times, such as shifting from 4 pm to an earlier time.

Lastly, based on the research above, harassment, confiscation of vendors' goods and solicitation of bribes is a common occurrence for women street vendor. Therefore, it is pertinent that rogue enforcement officers who not only harass female street vendors but also solicit bribes are investigated and prosecuted. To resolve some of the issues, there is need to involve key stakeholders especially hawkers in various engagements.

In conclusion, it is important that the challenges of women working in public spaces are acknowledged by policymakers and that constructive and sustainable solutions to their challenges are found.

⁶³ The Constitution of Kenya, art 36(i)

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