The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria

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Research dissertation in fulfilment for the degree of Doctor of Philosophy

In the Department of Commercial law, Faculty of Law

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July 2018

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Declaration

I, Osiki Abigail, hereby declare that the work on which this thesis is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole work nor any part of it has been, is being, or is to be submitted for another degree in this or any other university. I authorise the University to reproduce for the purpose of research either the whole or any portion of the contents in any manner whatsoever.

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ABSTRACT

Broadly, decent work is promoted as a means to escape poverty. Indeed, particularly in developing countries, work is valuable as a means to gain income to meet the needs for food, shelter, health care, clothing and education. However, not all work contributes positively to human development. One example of such work is informal employment. As the informal economy has continued to expand, growing concern about the nature and quality of work has, over the past two decades, given rise to various attempts to measure and promote decent work. Decent work means work that respects the human rights of the worker. This is necessary as a strategy to eliminate poverty as well as being a key component of human dignity.

A significant development of international norms for 'decent work' is the International Labour Organisation's (ILO) decent work agenda (DWA), launched in 1999, comprised of four pillars (indexes) that determine the quality of work, namely: fundamental rights at work, social protection, social dialogue and employment creation. However, characteristic of activities in the informal economy, of which street vending is an example, is the lack of decent work. To achieve decent work, the objective is to transition work in the informal economy toward decent work in the formal economy. The presence of a legal framework that facilitates such a transition is critical for achieving this objective and the primary aim of this thesis is to identify the characteristics of the Nigerian legal framework that impede a transition from the informal economy, with a particular focus on the legal framework for street vending activities. Based on these findings, the thesis makes recommendations for law reform, in order to operationalise decent work within the prescripts of the ILO's *Recommendation concerning the transition from the Informal to the Formal Economy (Recommendation 204).*

The thesis explores the development, characteristics and nature of the informal economy both at a global level and within the specific context of Nigeria; and street trading is used as a lens to examine the dynamics and conditions of work in the informal economy. The study reveals that street vendors, like many other informal workers, lack adequate property rights in public spaces and are not protected by the labour rights which make up the pillars of decent work, in essence highlighting two core legal shortcomings that impede decent work; that is, the unenforceability of socio-economic rights and the denial of property rights in urban public places. This is borne out

by the analysis of the current regulatory framework in Lagos, Nigeria, which is structured to undermine street trading as a legitimate form of work. The thesis draws attention to the interdependence of human rights, specifically in the context of property rights and the socio-economic rights that underpin the concept of decent work and proposes law reform to address shortcomings in the law in order to promote decent work and the formalization of the rights of street vendors in Nigeria. Specifically, the thesis recommends selected pathways for supporting the pillars of decent work within the context of the ILO's *Recommendation 204*. The thesis recognises that the implementation of these pathways has policy implications that require further reflection in the process of designing an appropriate legal framework to regulate the Nigerian informal economy.

ACKNOWLEDGEMENTS

All glory to the Lord Jesus, for his grace and love, and for giving me the strength and the resources to complete this thesis. For in Him I live and move and have my being; for I am his.

I would like to thank my supervisor, A/Professor Debbie Collier, for her patience and all round support, for challenging and encouraging me throughout the writing of this thesis; for always making my academic interest her priority. I could not have done this without your guidance ma!

I am grateful to my parents, Professor Jonathan and Mrs. Felicia Osiki, for their emotional and financial support. You have been there with me all the way. Thank you mum and dad!

To my husband, Vincent Oniga, the wind beneath my wings; thank you so much for your love, support and prayers. I also thank my siblings, Ohiole, Izijesu, Praise and particularly Prisca (my sounding board, flat mate and world best sister) for your support and prayers.

I am grateful for my friends and family, who have encouraged and cheered me on throughout this journey, particularly the Oniga family(world best in-laws), Taiwo Hassan (for your consistent advice), Nike Adebayo, Medese Adisa and Ovigwe Ogbodu (friends like sisters), Aderonke Ajayi-Smith (Asake), the Kunujis, the Oyebanjis, Rosemary Ireka (for the numerous bowls of soup), Olumide Oluwaseun, Ruth Nekura, Pelumi Babatunde, Tabeth Masengu, Bisi Shofoyeke, Temilolu Adejuwon, Ayodele Ogunnoiki, Susan Oyakhire and Olubunmi Afinowi. Cheers to more celebrations.

I would also like to thank the Latter House Parish, RCCG, Salt River, Cape Town for their spiritual support. I am grateful to members of the faculty office; Ms. Philips, Mr. Maurice and Ms. Clare. Thank you for your support. Finally, special thanks to the UCT's postgraduate funding office for assisting in funding my research through the international students' scholarship.

Declaration _____ *iii*

ABSTRACT _____ *iv*

CASES _____ *xii*

LIST OF STATUTES _____ *xiv*

ABBREVIATIONS _____ *xvi*

CHAPTER ONE: INTRODUCTION _____ *1*

1.1 Overview _____ **1**

1.2 Problem statement and scope of thesis _____ **3**

1.3 Research questions _____ **8**

1.4 Scope, aims and significance of thesis _____ **9**

1.5 Research method _____ **10**

1.6 Outline of thesis chapters _____ **11**

CHAPTER TWO: HISTORICAL OVERVIEW AND THEORETICAL PERSPECTIVES OF THE INFORMAL ECONOMY _____ *14*

2.1 Introduction _____ **14**

2.2 Historical overview of the concept of the informal economy _____ **15**

2.2.1 The origin of the term 'informal sector' _____ 15

2.2.2 Divergent perspectives on informality _____ 18

2.3 Measuring informality and the shift from informal sector to informal economy _____ **21**

2.3.1 The informal sector: the 1993 expanded definition _____ 22

2.3.2 The informal economy: current definition and realities _____ 24

2.4 Informality: characterized by insecurities and poverty _____ **27**

2.5 Conclusion _____ **32**

CHAPTER THREE: OVERVIEW OF THE INFORMAL ECONOMY IN NIGERIA _____ *33*

3.1 Introduction 33

3.2 The Informal economy in Nigeria 33

3.2.1 The definition of the Nigerian informal economy 34

3.2.2 Characteristics of the informal economy 36

3.2.2.1 Gender and age segmentation 37

3.2.2.2 Location of informal enterprises 38

3.2.2.3 Lack of protection and decent work deficits 38

3.2.2.4 Ease/freedom of entry and exit 39

3.2.2.5 Low literacy levels 39

3.2.2.6 Life span of informal enterprises 39

3.2.3 Size of the informal economy 40

3.2.4 Factors contributing to the expansion of the Nigerian informal economy 41

3.2.4.1 Political instability 41

3.2.4.2 Institutional fragility 42

3.2.4.3 High rate of social inequality and income gap 43

3.2.4.4 Low economic performance and poor trade patterns 44

3.2.4.5 Globalisation 45

3.2.5 Development phases of the Nigerian informal economy 45

3.2.6 The role and importance of the informal economy in Nigeria 51

3.2.6.1 Revenue generation 52

3.2.6.2 Employment generation 53

3.3 Informal work arrangements in Nigeria 56

3.3.1 Family labour 58

3.3.2 Casual labour 58

3.3.3 Apprenticeship arrangements 59

3.3.4 Communal labour 60

3.3.5 Child labour 60

3.3.6 Disproportionate representation of women 61

3.4 Conclusion 62

CHAPTER FOUR: STREET VENDING OPPORTUNITIES AND CONSTRAINTS: A STUDY OF DEVELOPMENTS IN LAGOS *64*

4.1 Introduction 64

4.2. Nature and forms of street vending 65

4.2.1 Positive characteristics (contributions) of street trading 69

4.2.2 Major constraints faced by street vendors 72

4.2.2.1 Economic pressures 73

4.2.2.2 Socio-cultural constraints 78

4.2.2.3 Political conditions, environment and policies 79

4.3 The development of Lagos State as a Metropolitan City 81

4.3.1 Colonial development era (1930s to 1960s) 85

4.3.2 Post-independence era (1960s to 2000) 89

4.3.3 Modern era (2000 till date) 90

4.4 The prevailing legal constraints operating against street trading in Lagos State 91

4.4.1 Street Trading and Illegal Markets (Prohibition) Law Lagos State (STIML) 92

4.4.2 Enforcement of Street Trading and Illegal Markets (Prohibition) Law 93

4.5 Conclusion 96

CHAPTER FIVE: A HUMAN RIGHTS FRAMEWORK FOR DECENT WORK *97*

5.1 Introduction 97

5.2 Decent work deficits in the informal economy 98

5.2.1 Employment/Enterprise creation 98

5.2.2 Rights at work 99

5.2.3 Social protection 101

5.2.4 Social dialogue 104

5.3 A human rights-based approach to poverty 106

5.4 Socio-economic rights 109

5.4.1 The regulatory framework for socio-economic rights in Nigeria 113

5.4.1.1 The Nigerian Constitution 113

5.4.1.2 Regional law instruments: the African Charter on Human and Peoples' Rights (1981) 117

5.4.1.3 International law: the Universal Declaration of Human Rights (UDHR) 1948 120

5.4.1.4 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 121

5.4.2 Property rights 124

5.4.3 The justiciability of socio-economic rights 130

5.5 Conclusion 134

CHAPTER SIX: LAND USE LAW AND URBAN PLANNING _____ *135*

6.1 Introduction _____ **135**

6.2 Historical overview of the governance of land use in Nigeria _____ **136**

6.2.1 Land control and ownership in pre-colonial Nigeria under customary law _____ 137

6.2.1.1 The customary land tenure system in Northern Nigeria _____ 138

6.2.1.2 The customary land tenure system in Southern Nigeria _____ 138

6.2.2 Received English law and statutory developments in colonial Nigeria _____ 139

6.2.2.1 The southern region and Lagos _____ 141

6.2.2.2 The northern region _____ 142

6.2.2.3 The unified Colony of Nigeria _____ 143

6.2.3 Land control and ownership at independence _____ 143

6.3 The current position: the Land Use Act _____ **144**

6.3.1 Prominent features of the Land Use Act _____ 145

6.3.2 Impact of the Land Use Act on property rights of street vendors _____ 147

6.4 Development of the urban planning system in Nigeria _____ **148**

6.4.1 From informal to formal urban planning _____ 149

6.4.2 Deficits of the urban land and administrative system in Nigeria _____ 152

6.5. Reframing the urban space: an inclusive approach to urban planning _____ **154**

6.5.1 Urban citizenship _____ 160

6.5.2 Reframing public spaces: Case study of Warwick Junction, Durban, South Africa _____ 163

6.5.2.1 Moving beyond historical exclusion _____ 164

6.5.2.2 A collective voice and the right to a livelihood _____ 167

6.6 Conclusion _____ **168**

CHAPTER SEVEN: RECOMMENDATION 204 – PATHWAYS TO FORMALISATION AND DECENT WORK _____ *170*

7.1 Introduction _____ **170**

7.2 Preamble and Objectives of Recommendation 204 _____ **171**

7.3 Measures to transition from the informal to the formal economy _____ **175**

7.3.1 Effective enforcement of rights at work _____ 175

7.3.2 The provision of social protection _____ 179

7.3.2.1 The scope and implementation of social protection 180
7.3.2.2 Implementation of social protection in the Nigerian informal economy 183
7.3.3 Promoting social dialogue 186
7.3.3.1 The organisation of workers in Nigeria 186
7.3.3.2 Members-Based Organisations (MBOs) 187
7.4 Conclusion 189
CHAPTER EIGHT: POLICY IMPLICATIONS AND CONCLUDING REMARKS 190
8.1 Introduction 190
8.2 Policy implications: effective governance as a precursor to formalisation 191
8.2.1 Data collection and monitoring 191
8.2.2 Labour inspection 192
8.2.3 Political commitment and good governance more generally 193
8.2.4 Allocation of resources 194
8.3 Concluding remarks 194
BIBLIOGRAPHY 197

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The Minimum Age Convention, 1973 (No. 138)

The Social Security (Minimum Standards) Convention of 1952

Universal Declaration of Human Rights (UDHR) 1948

Vienna Convention on the Law of Treaties 1969

Worst Forms of Child Labour Convention, 1999 (No. 182)

ABBREVIATIONS

CBN	Central Bank of Nigeria
CLEP	Commission for Legal Empowerment of the Poor
CPI	Corruption Perception Index
DWA	Decent Work Agenda
FODPSP	Fundamental Objectives and Directives and Principles of State Policy
GDP	Gross Domestic Product
HRBA	Human Rights-based Approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICLS	International Conference of Labour Statisticians
IDC	Industrial Development Centres
ILC	International Labour Conference
ILO	International Labour Organisation
IMF	International Monetary Funds
ITMB	Informal Traders Management Board
KAI	Kick Against Indiscipline
LEDB	Lagos Executive Development Board
LUA	Land Use Act
MBOs	Members-Based Organisations
MBOSVs	Members Based Organisation for Street vendors
MSMEs	Micro, Small and Medium Enterprises
NDP	National Development Plan
NEEDS	National Economic Empowerment and Development Strategy
NEP	National Employment Policy
NGN	Nigerian Naira
NGO	Non-governmental Organisation
NLC	Nigerian Labour Congress
R 202	Social Protection Floors Recommendation

R 204	Recommendation concerning the Transition from the Informal to the Formal Economy
SAP	Structural Adjustment Program
SEWA	Self-Employed Women Association
STIML	Street Trading and Illegal Markets (Prohibition) Law
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
WIEGO	Women in Informal Employment: Globalising and Organising

CHAPTER ONE: INTRODUCTION

1.1 Overview

In the past two decades, as the informal economy continued to expand, growing concern about the nature and quality of work has given rise to various attempts to measure and promote decent work.[1] A significant development in this regard is the International Labour Organisation's (ILO) decent work agenda (DWA),[2] launched in 1999, comprised of four pillars (indexes) that determine the quality of work, namely: fundamental rights at work, social protection, social dialogue and employment creation. Characteristic of activities in the informal economy, of which street vending is an example, is the lack of decent work. Decent work means work that respects the human rights of the workers.[3] To achieve decent work, the objective is to transition work in the informal economy toward decent work in the formal economy.[4] The presence of a legal framework that facilitates such a transition is critical for achieving this objective and the aim of this thesis is to identify characteristics of the Nigerian legal framework that impede such a transition from the informal economy, with a particular focus on street vending activities. Based on these findings, the thesis makes recommendations for law reform.

The term *informal economy* is heterogeneous and is comprised of various categories of workers and sectors of the economy.[5] Furthermore, the informal economy hosts the majority of workers and enterprises globally.[6] Notably, the ILO reports that more than 90% of Micro and Small Enterprises (MSEs) globally are found in this economy.[7] In addition, half to three quarters

[1] See for example Burchell B, Sehnbruch K, Piasna A and Agloni N "The quality of employment and decent work: definitions, methodologies, and ongoing debates" (2014) 38(2) *Cambridge Journal of Economics* 459-477 at 459.
[2] Fields S Gary "Decent work and development policies" (2003) 142(2) *International Labour Review* 239-262 at 240.
[3] Frey DF & MacNaughton G "A human rights lens on full employment and decent work in the 2030 sustainable development agenda" (2016) *Journal of Workplace Rights* at 1.
[4] ILO *The informal economy and decent work: A policy resource guide, supporting transitions to formality* (2013) Employment Policy Department.
[5] This heterogeneity is in terms of income, gender, sector (waste pickers, street vendors and domestic workers among others) and status of employment (self-employed, own-account workers, informal employees in formal and informal firms, and casual workers among others).
[6] Williams CC "The informal economy as a pathway to expanding opportunities" (2017) Centre for Development and Enterprise Commissioned Research Series. Available at http://www.cde.org.za/wp-content/uploads/2017/08/Colin-Williams-The-informal-economy-as-a-path-to-expanding-opportunities.pdf accessed on the 23rd of October, 2017
[7] "Informal Economy" available at http://www.ilo.org/employment/units/emp-invest/informal-economy/lang--en/index.htm accessed on the 23rd of October, 2017.

of non-agricultural work are found in the informal economy.[8] Although these statistics vary across global regions, Sub-Saharan Africa has the second largest informal economy in the world.[9]

Informality manifests in multiple contexts, particularly in developing countries.[10] These may include daily encounters such as buying goods from street vendors, doing unskilled informal work in formal workplaces, working as a waste-picker, or having a handy-man do repair work at home in exchange for cash and hiring a woman to undertake informal domestic work. These seemingly everyday encounters are sources of work for many and in the aggregate form a significant part of revenue for many countries. However, informal work is predominantly not decent work. Yet, work is an intrinsic part of human life,[11] and decent work is necessary for the achievement and maintenance of human dignity and the well-being of an individual.[12]

For workers in the informal economy, decent work remains elusive. Their work is often unrecognised and unprotected by legal and regulatory frameworks, they lack access to social protection, they are unorganised and without representation. Indeed, their working conditions are often poor, which may include unsafe working environments, insecure conditions, long working hours, low productivity and low incomes.[13]

Recognising these persistent deficits, the ILO and its constituents adopted the *Recommendation concerning the Transition from the Informal to the Formal Economy (Recommendation 204)* in 2015.[14] This recommendation was the outcome of the ILO's report

[8] Mukherjee D "Informal economy in emerging economies: not a substitute but a complement" (2016) 4(3) *International Journal of Business and Economic Development* at 16.
[9] Medina L *et al* "The informal economy in Sub-Saharan Africa: Size and determinants" (2016) WP/17/156 *IMF Working Paper*.
[10] William op cit note 6: Marshall S and Fenwick C "Labour law and development: Characteristics and challenges" (2016) in Shelley Marshall and Colin Fenwick (eds) *Labour regulation and development: Socio-legal perspectives* Edward Edgar.
[11] Nizami N & Pras *Decent work: Concept, theory and measurement* (2017) Palgrave Macmillan 1.
[12] Ibid.
[13] "The informal economy and decent work: A policy resource guide" (2011) Employment Policy Department, International Labour Office, Geneva Available at http://www.ilo.org/public/libdoc/ilo/2011/111B09_350_engl.pdf accessed on the 28th of October, 2017.
[14] *Recommendation concerning the Transition from the Informal to the Formal Economy (Recommendation 204)* (June 2015) International Labour Conference 104th Session International Labour Office, Geneva: A recommendation is different from a convention and serves as non-binding guidelines. In many instances, they supplement conventions by providing detailed guidelines on their application. However, recommendations can be autonomous as is the case *Recommendation 204*: "Conventions and recommendations" available at http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm accessed on the 15th May, 2018.

Transitioning from the informal to formal economy[15] highlighting the severe work deficits in the informal economy.[16] A major objective of Recommendation 204 is to 'facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship'[17] and to achieve this the Recommendation contains various guiding principles. Recommendation 204 was adopted by the International Labour Conference which included Nigeria in June 2015.[18] However, in Nigeria the activities of street vendors, a subcategory of informal workers, remains criminalised.[19] This gives rise to the overarching question of this thesis, which, in the context of implementing Recommendation 204, is: how is decent work and the formalisation of the rights of street vendors to be achieved?

1.2 Problem statement and scope of thesis

This thesis is broadly focused on the decent work deficits in the informal economy within the context of the regulatory framework applicable to the informal economy. This is of interest, and particular concern, as historical forecasts by researchers predicted that the informal economy would become obsolete and vanish.[20] In reality, the informal economy has not only persisted, but has shown remarkable resilience and growth, particularly in many developing economies including Nigeria where it is a major source of employment.[21] However, given the diversity within the informal economy, the legal challenges of various categories of workers or sectors may vary and

[15] "The Transition from the Informal to the Formal Economy" Report V(1) International Labour Conference 103rd Session, 2014 International Labour Office, Geneva.
[16] Ibid at 3-4.
[17] Op cit note 14 at article 1 (a).
[18]These recommendations are divided into nine main sections. These sections are objectives and scope; guiding principles; legal and policy frameworks; employment policies; rights and social protection; incentives, compliance and enforcement; freedom of association, social dialogue and role of employers' and workers' organizations; data collection and monitoring; implementation and follow-up.
[19] Different states in Nigeria have specific laws crimilising the activities of street vendors. Some of such laws include Section II (xx) and 35 (i) of Environmental Sanitation Authority Law of Rivers State (Cap 52, Laws of Rivers State of Nigeria 1999); section 35 of the Abuja Environmental Protection Board (AEPB) Act of 1997 and, the Lagos State Street Trading and Illegal Markets (Prohibition) Law of 2003. The Lagos state street trading law which is the specific focus of this thesis is discussed in Chapter four.
[20] Lewis A "Economic development with unlimited supplies of labour" (1954) 22(2) *The Manchester School* 139-191: This is discussed in further detail in Chapter two: Ram M *et al* "From the informal economy to the meaning of informality: Developing theory on firms and their workers" (2017) 37(7/8) *International Journal of Sociology and Social Policy* at 363.
[21]Verick S "The Impact of Globalisation on the Informal Sector in Africa" accessed at www.iza.org/conference_files/worldbank 2006/verick_s872 on the 10th April, 2015.

therefore cannot optimally be addressed collectively. Hence, street trading, a controversial and visible component of the informal economy, is used as a lens to consider decent work deficits in the Nigerian informal economy.[22] In addition, the mechanisms through which Recommendation 204 can be implemented to facilitate the formalisation process and the achievement of decent work are explored. The position in Lagos state, Nigeria is the specific geographical context of this thesis.

Street trading, one of the largest sectors in the informal economy, after home based and domestic workers, is a visible but contested domain.[23] It is a sector in which large numbers of urban workers in developing countries are engaged.[24] Regardless of the advances in modern retail, millions of people particularly in developing countries including Nigeria, partly or wholly make their living through the selling of goods and services on the streets.[25] Despite being one of the oldest and most widespread occupations in the world, street trading only recently started receiving substantial scholarly attention.[26] Early academic writings were primarily anthropological as street trading was seen as transitory and apolitical.[27] However, with the rapid rate of urbanisation, street trading became a source of work for a large number of people in urban cities which led to a paradigm shift in research on street trading.[28]

There are various definitions of street trading; and a common theme among these definitions is the location of trade.[29] Initially, a street vendor was defined as a person who sells goods to the public without having a permanent built-up structure.[30] Subsequently, street trade was

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[22] Street trading could be referred to as street vending, street hawking, street peddling petty trading and informal trade activity: Graaff K and Ha N. "Introduction" (2015) in Graaff K and Ha N(eds) *Street vending in the Neoliberal city: A global perspective on the practices and policies of a marginalized economy* Berghahn at 2.

[23] Brown A, Lyons M & Dankoco I "Street traders and the emerging spaces for urban voice and citizenship in African cities" (2010) *Urban Studies* 47(3) at 667.

[24] Chen M & Skinner C "The Urban Informal Economy Enhanced Knowledge, Appropriate Polices and Effective Organisation" (2014) in Susan Parnell and Sophie Oldfield(ed) *The Routledge Handbook on Cities of the Global South* Routledge at 224.

[25] Skinner C "The Struggle for the Streets: Process of Exclusion and Inclusion of Street Traders in Durban South Africa" (June 2008) 25(2) *Development Southern Africa* at 227.

[26] Bromley R "Rethinking the Public Realm on Vending, Popular Protest and Street Politics" (2013) in Hansen KT, Walter EL and Milgram BL (eds) *Street Economies in the Urban South* SAR Press at 20: Cross J "Street vendors, and postmodernity: conflict and compromise in the global economy" (2000) 20 1(2) *International Journal of Sociology and Social Policy* at 37.

[27] Ibid.

[28] Op cit note 26 at 21.

[29] Op cit note 23 at 667

[30] Bhowmik SH "Street Vendors in Asia: A Review" (May 25th to June 2005) *Economic and Political Weekly* available at at ///c/user/user/Downloads/bhowmik-street-vendors-in-asia. Pdf accessed on the 3oth June, 2015 at 2256.

defined 'as all non-criminal commercial activity that depends on access to urban public space…'.[31] Recently, in accordance with the manner of the definition of the informal economy which entails using a broad range of legal infringements as the defining criterion, street vending was defined as

> 'the production and exchange of legal goods and services that involved the lack of appropriate business permits, violation of zoning codes, failure to report tax liability, non-compliance with labour regulations governing contracts and work conditions, and/or legal guarantees in relations with suppliers and clients'.[32]

This definition is used in the course of this thesis.

The rights, economic security and working conditions of street vendors are unprotected in Nigeria.[33] Yet, the wholesale and retail informal sector is the largest sub-sector after agriculture in the informal economy and street vending has become the cornerstone of the retail economy.[34] More generally, street trading is said to constitute 15% to 25% of employment in African cities.[35] This is a significant statistic, making the development of an inclusive policy for workers in this sector an imperative. However, street vending is viewed negatively as a result of its correlation with child labour, traffic congestion and pollution, and the perception of street vendors as being involved in criminal activities.[36] Consequently, street vending is criminalised in many Nigerian states including Lagos. More specifically, section 1 of the Lagos state Street Trading and Illegal Markets (Prohibition) Law of 2003 (STIML) prohibits all forms of street trade in any place or street within Lagos. In spite of this, street trading is prevalent on the streets because of its function as a source of employment, cheap goods and services. Nonetheless, this law has adverse implications for the socio-economic life and work conditions of street traders.

The major implication of this law is the absence of legal recognition of street trading as a legitimate form of work. Consequences of this include lack of fundamental rights to and at work; lack of access to social protection, denial of property rights in public spaces and lack of

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[31] Brown A and Mackie P "Urban informality and 'rebel street'" (2017) in Alison Brown (ed) *Rebel streets and the informal economy: Street trade and the law* Routledge at 2.

[32] Op cit note 26 at 37.

[33] As earlier mentioned, in many states in Nigeria, street trading is prohibited and criminalized: See for example Street Trading and Illegal Market Law, Laws of Lagos State 2003; Environmental Sanitation Authority Law of River State Cap 52, Laws of River State of Nigeria 1999.

[34] www.nigerianstat.giv.ng/pages/downloads/41: Ibid Fn. 48 39.

[35] Skinner C "AAPS Planning Education Toolkit: The Informal Economy" Available at www.inclusivecities.org/up-content/uploads/2012/07/InformalEconomyToolKit-Nov212011.pdf accessed on July 1, 2015

[36] Anetor FO "An investigation into the value of street vending in Nigeria: A Case of Lagos State" (2015) 11 *Journal of Marketing and Consumer Research* at 35.

representation. As a result, street vendors experience high levels of socio-economic vulnerability.[37] Street vendors are exposed to harsh weather conditions, exploitation from touts, evictions and brutality or forceful seizure of goods by government officials.[38] This is illustrated by the facts of *Samuel Adeeabu & 14 others v. A.G. of Lagos State.*[39] In this case, the appellants who were street vendors were charged in the Magistrate Court of Lagos State for street trading and obstructing an authorised officer of the law from carrying out his duties to seize goods sold on the street under section 10(2) of the Street Trading and Illegal Market Law of Lagos State. Although the High Court overturned the decision of the Magistrate Court on appeal, as the appellants' right to a fair hearing was contravened, the case nonetheless illustrates the decent work deficits which impact on the quality of the work of street vendors in Nigeria, contributing to the expansion of informality and working poverty.

Although street vending is a major source of employment in Nigeria,[40] workers are denied their basic rights to safe working conditions, social dialogue or collective bargaining and social protection. These deficits are sustained by the unenforceability of socio-economic rights in terms of section 6(6)(c) Nigerian Constitution hence enabling the legal status of the Lagos state Street Trading and Illegal Markets (Prohibition) Law of 2003 which criminalises street trading.

Street vendors are consequently denied property rights in Nigerian urban public spaces. They are consistently arrested for using public spaces for their activities. Although the right to land for housing is widely recognised, land for urban informal livelihoods has received limited attention despite the informal economy being the major source of work in many developing countries including Nigeria.[41] Nigerian land use and urban laws are exclusionary and do not consider access to public spaces as assets required by street vendors. This is because public spaces are not viewed

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[37]Ikechebelu J *et al* "Sexual abuse among juvenile female street hawkers in Anambra State, Nigeria" (2008) 12(2) *African Journal of Reproductive Health* 111-19: Clark GC "Twentieth-Century Government Attacks on Food Vendors in Kumasi, Ghana" (2013) in Karen T. Hansen, Walter E. Little and B. Lynne Milgram (eds) *Street Economies in the Urban South* SAR Press at 43.

[38]Babb FE "Street Economies in the Urban Global South: Where are they heading and where are we heading?" (2013) in Karen T. Hansen, Walter E. Little and B. Lynne Milgram (eds) *Street Economies in the Urban South* SAR Press at 205: Basinski S *All fingers are not equal: A report on street vendors in Lagos, Nigeria* (2009) CLEEN Foundation available at http://www.cleen.org/allfingersarenotequalreport.pdf accessed on the 30th of June, 2015.

[39]available at squibcaselaw'blogspot.com/2008/12/adeeabu-ors-v-ag-1lagos-state.html accessed on 30th June, 2015

[40] This is discussed in chapters 4 and 5.

[41] Brown A "Claiming the streets: Property rights and legal empowerment in the urban informal economy" (2015) 76 *World Development* 238-48.

as workplaces. This has implications for the socio-economic well-being of workers who are dependent on street trading as a source of work.[42] This legal framework within which informal activities such as street trading takes place, undermines the rights of workers leading to decent work deficits.

Decent work is broadly recognized as a route out of poverty.[43] Indeed work is a means to gain income for food, shelter, education and health care among others. Work provides opportunities for workers to be integrated into society while affording them a sense of dignity.[44] However, not all work contributes to human development. Street trading in Lagos state can be argued to hinder human development because the regulatory framework undermines the rights of workers. Work is decent only if the rights of workers are respected. This is a necessary component if poverty is to be eliminated and is a basic aspect of human dignity.

In the context of such decent work deficits, the ILO introduced the Decent Work Agenda.[45] The use of the term *work* was deliberate and intended to be broader than traditional labour relationships, reflecting 'the variety of ways in which people contribute to the economy and society'.[46] The word *decent* 'reflects the idea of a realistic ambition which meets social norms of income, of conditions of work and security, of rights and dignity'.[47] Together, these two words consolidate the overall goal and various programmes of the ILO.[48] Therefore, 'decent work aims to bring together in a common framework both the quantity and quality of work, legal and

[42] Hanstad T, Nielsen R and Brown J "Land and livelihoods: Making land rights real for India's rural poor" (2004) *LSP Working Paper 12*, Food and Agriculture Organisation of the United Nations: Gerstter C et al *An assessment of the effects on land ownership and land grab on development* (2011) European Parliament available at https://www.ecologic.eu/sites/files/project/2013/gerstetter_11_Assessment_effects_land_ownership_land_grab_development_focus_small_holdings_rural_areas.pdf accessed on the 20th of January, 2018.

[43] "Poverty reduction and decent work in a globalising world" (2001) *GB. 280/WP/SDG/1* International Labour Office, Geneva at para. 32.

[44] UNDP *The human development report: work for human development* (2015) New York at 29.

[45] "Report of the Director-General: Reducing the decent work deficit-a global challenge" (2001) International Labour Conference Available at http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-i-a.htm accessed on the 20th of January, 2017.

[46] Rodgers G *et al The International Labour Organisation and the quest for social justice, 1919-2009* (2009) International Labour Office- Geneva 1-272 at 224: Dashtipour P & Vidaillet B " Work as affective experience: The contribution of Christophe Dejours's 'psychodynamics of work'" (2017) 24 (1) *Organisation* 18-35.

[47] Ibid Rodgers G at 224: Standing G *Beyond the new paternalism: basic security as equality* (2002) London Verso at 264.

[48] Op cit note 46 at 223: the overall goal of the ILO is the promotion of social justice and internationally recognised human rights: Tasneem Siddiqui "International labour migration from Bangladesh: A decent work perspective" (2005) *Working Paper No 66* Policy Integration Department, National Policy Group, International Labour Office Geneva at 1.

economic perspectives, security at work and a decent income'.[49] Although the concept of decent work has featured prominently in developmental discussions post the 2008 global financial crisis, decent work deficits persists particularly in the informal economy; and in 2015 the international labour conference adopted *Recommendation 204* to facilitate the achievement of decent work for informal workers.

Recommendation 204 is a peculiar regulatory framework because it is targeted specifically at the informal economy. This framework has three major objectives centered on the achievement of decent work and the formalization of the informal economy.[50] Importantly, R204 provides guiding principles for the design of integrated strategies to facilite transition to the formal economy. These principles are broader than the DWA and are multifaceted in their approach. Applying the guiding principles in R204, this thesis recommends an *inclusive* legal system by taking into consideration the broad legal challenges of street vendors in Nigeria.[51]

In summary, the decent work deficits experienced by street vendors in Nigeria occur in the context of: (a) the absence of socio-economic rights for workers and (b) the lack of adequate property rights in urban public places. This has ramifications for the achievement of decent work and for the formalisation of the rights of street vendors and provides the parameters for the scope of this thesis.

1.3 Research questions

A key question addressed in the thesis is: 'what shape and form should law reform take if decent work and the formalisation of the rights of street vendors are to be achieved in Nigeria?' This requires a consideration of more specific questions, including:

- Whether the informal economy should be regulated and, if so, to what extent should there be regulation?
- What is the justification for the criminalization of street vending?

[49] Lieuw-Kie S "Integrating public works and cash transfers in Ethiopia: Implications for social protection, employment and decent work" (2011) *No. 84 Working Paper* International Policy Centre for Inclusive Growth at 8-9.
[50] The objectives are outlined under heading 7.2.
[51] This thesis acknowledges that there are various means to achieve decent work and formalisation for informal workers as provided in Part II Recommendation 204. However, the scope of this thesis is stricted to socio-economic rights and property right which I believe are the basic legal challenges of street vendors. Nonetheless, brief references are made to other challenges faced by these workers in this thesis.

- Does Nigerian law provide for property rights in urban public spaces and inclusive urban planning for informal economic activities?
- Does Nigerian labour legislation and the Nigerian Constitution adequately safeguard the fundamental rights of informal workers such as street vendors?
- How should Recommendation 204 be implemented in Nigeria?

These questions consider the interplay between informality and poverty in the informal economy; and further consider the mechanisms that would balance public interest, the rights of street vendors and the regulatory role of government.

1.4 Scope, aims and significance of thesis

The scope of the thesis is limited to a detailed consideration of street vending and does not consider all of the activities in the informal economy in Nigeria. This approach is supported by the argument that the appropriate method for developing policy for workers in the informal economy is by sectoral or industry-by-industry approach.[52] The thesis contributes toward the development of policy for transitioning the informal economy in the context of street trading activities, and it furthermore provides a prism through which the broader debates on regulation of the informal economy can be analysed.

The key research question is the design of regulatory reform to achieve decent work and the formalisation of the rights of street vendors. This is significant for several reasons. First, despite the visibility of street trading in Nigeria, most states have criminalised the activities of workers in this sector. This is contrary to section 17(3)(a) of the Nigerian Constitution which provides that 'the state shall direct its policy on social order towards ensuring the right of any citizen to a secured means of livelihood and security in any suitable employment'. As a result of criminalisation, street vendors are persistently exposed to repression and prosecution by governmental agencies. However, academic research has mostly focused on the environmental and public health implications of street vending. This research, to the contrary, focuses on the significance of street vending as a source of employment for Nigerians, in the context of the government's inability to provide employment.

[52] Op cit note 25 at 236.

Secondly, there are no detailed scholarly studies on 'decent work' in the context of street vendors as workers in the informal economy in Nigeria within the framework of Recommendation 204. Hence the research contributes to the debate on how decent work and the formalisation of the rights of street vendors can be achieved in Nigeria. Importantly, achieving this will have positive implications for the regulations of other sectors within the informal economy.

Thirdly, given the importance of public spaces in urban areas to street vendors and the lack of legal considerations for their rights in these spaces; this study draws attention to urban public spaces as 'assets' to informal workers. In doing so, the thesis probes a potential policy dilemma; which is how to balance the rights of street vendors, the rights of Nigerians to use public spaces, and the responsibilities of the government. Importantly, the thesis highlights the need for informal economic activities to be considered in the future development of the land use law in Nigeria.

Finally, addressing these issues represents a significant move towards creating an enabling environment for informal workers in Nigeria and harnessing the economic potential of the informal economy. A valuable contribution of the research is the guidance it provides on how Recommendation 204 can be implemented to address the decent work deficits in the informal economy to facilitate the formalisation process.

1.5 Research method

The principal method of research informing the thesis is desk-based analysis. This involves the collection of data, or the gathering and analysis of information from existing resources. Although located within the field of law, the research subject is not purely legal. The study adopts a broad 'law in context' approach that recognizes that law does not operate in a vacuum and must be considered within the context in which it operates.[53] The study therefore engages with a broad body of sources and literature in addition to statues, court decisions and relevant instruments from the international law framework. It will also consider literature from the fields of history, sociology, urban-geography, economics and socio-legal studies to examine the challenges faced by street vendors as a category of workers within the informal economy.

[53] Twining W "Introduction: the story of a project" (2006) in *Rethinking evidence: Exploratory essays* (2nd ed) Cambridge University Press at 1-3: Bintliff B "Context and legal research" (2007) 99 (249) *Law Library Journal* at 260-262.

Importantly, the study considers the literature on the political economy to provide an understanding of the ideological underpinnings of the criminalisation of street vending in Nigeria. In addition, the study considers international framework, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR), which are relevant to the promotion of decent work for informal workers. Furthermore, some conventions and recommendations that were mentioned by R204 are briefly examined in chapter 7.

Furthermore, while the core of this thesis is located within the Nigerian context, a comparative approach is adopted for the analysis of specific issues that affect street vendors. For example, in the context of property rights in urban public spaces, informative developments in South Africa are considered. The experience and relevant scholarship in relation to other countries is considered from the perspective of the Nigerian context. In addition, urban public spaces as a source of work or livelihood has not featured in the discussion on the use of land in the Nigeria; hence the position in jurisdictions such as South Africa is considered to conceptualise the practice and gain an understanding of the potential legal challenges.[54] A consideration of the South Africa approach in this context will help develop an understanding of the implications of property rights for the socio-economic right to work of informal workers such as street vendors.

1.6 Outline of thesis chapters

The thesis consists of eight chapters. The major theme underpinning these chapters is the promotion of decent work and the formalisation of the rights of informal workers. Chapter one broadly introduces the study, presents the problem statement and scope of research, and the research question and method.

Chapter two provides an overview of the informal economy from a theoretical perspective, including the definitions and policy debates on the informal economy. This chapter is divided into three main parts. The first reviews the history and development of the informal economy concept. Secondly, it considers the current approach to understanding the informal economy and highlights the role of international organisations such as the ILO in this regard. Finally, the chapter identifies

[54] Wilson G "Comparative legal scholarship" (2007) in Mike McConville and Wing Hong Chui (eds) *Research methods for law* Edinburgh University Press at 87-103.

decent work deficits in the informal economy and explores the overlap between the informal economy and poverty.

The analysis in chapter three highlights the heterogeneity of the informal economy within the Nigerian context. The chapter considers the history, development, size, characteristics and the importance of the informal economy in Nigeria. It shows that the informal economy is the major source of employment to Nigerians and contributes significantly to her economy. Furthermore, the characteristics of informal employment as well as various informal work arrangements are examined. Importantly, the vulnerability faced by women as a specific category of workers is emphasised.

Chapter four narrows the focus of the thesis from the broad informal economy to the nature and characteristics of street trading in Nigeria with a focus on Lagos state. The chapter argues that street trading is a valuable source of employment and affordable goods to citizens. The chapter analyses the constraints faced by traders because of the socio-political environment of Nigeria, which has ultimately resulted in street trading being criminalised. Given the specific geographical context of this thesis, the chapter analyses the Street Trading and Illegal Market Law of Lagos State which criminalises street trading in Lagos. Importantly, this chapter identifies the absence of property rights in public spaces and the unenforceability of socio-economicrights as barriers to decent work and the formalization of the rights of informal workers.

Chapter five sets out a human rights framework for decent work within the context of street trading in Nigeria. Work and property rights are highlighted as interdependent and necessary for the formalization of the rights of street vendors. This chapter has three main parts. First, decent work deficits in the informal economy are examined. This leads to the second part which explores a human right based approach to poverty. This discussion is important because of the overlap between the informal economy and poverty. Third, the regulatory framework of socio-economic rights is explored within the Nigerian context. Also, international regulatory instruments which address socio-economic rights and directly impact on Nigeria as a member of the United Nations and the African Union are examined in this part. Finally, property rights as an element of decent work for street trading activites is considered and the justiciability of socio-economic rights in Nigeria is reflected on.

Chapter six considers land use and urban planning regulation in Nigeria in the context of property rights as an integral part of decent work. The chapter provides a historical overview of

the current regulatory framework in Nigeria and highlights the lack of consideration of land as an asset to promote decent work and formalisation. This chapter argues for the claiming of urban spaces by street vendors through inclusive urban planning. Finally, Durban, South Africa is used as a case study of a public urban space that is transforming to include the activities of informal workers.

Chapter seven elaborates on the decent work and formalization themes of the thesis and provides tentative recommendations as to how Recommendation 204 can be substantively implemented in Nigeria to promote decent work and formalisation of the informal economy in the context of street vending. Before doing so, the chapter outlines the objectives of Recommendation 204.

Finally, chapter eight concludes the thesis. The chapter recognizes the core policy implications for the implementations of the recommendations in chapter seven.

CHAPTER TWO: HISTORICAL OVERVIEW AND THEORETICAL PERSPECTIVES OF THE INFORMAL ECONOMY

2.1 Introduction

The informal economy has been described as a field of study in its own right.[55] It draws a range of scholars from different disciplines including law, economics, political science, gender studies, urban planning, sociology and public health. This is perhaps because it 'employs' a large share of the global workforce particularly in developing countries. Over the last decade too, the challenge of working poverty has resulted in renewed interest in the informal economy.[56]

The formative years of the concept of the informal economy were plagued with definitional debates, and, although still a contested term, the approach articulated in the ILO's *Resolution concerning Decent Work and the Informal economy*[57] is sufficient, at least for the purposes of this thesis.[58] This resolution formulated the most recent and widely recognised definition of the informal economy and its associated concepts,[59] which are explored in this chapter. In this regard, the chapter provides an overview of the definitional, theoretical and policy debates on the informal economy. The next chapter will consider the informal economy in Nigeria.

The chapter consists of three parts. The first part provides a historical and conceptual overview of related informal economy concepts and debates. The second explores the current approach to the informal economy with particular emphasis on the role of the ILO, and the third part examines the relationship between informality and poverty, and the impact on workers in the informal economy.

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[55] The term 'informal economy' was first used in 2003 by the 17th International Conference of Labour Statisticians. Prior to this use, 'informal sector' was used to refer to all informal economic and work arrangements. However, in many developed countries, the informal economic and work activities are known as the shadow or undeclared economy: Vanek J *et al* "Statistics on the Informal Economy: Definitions, regional estimates & challenges" (April 2014) 2 WIEGO *Working Paper (Statistics)* at 5: Chen MA "The Informal Economy: Definitions, Theories and Policies" (August 2012) 1 WIEGO *Working Paper* at 4.

[56] Chen M "Informal employment: Theory and reality" (2015) in Edgell Stephen *et al The SAGE handbook of the sociology of work and employment* SAGE chapter 22.

[57] This was tentatively resolved at the International Labour Conferences in 2002 and International Conference of Labour Statisticians which held in 1993 and 2003 respectively. This is discussed in a later part of this chapter.

[58] See section 2.3.

[59] Kalula E *et al* "Towards an effective regulatory framework for labour rights and social protection in Southern Africa" (2011) in Banik Dan (ed) *The legal empowerment agenda: Poverty, labour and the informal economy in Africa* Ashgate Publishing limited at 15.

2.2 Historical overview of the concept of the informal economy

The dynamics of operations in the informal economy are of particular interest, more so given the historical forecasts of earlier researchers that this economy was a transitory phenomenon that would be resolved by economic growth. In reality though, the informal economy has shown remarkable resilience and growth in both developed and developing countries.[60] Given its complexity and the contested nature of its development potential, the informal economy cannot be described with a simple definition; instead, it is a dynamic process that includes different economic activities seen in almost every sphere of society.[61] The informal economy has thus been described as a 'common-sense notion' whose fluid social boundaries cannot be captured with a *sensu stricto* definition.[62] Doing so would close the debates around the informal economy prematurely.[63]

In order to understand informality as a process and a concept it is helpful to refer to the historical realities connoted by this theme beginning with the notion of the informal sector.

2.2.1 The origin of the term 'informal sector'[64]

Between 1954 and 1958, a theoretical model to explain economic growth in so-called third world countries was developed by WA Lewis.[65] This model assumed that there was an unlimited supply of labour in these countries, which would be absorbed into the modern industrial economy as these countries experienced economic growth.[66] According to this model, the industrial 'sector' would continue to expand until it had absorbed all excess labour from the traditional sector, which comprised of street trading, small-scale production and different causal jobs.[67] This absorption would lead to the disappearance of the traditional (informal) sector because it was believed to be

[60] Op cit note 21.
[61] Rapu S *Alleviating Poverty in Nigeria through the Improvement of the Labour Conditions in the Informal Economy. A Socio-Ethical Enquiry.* (2012) Petser Lang at 33.
[62] Castells M. & Portes A. (1989) "World underneath: the origins, dynamics and effects of the informal economy" in Portes Alejandro, Castells Manuel & Benton Lauren *The informal economy: studies in advanced and less developed countries* (1989) Johns Hopkins University Press at 11.
[63] Ibid.
[64] The term 'informal sector' will be used specifically when reference is made to the historical development of the concept of the informal economy.
[65] Becker FK "The Informal Economy-Fact finding study" (March 2004) Department for Infrastructure and Economic Co-operation, SIDA at 8.
[66] Ibid.
[67] Chen M "Rethinking the Informal Economy: From Enterprise characteristics to employment Relations" (2005) in Kudva Neema and Beneria Lourdes *(*eds) *Rethinking Informalisation: Poverty, Precarious Jobs and Social Protection"* Cornell University Open Access Repository at 28.

completely lacking in developmental potential.[68] This viewpoint was strengthened by the successful rebuilding of Europe and Japan after the Second World War and the expansion of production in Europe and North America.[69] However, by the mid-1960s the prospect for similar economic growth in developing countries began to diminish and high levels of unemployment persisted.[70]

By the 1970s, developing countries including those undergoing economic growth were still experiencing persistent and increasing levels of unemployment in addition to other employment problems.[71] This was contrary to the predictions of many economists who were influenced by the Lewis theory.[72] Also, this contrasted with the historical experience of developed countries, where economic growth reduced unemployment and under-employment.[73] Consequently, proving wrong the Lewis theory within the context of developing countries.

In a bid to address these employment issues, the ILO launched a series of large, multi-disciplinary 'employment missions' to various developing countries.[74] The first of which was the employment mission to Kenya in 1972.[75] This mission in its official report recognised that the traditional sector had expanded to include profitable and self-sufficient enterprises.[76] To emphasise this, the mission used the term 'informal sector' rather than 'traditional sector' for small-scale and unregistered economic activities.[77] This term had been first used by British anthropologist, Keith Hart to describe unskilled migrant workers in Northern Ghana.[78]

This employment mission's report and Keith Hart's study were the first to raise the issue of the developmental potential of the then informal sector particularly in relation to dealing with

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[68] Prior to the 1970s, the informal sector was known as the traditional sector: Meagher K and Yinusa M "Limits to Labour Absorption: Conceptual and Historical background to adjustment in Nigeria's urban informal sector" (December 1991) *Discussion Papers* United Nations Research Institute for Social Development (UNRISD) available at www.unrisd.org/80256B3005BCCF9 accessed on 1st September 2015 at 6.
[69] Op cit note 67 at 2.
[70] Op cit note 67 at 2.
[71] Op cit note 67 at 2.
[72] Op cit note 65 at 8.
[73] Op cit note 55 at 2.
[74] Op cit note 67.
[75] "Employment, Incomes and Equality. A Strategy for increasing Productive Employment in Kenya" (1972) International Labour Office Geneva (1972) at XI available at www.ilo.org/public/libdoc/ilo/1972 accessed on 22nd April, 2015.
[76] Ibid.
[77] Ibid at 5.
[78] Hart K "Informal Income Opportunities and Urban Employment in Ghana" (March 1973) 11(1) *The Journal of Modern African Studies* at 68

employment challenges.[79] Consequently, the ILO's employment mission report defined the informal sector by considering the characteristics of informal activities. These included:[80]

a) 'Ease of entry;
b) Reliance on indigenous resources;
c) Family ownership of enterprises;
d) Small scale operation;
e) Labour intensive and adapted technology;
f) Skills acquired outside the formal school system; and
g) Unregulated and competitive markets'.

Although the report gave positive reviews of this sector because of its efficiency, creativity and resilience, the development circle remained sceptical of this concept.[81] This reaction for the most part was as a result of perceptions based on the Lewis economic theory. Despite this scepticism, some observers argued that economic development in developing countries would take a different path, which would include the expansion of informal economic activities.[82] These divergent perspectives were captured in the formulation of three schools of thought regarding the basis of the informal sector, its characteristics and its links to the formal economy.[83] More recently, a fourth perspective has emerged on the concept of informality specifically in relation to developed economies.[84] These four schools of thought (labelled the dualist, legalist, structuralist and the post-modern perspectives)[85] are discussed next.

[79] Op cit note 68 at 7.
[80] "Employment, Incomes and Equality. A Strategy for increasing Productive Employment in Kenya" (1972) International Labour Office Geneva (1972) P.XI available at www.ilo.org/public/libdoc/ilo/1972 accessed on 22nd April, 2015 P.6.
[81] Chen MA "Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment" (April 2005) *Research Paper No 2005/10* United Nations University-World Institute for Development Economic Research at 3: the development circle was a term used in the article to describe a network of international development experts and professionals.
[82] Ibid.
[83] Ibid.
[84] Williams CC and Lansky MA "Informal Employment in the developed and developing Economies: Perspectives and Policy Responses" (2013) 152(3-4) *International Labour Review* at 365.
[85] Although the dualist school is now considered redundant: op cit note 81 at 3.

2.2.2 Divergent perspectives on informality

The various perspectives on informality differ in terms of their position on why informality is so pervasive and on what the role of the state should be in dealing with it. Importantly, each perspective appears to reflect only limited aspects of the informal economy. Rather, the informal economy as a whole is more heterogeneous and complex than portrayed by the individual perspectives.

The **dualist school** is also known as the modernisation perspective and was popularised by the ILO in the 1970s.[86] This perspective proposed that the persistence of the informal sector was because of imbalanced economies. These imbalances occur when population growth is higher than economic growth as seen in most developing countries or when traditional skills do not match new economic opportunities.[87] In addition, the disparity between people's aspirations and expectations at work against the income and opportunities available contributed to imbalanced economies, which fostered informality.[88] Therefore, it was believed that as the formal economy became more dominant, the informal sector would fade away. This school of thought was in tandem with the Lewis theory of 1954 which assumed that the informal sector would disappear when countries achieved a certain level of economic development.[89] The persistence of employment in this sector was seen as a sign of 'traditionalism', 'under-development' and 'backwardness'.[90] The formal economy was viewed as an indication of advancement, development and modernity.[91]

According to Packard, workers in the informal sector were those who lost salaried jobs as a result of economic downturn and were just biding their time for employment in modern firms.[92]

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[86] Op cit note 84: Khandan A"Informal economy: The invisible hand of government" (2016) in Polese Abel *et al* (eds) *The informal economy in global perspective: Varieties of governance* International Political Economy Series Palgrave Macmillian at 39.
[87] "Employment, Incomes and Equality. A Strategy for increasing Productive Employment in Kenya" (1972) International Labour Office Geneva (1972) P.XI available at www.ilo.org/public/libdoc/ilo/1972 accessed on 22nd April 8.
[88] Ibid.
[89] Adom K "Beyond the marginalization thesis: an examination of the motivations of informal entrepreneurs in Sub-Saharan Africa: Insights from Ghana" (2014) 15(2) *Entrepreneurship and Innovation* 113-125 at 116.
[90] Op cit note 84 at 363.
[91] Op cit note 89.
[92] Packard GT "Do workers in Chile choose informal employment? A dynamic analysis of sector choice" World Bank Policy Research working paper 4234 (May 2007). Available at https://openknowledge.worldbank.org accessed on 7th October 2015 4.

From this perspective, informal workers were seen as unimportant and destined to disappear.[93] However, viewing this sector as transitory and persisting at the fringes of the formal sector implies that there is only one path to achieving economic development.[94] Nevertheless, there is now recognition of the growth of this sector relative to the formal sector in some countries.[95] Indeed, it has been proposed that the informal sector be viewed as a form of capitalism.[96]

Although flawed, the dualistic school of thought brought to light the employment creation potential of the informal economy.[97] This is specifically obvious in developing countries where the informal economy has absorbed excess and untrained labour.[98] However, the dualist school could not effectively grasp the economic changes and expansion of the informal economy,[99] and is largely considered to be redundant.[100]

The **legalist school** of thought, also referred to as the neoliberal perspective, is advocated most prominently by Hernando De Soto, a Peruvian economist.[101] According to this perspective, certain informal work arrangements may arise out of choice because of the desire for greater autonomy, flexibility and freedom in this sphere.[102] This may result from burdensome bureaucratic procedures of states, and polices which fail to meet the needs of citizens.[103] Therefore, the rise in informalisation is seen as a reaction of the populace to high taxes, corrupt state systems and overregulation of the market.[104] To remedy this, there would need to be a reduction in rules and regulations that stifle economic participation. For example, as highlighted

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[93] Bromley R "Foreword" in *Street Entrepreneurs: people, place and politics in local and global perspective* John Cross and Alfonso Morales (eds) (2007) London Routledge at XV-XVII

[94] Op cit note 84 at 363.

[95] Schneider F and Williams CC *The Shadow Economy* (2013) Institute of Economic Affairs and Profile Books Ltd 2-96: Lars FP and Schneider F "Survey on the shadow economy and undeclared earnings in OECD countries" (2010) 11(2) *German Economic Review* 109-49.

[96] Dibber P and Williams CC "Varieties of capitalism and employment relations: informally dominated market economies" (April 2012) 51(S1)*Industrial Relations* 563-582.

[97] Bhowmik S "Introduction" (2012) in Bhowmik Sharit (ed) *Street Vendors in the Global Urban Economy* at 4.

[98] Ibid

[99] Ibid.

[100] In many countries including developed ones, the informal economy rather than disappearing has grown tremendously. In developed countries this is seen in the increase of non-standard work: "Links with growth" accessed at http://www.wiego.org/informal-economy/links-growth on 23rd June, 2018.

[101] Op cit note 84 at 364: Broembsen von M "Poverty, legal empowerment and informal business in South Africa" (2011) in Banik Dan (ed) *The legal empowerment agenda: Poverty, labour and the informal economy in Africa* at 44.

[102] De Soto H *The Mystery of Capital: Why Capitalism Triumphs in the West and fails Everywhere Else* (2001) Black Swan at 76-80.

[103] Op cit note 65 at 10.

[104] Nigeria is an example of a country in which the above occurs: Nwabuzor A "Corruption and development: new initiatives in economic openness and strengthened rule of law" (2005) 59 (1-2) *Journal of Business Ethics* at 126.

in chapter three, the expansion of the Nigerian informal economy is linked to cumbersome regulations and corruption.[105] It has also been suggested that this perspective explains why street vending occurs in the informal economy.[106] Furthermore, this perspective highlights the importance of property rights for street vendors which is examined in chapter five.

Yet another perspective is articulated by, among others, Caroline Moser and Alejandro Portes who popularized the **structuralist school**, reflecting a political economy perspective.[107] This school, in contrast to the neo-liberal perspective, subscribes to the notion that the informal sector is a receptacle into which surplus labour is cast to eke out a living in the absence of any other alternative.[108] This was affirmed by Meagher, when she posited that informal economic arrangements have become part of contemporary economies via subcontracting, moonlighting and diminishing state involvement in employment and welfare of citizens.[109] However, it is argued that a distinction needs to be made between the survivalist urban informal sector and the 'productive' informal sector, which despite its vulnerability is linked with the process of capitalist accumulation and dynamics.[110] Indeed, the marginalised (survivalist) sector operates with defined supply and demand links to the formal (capitalist) sector.[111] On the other hand, the productive informal sector is viewed as being a direct result of business arrangements aimed at maximising profits and cost reduction through the avoidance of select laws and hence greater flexibility.[112] Primitive forms of exploitation have a new life through these arrangements.[113]

Since the turn of the 21st century, a fourth, **post-modern,** perspective of the informal sector specifically in relation to developed economies has emerged.[114] This perspective posits that participation in the informal sector is voluntary as a solidarity-oriented community endeavour.[115] This perspective though similar to the legalist school differs in terms of the reasons for

[105]Gajigo O & Hallward-Driemeier M "Why do firms abandon formality for informality? Evidence from African countries" (2012) No 159 *Working Paper Series* African Development Bank Group, Tunisia 1-32 at 27: Ibid Nwabuzor.
[106] Op cit note 97 at 5.
[107] Op cit note 81 at 4.
[108] Op cit note 62 at 11-39.
[109] Meagher K *Identity Economics Social Networks and the Informal Economy in Nigeria* (2010) James Currey at 11.
[110]Bhattacharya S "Informal sector dynamics and its role in the capital accumulation process: the contrasting cases of India and South Africa". Available at http://citeseerx.ist.psu.ed accessed on 7th October 2015.
[111] Ibid.
[112] Op cit note 84 at 364
[113] Davis M *Planet of Slums* (2006) Verso 186.
[114] Op cit note 84 at 365.
[115] Pfau-Effinger B "Varieties of undeclared work in European societies" (March 2009) 47(1) *British Journal of Employment Relations* at 81.

participation in the informal economy. According to this school of thought, people participate in the informal economy for social and not economic reasons.[116] Indeed, this is becoming the norm in a substantial part of Europe where 55% of informal employment is said to be for redistributive and social reasons within a community.[117]

Generally, these schools of thought are treated as valid and seen as competing perspectives.[118] Many commentators predominantly support one or the other perspective.[119] For example, in many countries in the European Union (EU) the provision of social protection and interventions in the labour market largely reflects the political economy perspective and is perceived as a way to reduce the informal economy; while the ILO in its work on the informal economy in developing countries tentatively supports the modernisation perspective.[120] In a 2015 study, Williams attempts to synthesise these perspectives, indicating that there is a correlation between the size of the informal economy, modernisation of work and welfare arrangements.[121] The implication is that by combining these various perspectives, a finer-grained understanding of the concept of informality can be gained.[122] By the late 1980s, theoretical debates on the informal sector began to subside,[123] however informality continued to expand and the focus of the debate shifted to the more practical question of how to measure levels of informality.

2.3 Measuring informality and the shift from informal sector to informal economy

In the past two decades, academic discourse has shifted from conceptual controversies on the boundaries between formality and informality to discussions on how to operationalise a definition

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[116] Op cit note 89 at 117.

[117] Williams CC and Renooy P "Tackling undeclared work in 27 European Union Member states and Norway: Approaches and measures since 2008" (2013) *Eurofound* Dublin 1-33. Available at http://works.bepress.com/cgi accessed on 8th October 2015.

[118] Op cit note 84 at 365.

[119] Williams CC "Explaining the informal economy: An exploratory evaluation of competing perspectives" (2015) 70(4) *Industrial Relations* 741-765 at 745.

[120]Williams & Piet op cit note 99:Vanderseypen Guido *et al* "Undeclared work: recent developments" in (2013) *Employment and Social Developments in Europe* Chapter four 231-274:"Statistical update on employment in the informal economy" (2012) ILO Available at http://laborsta.ilo.org/applv8/data/INFORMAL_ECONOMY/2012-06-Statistical%20update%20-%20v2.pdf accessed on the 22nd of September, 2017.

[121] Op cit note 119 at 759.

[122] Op cit note 84 at 365.

[123] Chen MA, Jhabvala R and Lund F "Supporting Workers in the Informal Economy A Policy Framework" (November 2001) WIEGO available at http://wiego.org/sites/wiego.org/files/publications/files/Chen-Jhabvala-Lund-Supporting-Workers-policypaper.pdf accessed on 17th April, 2015 3: Brown D and McGranahan G "The urban informal economy, local inclusion and achieving a global green transformation" (2016) 53 *Habitat International* 97-105 at 98.

for statistical and policy purposes.[124] This endeavour was accompanied by a significant rethinking of the informality concept,[125] prompted by the continuous growth of informality and its emergence in new guises and in unexpected places.[126] Pivotal developments include the 1993 expanded definition of the informal sector.

2.3.1 The informal sector: the 1993 expanded definition

The attention of the international labour community turned to the informal sector at two International Labour Conferences in the early 1990s.[127] The 1991 conference focused on the dilemma within the informal sector: the poor quality of jobs and the non-protection of workers.[128] This was aptly captured by ILO's Director-General's report, *The dilemma of the informal sector*, which discussed the implications of this dilemma in a number of specific policy areas.[129] The report predicted that informality would persist and expand in spite of economic growth in many countries, leading to increased urban poverty and congestion.[130] This report led to intense debates among the participants of the conference. Consequently, operating under the mandate of the 1991 International Labour Conference (ILC) and the 251st Session of the Governing Body, the International Conference of Labour Statisticians (ICLS) proposed an official, measurable, definition of the informal sector in 1993.[131] Specifically, the ICLS adopted the *Resolution concerning Statistics of Employment in the Informal Sector* in an attempt to resolve the ambiguities surrounding the meaning of the informal sector.[132] The ICLS defined the sector with reference to

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[124] Meagher K "Unlocking the informal economy: A literature review on linkages between formal and informal economies in developing countries" (April 2013) WIEGO Working paper No. 27 at 2.
[125] Op cit note 81 at 7.
[126] Chen M "Informality and social protection: theories and realities" (May 2008) 39(2). *Institute of Development Studies Bulletin*
[127] Op cit note 123 at 3.
[128] Op cit note 67 at 30.
[129] *The dilemma of the Informal Sector* (1991) Report of the Director-General (Part 1), International Labour Conference, 78th Session, 1991, Geneva: Bangasser EP "The ILO and the informal sector: an institutional history" (2000) *Employment Paper 2000/9* International Labour Organisation at 17.
[130] Ibid at 18.
[131] *Record of Proceeding* International Labour Conference Seventy-eighth Session, Geneva, 1991 at 14: This mandate consisted of five lines of action, a) data collection and policy research, b) organisation of the producers and workers in the sector, c) development of the productive potential of the sector, d) the establishment of an appropriate regulatory framework, and e) the improvement of social protection: Op cit Bangasser E Paul at 19.
[132] "Resolution concerning Statistics of employment in the Informal Sector adopted by the fifteenth International Conference of Labour Statisticians" (January 1993) available at http://www.ilo.org/wcmsp5/groups/public/@dgreports/@stat/documents/normativeinstrument/wcms_087484.pdf accessed on the 12th of March 2016.

the definition given by the United Nations (UN) in terms of the characteristics of the production unit in which activities take place.[133]

This instrument defines the informal sector as

> 'private unincorporated enterprises…enterprises owned by individuals or households that are not constituted as separate legal entities independently of the households or household members that own them, and for which no complete accounts (including balance sheets of assets and liabilities) are available that would permit a clear distinction of the production activities of the enterprise from the other activities of their owners…'. *134*

This definition in subsequent years became known as the enterprise-centred definition. This was primarily to improve labour statistics in developing countries where various informal sectors were dominant.[135] In addition, the ICLS defined employment in the informal sector consistently with the enterprise-centred approach.[136]

Employment in the informal sector includes:[137]

- Employers (owners of unregistered small enterprises):
- Own-account workers- owners of family business or single unit of production:
- Contributing unpaid family workers in family businesses and
- 'Other' employees in informal enterprises.

However, it was clear to the ICLS that the enterprise-based definition of the informal sector did not capture all the elements of informality.[138] The conference therefore proposed that further work be done, specifically on the employment-based dimension of informality.[139] This was because the definition of the informal sector focused on production units without considering the persons involved in informal activities.

Accordingly, in recent years, researchers from Women in Informal Employment: Globalising and Organising (WIEGO) and the ILO sought to expand the 1993 ICLS concept of

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[133] Hussmanns R "Measuring the Informal Sector: from employment in the informal sector to informal employment" (2005) Policy Integration Department, Bureau of Statistics International Labour Office Geneva at 1: Sankaran K "Protecting the worker in the informal economy: the role of labour law" in Guy Davidov and Brain Langille (eds) *Boundaries and frontiers of labour law: Goals and means in the regulation of work* 205-220 at 205

[134] Op cit note 84 at 356: *Report of the Conference* 15th International Conference of Labour Statisticians Geneva (1993). Available at http://www.ilo.org/public accessed on the 12th of March 2016 1-113 at 53.

[135] Op cit note 132: ICLS "Guidelines concerning a statistical definition of informal employment" (2003) 17th ICLSC.

[136] Op cit 61 at 35.

[137] Op cit note 67.

[138] Op cit note 133 (Hussmanns) at 2.

[139] Op cit note 133 (Hussmanns) at 2.

the informal sector.[140] This was important because informality manifests in various ways in the economies of developing and developed countries, and in the dynamics in labour markets, in particular as it impacts employment arrangements of the working poor.[141] In addition, having a broader definition would lead to a deeper understanding of informal economic activities and relationships.[142] The ILO therefore adopted a new definition of informality and its associated concepts in 2002.[143] This was endorsed in the general discussion on 'decent work and the informal economy' and was adopted in the *Resolution concerning decent work and the informal economy* which is discussed in detail below.[144]

2.3.2 The informal economy: current definition and realities

As informality expanded in almost every corner of the globe and could no longer be considered a transitory phenomenon,[145] the term 'informal sector' was clearly inadequate, and even misleading, and failed to reflect the dynamic and heterogeneous characteristics of informality, which is not a 'sector' in the sense of a specific industry.[146] As a result, in recent years, the international labour office, the international expert group on informal sector statistics (the Delhi group) and the global network of WIEGO have collaborated to broaden the concept and definition of informality.[147] Their intention was to incorporate informality in whatever form it manifested in both developing and developed countries, particularly as it affects the working poor.[148] This led to the rethinking of the term 'informal sector' and the quest for a term that captures the broadened concept of informality.[149]

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[140] Chen, Vanek and Heintz "Informality, gender and poverty: a global picture" (May 2006) *Economic and Political Weekly* 2132.
[141] Ibid.
[142] Op cit note 67 at 30.
[143] This was done at 90th Session of the International Labour Conference: ILC *Decent work and the informal economy* (2002) Report VI, 90th Session, Geneva.
[144] Ibid: *Resolution concerning decent work and the informal economy* Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/---reloff/documents/meetingdocument/wcms_080105.pdf accessed on the 24th March 2016.
[145] Op cit note 143 at 1.
[146] Ibid.
[147] Op cit note 61 at 19.
[148] Chen M, Vanek J and Carr M *Mainstreaming informal employment and gender in poverty reduction. A handbook for policy makers and other stakeholders* available at www.idrc.ca accessed on 2nd October, 2015 21.
[149] Op cit note 61 at 37.

As mentioned earlier, the ILC adopted at its 90th session in June 2002 a resolution that captured this broadened concept.[150] This marked a new stage in addressing the issue of informality, as emphasis was shifted from unregulated enterprises to employment relationships not legally protected or regulated.[151] The term 'informal economy' was then formally introduced to include the expanding and diverse group of workers and enterprises operating informally in both rural and urban areas.[152]

The resolution defines the informal economy as 'all economic activities by workers and economic units that are- in law or practice- not covered or insufficiently covered by formal arrangements'.[153] Activities and units that are not covered 'in law' means economic activities operating outside the formal reach of the law. Those that are not covered 'in practice' means that although these activities or units are within the reach of the law, this law is not enforced or complied with or the law discourages compliance.[154] Broadly, this includes 'the self-employed in informal enterprises as well as wage employed in informal jobs in both urban and rural areas'.[155] In brief, the informal economy focuses on the nature of employment as well as characteristics of enterprises and encompasses all types of informal employment both within and outside informal enterprises.[156] Notably also, the Conclusions of the ILC 2002 distinguished informal activities from 'criminal and illegal activities'.[157]

In a review of the 2002 ILC Conclusions, Trebilock points out that the shift from talking about the 'informal sector' to the 'informal economy' was more than semantics.[158] According to her, although still speaking of two economics, the ILC Conclusions rejected a dualism in which

[150] Op cit note 61 at 37.
[151] Op cit note 61 at 37.
[152] Op cit note 143.
[153]Op cit 144 at para 3.
[154] Trebilcock A "Decent work and the informal economy" (Jan 2005) Discussion Paper No. 2005/04 available at https://www.wider.unu.edu/sites/default/files/dp2005-04.pdf accessed on the 30th of March 2016 1-37 at 2.
[155] Op cit note 143: Chen M "Informality and social protection: theories and realities" (May 2008) 39(2) *Institute of Development Studies Bulletin* at 19.
[156] Op cit note 140 at 2132.
[157]Trebilock A "Using development approaches to address the challenge of the informal economy for labour law" (2006) in Guy Davidov and Brain Langile(ed) *Boundaries and frontiers of labour law* Hart Publishing at 64: criminal activities involves inherently illegal goods or services. Although some informal activities like street trading could be 'illegal', it is because the laws and regulations are irrelevant to the needs and conditions of the vendors whose only means of livelihood is in this informal economic activity: Boels D *The informal economy: seasonal work, street selling and sex work* (2016) Palgrave Macmillan at 227-30: However, there are criminal activities such as drug trafficking and smuggling in the informal economy: Williams C *Cash-in-hand work: The underground sector and the hidden economy of favours* (2004) Springer.
[158] Ibid (Trebilock) at 64.

the formal and informal 'sectors' were seen as separate entities, in favour of the idea of a *continuum of production and employment relations*.[159] This is explained by three factors. Firstly, workers and enterprises considered to be 'informal' cut across different sectors of economic activity, rather than just one 'sector'. Furthermore, the interdependencies and linkages that exist between formal and informal activities partly reflect the changes in the global production system.[160] Finally, this new concept affirms the long standing criticism of the dualistic formal/informal framework for being *both over-simplified and blurred*.[161] This new conceptual framework therefore sees formal and informal enterprises and workers as co-existing along a *continuum,* with both experiencing decent work deficits particularly those at the informality end of the continuum whose employment relations are unprotected.[162]

This expanded definition was endorsed by the ICLS in 2003,[163] and based on the expanded definition; the ICLS broadened the definition of informal employment. Informal employment was defined as informal jobs carried out in formal and informal enterprises.[164] According to the guidelines by the 17th ICLS, informal employment comprises of those:

> '[W]hose employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave etc.). The reasons may be the following: non-declaration of the jobs or the employees; casual jobs or jobs of a limited short duration; jobs with hours of work or wages below a specified threshold (e.g. for social security contributions:; employment by unincorporated enterprises or by persons in households; jobs where the employee's place of work is outside the premises of the employer's enterprises (e.g. Outworkers without employment contract); or jobs for which labour regulations are not applied, not enforced, or not complied with for any other reason'.[165]

This definition is from the perspective of the work (job) of an individual rather than the economic unit or enterprise.[166]

The ICLS further distinguished the enterprise centred concept of employment in the informal sector from the broader employment centred concept of informal employment. These two

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[159] Ibid (Trebilock) at 65.
[160] Op cit note 65 at 8.
[161] Op cit note 157 (Trebilock) 64.
[162] Op cit note 61 at 38.
[163] Op cite note 126 at 19.
[164] Op cite note 126.
[165] *Report of the Conference Seventeenth International Conference of Labour Statisticians* (24th November- 3rd December 2003) available at http://www.ilo.org/public/english/standards/relm/gb/docs/gb289/pdf/icls-17.pdf accessed on the 18th of April, 2017 1-154 at 14.
[166] Ibid at 10.

employment terms, 'employment in the informal sector' and 'informal employment' should not be used interchangeably. Whereas the former is restricted to work in informal enterprises, the latter comprises work in the formal and informal sectors. Thus, street vendors will be specifically categorised as employment in the informal street vending sector; and also broadly classified as informal employment because it is an informal sector in the informal economy. In addition, the former is useful for national statistical purpose; the latter is useful for policymaking.[167]

To avoid inconsistencies, it is important to note that an informal sector, such as street trading, is a component of the informal economy.[168] Also, employment in the informal economy or informal employment consists of all persons (regardless of their employment status) who work in informal enterprises (sectors) plus people who work informally in other sectors of the economy, including the private and public sectors.[169] The terms 'informal employment' and 'informal economy,' are used in the thesis to have a corresponding meaning.[170]

In the last decade, particularly in developing countries the informal economy has persistently expanded.[171] This expansion comes with a range of vulnerabilities as informal workers are either not protected under regulatory frameworks or in practice.[172] These vulnerabilities are manifested in the lack of basic socio-economic securities leading to the intersection of the informal economy with poverty.

2.4 Informality: characterized by insecurities and poverty

The essential securities that are usually denied to workers in the informal economy lead to decent work deficits. These include the securities identified by Standing such as work, job, labour/skill, representation and income.[173] Workers lack protection against loss of work. For waged informal

[167] Op cite note 61 at 39.
[168] Charmes J "The informal economy worldwide: trends and characteristics" (May 2012) 6(2) *Margin-The Journal of Applied Economic Research* 103-132 at 108.
[169] Ibid.
[170] The employment based definition is a useful tool to promote decent work for informal workers, which is a primary objective of this thesis. Note however that the use of 'informal sector' is still retained by some countries, international institutions and authors. This is the case in Nigeria where the informal economy is officially referred to as the informal sector. Therefore, the use of 'informal sector' will be retained where it appears in official documents.
[171] Chen MA "The informal economy: Recent trends, future directions" (2016) 26(2) *A Journal of Environmental and Occupational Health Policy* 155-72.
[172] Mannila S "Informal employment and vulnerability in less developed markets" (2015) in J. Vuori *et al* (eds) *Sustainable working lives, aligning perspectives on health, safety and well-being* Springer, Dordrecht 17-33.
[173] The informal economy lies beyond the reach of legislation and social protection, and are characterised by low income and high levels of insecurity. Their rights are the least respected; hence, the occurrence of the above

workers, this means no protection against unfair or arbitrary dismissal; and for self-employed informal workers it means no protection against business failure. Furthermore, these workers generally work in hazardous environments. Although different jobs or occupations have their own peculiar hazards, the insecurity at work experienced by informal workers is more complex.[174] Their working conditions are unsafe and do not promote their well-being. In particular, workers such as street vendors who operate outside formal workplaces face harassment from officials of government.[175] According to the ILO, harassment is a serious problem in Sub-Saharan countries including Nigeria, which leads to the death of informal workers in some cases.[176]

Job insecurity means the lack of access to and control of an economic activity with prospects of a satisfying career.[177] This is different from work insecurity because in this instance, this work is not in line with the interests and skills of the worker.[178] In addition, job insecurity manifests through institutional barriers to work opportunities. For example, as examined in chapters four and six, some regulations in Nigeria have discriminatory effects on the economic activities of street vendors, one of which is their property right in public spaces.

Similarly, workers lack opportunities for training, education and apprenticeship to develop their capacities and acquire the qualifications needed to have a socially and economically viable occupation.[179] This means workers experience skills reproduction insecurity. This is exacerbated by the lack of a voice of informal workers, which limits the platform for the articulation of their needs and interests, making it difficult for these workers to collectively organise trainings and skills development opportunities. Furthermore, trade unions have traditionally failed to reach informal workers who constitute more than half of the world's working population.[180] This makes it imperative for new forms of representation as discussed in chapter seven to enable informal workers articulate their needs and interests.

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insecurities: Unni J & Rani U "Insecurities of informal workers in Gujarat, India" (2002) International Labour Office, Geneva: Standing Guy *Global Labour Flexibility: Seeking Distributive Justice* (1999) Macmillan New York St Martin Press at 167-207.

[174]"Economic security for a better world" (2004) International Labour Office. Available at http://www.social-protection.org/gimi/gess/RessourcePDF accessed on the 9th of November 2015 at 165.

[175] Ibid.

[176]Ibid: Op cit note 24.

[177] Op cit note 174 at 221.

[178] This is different from work insecurity which is related to the work conditions of informal workers: Op cit note 173(Unni J & Rani U) at 28.

[179] Op cit note 174 at 192.

[180] Op cit note 174 at 331.

Finally, informal workers have to deal with income inadequacy and instability.[181] Income security relates to the fairness of the income of the worker in relation to the income of other workers in the locality and the standard of living.[182] The absence of income security is interwoven with the high levels of poverty experienced by informal workers and the absence of social security/unemployment benefits.[183]

The presence of these insecurities means that informal workers operate in conditions termed indecent.[184] The presence or absence of these insecurities can be broadly used as indexes to determine whether any work is decent. Indeed, the current reality of the majority of work in the informal economy is indecent because of the absence of the elements of decent work. This is the context for the ILO's *Recommendation concerning the Transition from the Informal to the Formal Economy* with the objectives to promote decent work in the informal economy and facilitate its transition to the formal economy. The implementation of this Recommendation is discussed in chapter seven within the context of the Nigerian informal economy.

The role of the informal economy in economic growth, the generation of employment and poverty reduction within the African context cannot be overemphasised.[185] However, despite these significant contributions to the economies of Sub-Saharan African countries, there exist high levels of vulnerabilities because of the poor conditions of work within the informal economy and the lack of adequate social security rights in these countries. Hence, the high levels of poverty in the informal economy.

Poverty has many faces and its persistence is a major challenge worldwide mainly in developing countries in the 21st century.[186] Poverty involves the lack of necessities for the material

[181] Op cit note 61 at 51-2.
[182] "Definitions: What we mean when we say economic security" ILO Socio-economic security programme: Standing G *Basic Income: And how we can make it happen* (2017) Penguin UK.
[183] Unni J & Rani U "Social protection for informal workers: Insecurities, instruments and institutional mechanisms" (2003) 34(1) *Development and Change*.
[184] Op cit note 2
[185] Aryeetey E ."The informal economy, economic growth and poverty in Sub-Saharan Africa" (2009) Framework Paper African Economic Research Consortium. Available at http://dspace.africaportal.org/ accessed on 15th September, 2015 at 2: Aryeetey E "The informal economy, economic growth and poverty in Sub-Saharan Africa" (2015) in Mckay Andy and Thorbecke Erik (eds.) *Economic growth & poverty reduction in Sub-Saharan Africa: Current & emerging issues* Oxford University Press at 160.
[186] The presence of any form of poverty robs people of dignity, confidence and self-respect: Sudir A and Sen A "Concepts of human development and poverty: A multidimensional perspective" (1997) in *Poverty and Human Development: Human Development Papers* 1-20: Op cit note 140 at 2131: Sindzingre A "The multidimensionality of poverty: An institutionalist perspective" (2007) in Kakwani N and Silber J (eds.) *The Many Dimesions of Poverty*

well-being of an individual.[187] It can also include the denial of opportunities linked to health, education and decent work for a person to live a tolerable life.[188] Despite the progress made by many countries towards the achievement of the Millennium Development Goals' goal of eradicating extreme poverty, about 1.2 billion and 836 million people struggled to survive on less than $1.25 in a day in 2011 and 2015 respectively.[189] The overwhelming numbers of these people live in Sub-Saharan Africa and 9% of this number lived in Nigeria as at 2011.[190] The 839 million of the 2011 statistics were working poor.[191] And, the vast majority of these workers are found in the informal economy.[192] Indeed, the problem of poverty cannot be addressed without recourse to the informal economy.

Poverty and informality intersect in Sub-Saharan Africa, which gives rises to these questions:[193]

- Does work in the informal economy inevitably result in the poverty of the worker?
- Similarly, how does the informal economy influence poverty and what will happen to the informal economy with changes in the incidence of poverty?[194]

Palgrave Macmillan, London at 52-74: Alkire S and Foster J "Counting and multidimensional poverty measurement" (2011) 95 *Journal of Public Economics* 476-87.

[187] Ibid: For example, the lack of food or shelter.

[188] Ibid.

[189] *The Millennium Development Goals Report* (2015) UN, New York. Available at http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf accessed on the 26th September, 2017 at 14-19: The MDGs came to an end in 2015. Although many countries met the MDGs' goal of reducing poverty, Sub-Saharan Africa did not meet the target. In a bid to build on the achievements of the MDGs and to reduce the number of poor people in the world, a more inclusive post- 2015 development agenda was introduced in 2016. This agenda is known as Sustainable Development Goals (SDGs). At the heart of the SDGs is the eradication of poverty by 2030. Unlike the MDGs, decent work which is goal 8 of the SDGS is recognised as one of the tools for the eradication of poverty. However, the SDGs are outside the scope of this thesis: *Transitioning from the MDGs to the SDGs* (2016) available at file:///C:/Users/Student/Downloads/Transitioning%20from%20the%20MDGs%20to%20the%20SDGs.pdf accessed on the 26th of September, 2017 World Bank and UNDP: It is important to note that great progress has been globally to reduce poverty. However, this progress is far from even and it masks large regional difference. This trend in global poverty reduction was dominated by rapid growth in China and India which had the highest numbers of the world poor.

[190] *The Millennium Development Goals Report* (2014) Available at http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf accessed on the 26th of October, 2016 UN, New York at 8-10: Adibe Jideofor "MINT, Re-based GDP and poverty: A commentary on the identity crisis in Africa's 'largest' economy" (2014) 9(1) *African Journal of Business and Economic Research* 119-134.

[191] *Global employment trends 2014: Risk of a jobless recovery?* (2014) International Labour Office, Geneva. Available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_233953.pdf accessed on the 30th of November, 2015 at 10.

[192] Op cit note 185 (Aryeetey) at 27.

[193] Op cit note 185 (Aryeetey) at 178.

[194] Op cit note 185 (Aryeetey) at 3.

These questions are significant because of the multi-dimensional characteristics of poverty.[195]

There are contradictory views regarding the intersectionality between poverty and the informal economy.[196] On one hand, it is recognised that the informal economy has the potential to contribute to poverty reduction through the provision of employment.[197] The lack of employment opportunities in the formal economy forces many workers to seek work in the informal economy in order to earn a living. However, the earnings of most workers and the conditions of work in the informal economy are such that they are classified as working poor.

This overlapping relationship between informal employment and poverty can be understood in different ways.[198] Although the informal economy contributes to economic growth, there are links between being poor and working informally.[199] This is seen in the link between informal work and low income,[200] with a further gender-dimension which is evident when informal work is analysed by economic sectors, status of employment and gender.[201] According to ILO statistics, men tend to have the best quality jobs in the informal economy while women have the poorest jobs.[202] In addition, women also earn less within specific segments of the informal economy as a result of gender differences in the type of activity and the volume of work/output.[203] An example of such segment is the street vending sector. As discussed in chapter four, this operates through horizontal and vertical gender segregation within the sector with women usually at the low levels. In addition to low income, informal workers receive little (if any) employment based benefits and protection and few are able to save and contribute for their social protection.

Similarly, another link between informal employment and poverty is the lack of social dialogue. Many informal workers do not have access to forums where they can negotiate for their

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[195] Although poverty is often mistaken for just low-income, it embraces a wide range of characteristics which includes resources deprivation, social isolation, exclusion and deprivation of human rights: Alkire A "Choosing dimensions: The capability approach and multidimensional poverty" (2007) in *The many dimensions of poverty* Palgrave Macmillan, London 89-119: Wang Y & Baixue W "Multidimensional poverty measure and analysis: A case study from Hechi City, china" (2016) 5(1) *SpringerPlus* 642.

[196] Saglam NECDET "The informal economic sector and poverty in the Mediterranean countries and Turkey" (2011) available at http://www.um.edu.mt/europeanstudies/books/CD_CSP4/pdf/nsaglam.pdf accessed on the 26th of September, 2017 at 167.

[197] Op cit note 185 (Aryeetey) at 27.

[198] Op cit note 123 at 15.

[199] Op cit note 67 at 40

[200] Op cit note 67 at 42.

[201] Op cit note 67.

[202] "Women and men in the informal economy: A statistical Picture" (3rd Ed) (2018) International Labour Organisation, Geneva at 20-26.

[203] Ibid.

interests. In essence, these workers lack a voice. As explored in chapters four and five, these decent work deficits foster poverty within the informal economy.[204] This form of poverty is called working poverty.

Poor people are likely to participate in the informal economy for survival, while the deficits in the informal economy further reinforce their poverty.[205] Yet the informal economy remains a source of work, particularly in developing countries including Nigeria. It is therefore important to identify effective methods to reduce or eliminate poverty in the informal economy and to promote decent work through formalisation of the informal economy without jeopardising the livelihood of workers. Pathways for doing so are identified in chapter seven.

2.5 Conclusion

This chapter provided an overview of the theoretical perspectives related to the informal economy. Furthermore, the links between informality and poverty were examined, noting that the majority of workers in the informal economy, including street vendors, work in conditions where their rights are not respected, leading to decent work deficits and poverty.

The next chapter seeks to explore the informal economy in Nigeria. This is in accordance with the guiding principles in part II and III of Recommendation 204 which provides that states should take into account the circumstances, causes and characteristics of informality in the national context.

[204] "Thematic briefing note on the informal economy and decent work" (2009) European Commission accessed at https://ec.europa.eu/europeaid/sites/devco/files/informal-economy-and-decent-work_en.pdfon the 23rd of June, 2018: Kantor P *et al* "Decent work deficits in informal economy: Case of Surat" (2006) *Economic and Political Weekly* 2089-97.
[205] Ibid.

CHAPTER THREE: OVERVIEW OF THE INFORMAL ECONOMY IN NIGERIA

3.1 Introduction

Chapter two examined the theoretical perspectives and characteristics of the informal economy. As highlighted in the latter part of that chapter, the informal economy remains a major source of employment in developing countries including Nigeria. This chapter therefore narrows down the discussion to focus on the informal economy in Nigeria.

Nigeria has the largest informal economy in Sub-Saharan Africa and the purpose of this chapter is to explore the development, causes and characteristics of the informal economy within the national context of Nigeria. This provides a background for the decent work framework discussed in chapter five.[206] Furthermore, this is to ensure that the pathways for the implementation of R204 (which are recommended in chapter seven) are appropriately tailored.

This chapter has two main parts. The first part provides background to the informal economy in Nigeria, including the history, growth, size, characteristics and the importance of the informal economy to national development in Nigeria. The second part examines informal employment and forms of informal work. This part also includes a discussion on the vulnerabilities experienced by women as a specific group of informal workers.

3.2 The Informal economy in Nigeria

As chapter 2 indicates, the informal economy in many countries continues to grow.[207] This is particularly obvious in Nigeria. Nigeria has the largest informal economy in Africa which stems primarily from her being the most populous black nation in the world and the rebasing of her

[206] This is in line with the guiding principles in Part II and III of R204 which emphasises the importance of national context for the transition to formalisation process.
[207] Onwe OJ "Role of the informal sector in the development of the Nigerian economy: Output and employment approach" (June 2013) *Journal of Economics and Development Studies* 66.

economy in 2013.[208] The informal economy accounts for about 90% of new jobs in the country.[209] Indeed, the importance of the informal economy to Nigeria can be situated within the context of the remarks of her former head of state, Ibrahim Babangida, at the height of the economic crisis in 1991. He posited thus 'the Nigerian economy has defied all known economic prescriptions, yet it has not collapsed. The reason for the non-collapse of this economy is not far-fetched; it is the sustaining power and 'ability' of the neglected informal economy'.[210]

As discussed in chapter 2, there has been a shift in the conceptualisation of the informal economy from a traditional sector which was expected to disappear to a more integrated outlook on informality. The term 'informal economy' is used broadly to refer to the diverse forms of informal economic activities. However, in Nigeria, for policy making and statistical purpose, the term 'informal sector' is still being used to refer to all informal economic activities. Nonetheless 'informal economy' will be used to refer to all informal activites throughout this chapter unless in cases of direct quotation from any referenced sources.

3.2.1 The definition of the Nigerian informal economy

As stated in chapter two, the definitions of the informal economy and its related concepts were adopted at various ICLS, however, Nigeria has not applied these definitions uniformly and the term 'informal sector' is still used. The term 'informal sector' was first used in 1975 in Nigerian academic circles with the publication of an ILO working paper titled "Urban development, income

[208]Onyebueke V and Geyer M "The Informal Sector in Urban Nigeria: Reflections from almost four Decades of Research" (2011) 59 *Town and Regional Planning* at 66: Onokala U and Banwo A "Informal sector in Nigeria through the lens of apprenticeship, education and unemployment" (2015) 1(1) *American Advanced Research in Management* at 3: Adetula OV "Nigeria's rebased economy and its role in regional and global politics" (2014) 13 *E-International Relations*: Rebasing is basically the updating of a country's national statistics. Generally, to economists, the GDP is the market value of goods and services provided within a specific period in a country. This reveals the extent to which an economy is performing. However, there are two types of GDP- real and nominal GDP. Nominal GDP is the final value of goods and services produced and valued at the prices of the same year. While real GDP, refers to the value of goods and services calculated at unchanged prices of a given reference year. For economists, the real GDP is the index to determine if a country is experiencing economic growth. Hence, countries are expected to rebase their economic activities every five years to determine the real value of her economic activities: Nwoye UJ *et al* "Effect of Nigeria macroeconomic environment on the performance of the national economy: implications" (2015) 5(6) *International Journal of Academic Research in Business and Social Science* 42-51.

[209]Attah AP *et al* "Strategy for Reducing Unemployment in Nigeria: the Role of the Informal Sector" (December 2013) 2(1) *International Journal of Capacity Building in Education and Management (IJCBEM)* at 33.

[210] Dada JO "Harnessing the potentials of the informal sector for sustainable development- lessons from Nigeria" Available at http://unpan1.un.org/intradoc/groups/public/documents/AAPAM/UNPAN025582.pdf accessed on 10th September, 2015 at 2.

distribution, and employment in Lagos".[211] This study was undertaken by OJ Fapohunda, M Pieter van Dijk and J Reijmerink.[212]

The concept of informality in Nigeria aligns with the enterprise-centred definition of the informal economy.[213] In this regard, an informal enterprise is defined as 'that which operates without binding official regulations (but it may or may not regulate itself internally) as well as one that operates under official regulations that do not compel rendition of official returns on its operations or production process'.[214] From this definition, four kinds of economic units can be referred to as informal enterprises; these are units:[215]

- operating under binding official regulations with autonomous internal regulations;
- operating without autonomous internal regulations but under binding official regulations;
- outside the legal framework but have internal regulations;
- operating both outside the scope of a legal framework and lack internal regulations.

In making this classification, the National Bureau of Statistics (NBS) does not define what it meant by autonomous or internal regulations. On the other hand, official regulation can be said to mean the regulatory framework of Nigeria. Hence, any enterprise that operates outside of these regulations will be said to be informal. In addition, such enterprises do not pay tax to any statutory body.[216]

Similarly, the NBS agrees that informal activities in Nigeria are heterogeneous and cover almost every field of economic endeavour, however, official documents still persistently use the narrower 'informal sector' to describe the broad informal economy.[217] This may raise confusion especially with respect to policy formulation which could result in policy targetting Nigerians working in informal enterprises and excluding informal workers in formal enterprises.

The NBS gave a further definition of informal enterprises as enterprises 'owned and operated by self-employed persons, either alone or in partnership with another, primarily for the

[211] Op cit note 207 at 67.
[212] Fapohunda OJ *et al Urban development, income distribution, and employment in Lagos* (1975) International Labour Office.
[213] Op cit note 207 at 66.
[214] "National Manpower stock and employment generation survey" (2010) National Bureau of Statistics- Household and Micro-enterprises (Informal sector).
[215] Ibid.
[216] Ibid.
[217] Ibid.

generation of their own employment and income through the production or distribution of goods or provision of services'.[218] This definition is also exclusionary, as waged workers in the informal sector are not covered. However, this was addressed in the 2014 third quarter job survey report where informal jobs were defined 'as those generated by individuals or businesses employing less than 10 or those businesses operating with little or no structure'.[219]

While various Nigerian authors have come up with definitions of informality, in most cases the term 'informal sector' is used. Ojo defined the informal sector as consisting of small scale units engaged in the production and distribution of goods and services.[220] The primary objectives of these units are the generation of employment and income.[221] More expansively, the informal sector in Nigeria has been defined as economic activities in all sectors of the economy outside any form of government regulation.[222] These economic activities could be 'invisible, irregular, parallel, non-structured, background, underground, subterranean, unobserved or residual'.[223] These definitions are broader than the enterprise-approach.

The Nigerian informal economy can be found in almost every sphere of society. However, the nature of the informal economy varies within Nigerian states and is a reflection of the population, location, economic opportunities, culture and traditional institutions of each individual state.[224] Nonetheless, there are general characteristics of informality which manifest in every State in Nigeria.

3.2.2 Characteristics of the informal economy

Generally informal activities in Nigeria are characterized by the following:

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[218] Ibid.
[219] "3rd 2014 Quarter Job Creation Survey Report" National Bureau of Statistics available at www.nigeriastat.gov.ng/pages/download accessed on the 30th March 2015 3.
[220] Ojo F "Nigeria's manpower planning experience" (1981) in F. Ojo, A. Aderinto and Fasoyin (eds) *Manpower development and utilization in Nigeria: Problems and Polices* Lagos University Press: In many of the Nigerian authored articles used in this thesis and discovered during this research, the use of 'informal sector' was the prevalent term to describe informality.
[221] Ibid.
[222] Akintoye IR "Enhancing the performance of the informal sector for the economic development of Nigeria: A case study of Lagos State" (2006) 5 (1) *International Journal of Social Sciences* 100-12.
[223] Ibid.
[224] Op cit 208 (Onokala & Adeleke) at 3.

3.2.2.1 Gender and age segmentation

There is a relationship between informality and gender.[225] Although women are generally more dominant in the informal economy, more men own informal enterprises.[226] This could be linked to more men having access to capital and the culture of patriarchy in Nigeria as highlighted in chapter four.[227] As a result of this, there are significant gender differences in the informal economy.[228] In addition, this gender segmentation is more pronounced by sector. More women are found in the informal manufacturing sector for perishable items including food, beverage and tobacco, while men dominate the more capital intensives sectors like construction and building, as examined in the next chapter, this gender-based segregation is also manifested in the street vending sector in the country. [229]

Similarly, Nigeria has continued to experience population growth which has led to an overwhelming increase in the youth population.[230] The official population of youth in Nigeria is estimated to be 64.1 million as at 2012.[231] This makes youth about 60% of the entire population of Nigeria.[232] As a result, there is a rapid growth of the labour pool which far exceeds the available

[225] Chant S and Pedwell Carolyn "Women, gender and the informal economy: An assessment of ILO research and suggested ways forward" (2008) International Labour Office, Geneva: Xaba J *et al* "Informal sector in Sub-Saharan Africa" (2002) *Working paper on the Informal Economy* International Labour Office, Geneva: this relationship varies accross regions with Sub-Saharan Africa, Latin America and the Carribbean having more women in the informal economy: Otobe N " Gender and the informal economy: key challenges and policy response" (2017) *Employment Working Paper No 236* Employment Policy Department International Labour Office, Geneva at 1.

[226] *The World's Women 2010: Trends and statistics* (2010) United Nations: *The World's Women 2015: Trends and statistics* (2015) United Nations.

[227] Okafor EE *et al* "Barriers to women leadership and managerial aspirations in Lagos, Nigeria: An empirical analysis" (2011) 5(16) *African Journal of Business Management*.

[228] Hill E "The informal economy in theory and policy" (2017) in Jo Tee-Hee *et al*(eds) *The Routledge Handbook of Heterodox Economics: Theorising, analysing and transforming capitalism* Routledge: Although these differences might not be as a result of direct gender-based discrimination but are reflections of division of labour based on gender roles. Generally, women are assumed to be the primary care-givers within the family structure. This limits their capacity to work in many developing countries including Nigeria. Hence, in many cases, women seek work they can combine with their roles as caregivers which limits their productivity and economic security: *Progress of the World's Women 2015-2016: Transforming economies, realising rights* (2015) UN Women

[229] Op cit note 207 at 67.

[230] Kakwogh VV & Ikwuba A "Youth Unemployment in Nigeria: Causes and Related Issues" (2010) 6(4) *Canadian Social Sciences* at 232.

[231] "2012 National Baseline Youth Survey" National Bureau of Statistics & Federal Ministry of Youth Development Available at www.nigerianstat.gov.ng accessed on 3rd May, 2015 at 11: The National Bureau of Statistics Nigeria has not updated the population statistics of the country in the last five years. However, international organisations like Bloomberg have estimated that Nigeria's population is about 182 million as at 2016 and half of its people are youth. This means over 91 million Nigerians are youth: Mbachu D and Alake T "Nigeria population at 182 million, with widening youth bulge" (November, 2016) *Bloomberg Markets* available at https://www.bloomberg.com/news/articles/2016-11-08/nigerian-population-hits-182-million-with-widening-youth-bulge accessed on the 2nd of October, 2017.

[232] Ibid (2012 National Baseline) at 19.

formal jobs.[233] This challenge is exacerbated by the migration of youth to urban areas in search of employment.[234] Unfortunately, job opportunities in formal establishments are limited. This leaves youth to either suffer unemployment or work in the informal economy.[235] Working in the informal economy is chosen by many unemployed youth. Although the informal economy has contributed to ameliorating unemployment among Nigerian youth, the poor working conditions make them vulnerable.[236]

3.2.2.2 Location of informal enterprises

The majority of informal enterprises are located in informal working places or housing. Many informal actors do not have fixed locations; they are generally found wherever their goods or services are demanded.[237] In addition, the location is determined by the nature of the informal activity. For street vendors, their place of business is in public spaces.

3.2.2.3 Lack of protection and decent work deficits

As mentioned in chapter two, the majority of workers within the informal economy work outside of legal or formal arrangements.[238] Specifically, informal workers like street vendors have no rights at work, social protection and social dialogue. The absence of work rights may result in exploitation, poor working conditions, lack of property rights and the associated effects of decent work deficits. Similarly, for informal workers in formal workplace, they are paid below the

[233] Fares J *et al*"School to Work transition in Sub-Saharan Africa: an Overview" Understanding Children's work. An Inter-agency Research Cooperation Project (UNICEF) (November 2005). Available at http://ssrm.com/abstract=1780265 accessed on the 27th March 2015 232: "Study on skills development for the informal sector of the Nigerian economy" (2009) Nigerian Institute of Social and Economic Research (NISER) & World Bank available at http://siteresources.worldbank.org/INTLM/Resources/390041-1212776476091/5078455-1398787692813/9552655-1398787856039/Nigeria-Skills_Development_for_the_Informal_Sector.pdf accessed on the 13th of March 2018 at 3.

[234] Ibid.

[235] Onno R "Nigeria's youth: Turning challenge into opportunity" (2011) A convocation lecture presented on the events of the 23rd Convocation of the Federal University of Technology Owerri, Imo State Nigeria availiable at http://siteresources.worldbank.org/NIGERIAEXTN/Resources/Nigerian-Youth-Paper-Onno-Ruhl.pdf accessed on the 20th February, 2018.

[236] Op cit note 209 at 33.

[237] Abolade O & Adeboyejo AT "Urban informal enterprises and space utilization in Ibadan, Nigeria" (2013) 3(3) *World Environment*.

[238] Chen M "Women in the informal sector: A global picture, the global movement" (2001) XXI (1) *SAIS Review* at 71.

national minimum wage and lack access to social protection.[239] Also, such workers cannot form organisations to protect their interests for fear of reprisal from the employers.[240]

3.2.2.4 Ease/freedom of entry and exit

New entrants, who have aquired skills or small amounts of capital from relatives can access the informal economy unhindered.[241] The lack of professional bodies or unions and the by-passing of government requirements in the formal economy makes the ease of entry into the informal economy attractive.[242]

3.2.2.5 Low literacy levels

Studies have shown that compared to formal workers, more informal workers are illiterate and have little formal schooling.[243] This can be linked to the low skills requirement within the informal economy. Although increasingly globally, more people with formal education participate actively in the informal economy mostly because of its flexibility and as an additional source of income.

3.2.2.6 Life span of informal enterprises

Businesses in the informal economy are usually operated by the capital and skills of the owner. Thus in most cases the death of the owner brings an end to the business. Furthermore, it has been suggested that the life span of any start up business in Nigeria is 5 years which has been linked to the unconducive business environment for small and medium scale enterprises.[244]

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[239] Aderemi T & Ogwuike F "Welfare implications of minimum wage increase in Nigeria" (2017) 44(2) *International Journal of Social Economics*:

[240] Rasak B *et al* "Casual work arrangements(CWAs) and its effect on right to freedom of association in Nigeria" (2019) 7(1) *International Journal of Innovative Legal & Political Studies* 1-17.

[241] Udoh JE "Taxing the informal economy in Nigeria: Issues, challenges and opportunities" (2015) 6(10) *International Journal of Business and Social Science* 160-75: Folawewo AO "Determinants of informal sector labour demand: An application of laternative methodological approaches to South Western states of Nigeria" (2006) 6(2) *Applied Econometrics and International Development* 147-60.

[242] Viljoen JM *Economic and social aspects of street waste pickers in South Africa* (2014) Unpublished PhD Thesis Department of Economics and Econometrics University of Johannesburg, South Africa.

[243] Adams AV, de Silva SJ and Razmara S *Improving skills development in the informal sector* (2013) The World Bank at 179: Nigeria's literacy score is 57.2: *The Global Human Capital Report: Preparing people for the Future of Work* (2017) World Economic Forum 146.

[244] Aremu MA & Adeyemi SL "Small and medium scale enterprises as a survival strategy for employment generation in Nigeria" (2011) 4(1) *Journal of Sustainable Development* at 201: Under the Global Competitivness Index, Nigeria is ranked 125 out of 137 countries. This index measures the factors including human development that drive long-term economic growth. This affirms the effect of inappropriate economic and socio-political policies: Schwab K(ed) *The Global Competitiveness Report 20-2018* (2017) World Economic Forum at 224.

3.2.3 Size of the informal economy

The Nigerian informal economy is the largest and probably the most dynamic in Africa.[245] Nigeria has an estimated population of 184 million and represented Africa's largest economy with a rebased Gross Domestic Product (GDP) of 521.5 billion Nigerian Naira (NGN) in 2013.[246] However, the specific size and rate of growth of this economy is difficult to establish because of the lack of accurate statistical records in Nigeria.[247] Nonetheless, there are helpful indicators which are discussed below.

Informal employment comprise of one half to three quarters of non-agricultural employment in developing countries.[248] In Sub-Saharan Africa, including Nigeria, informal employment comprises 72% of non-agricultural employment.[249] In a 2014 study which analysed the size of the Nigerian informal economy, the participation rate in this economy was pegged at 65.4%, and according to a survey by the National Bureau of Statistics in January 2015, the number of informal jobs created by the third quarter of 2014 was 198, 144 as against 145, 465 of formal jobs.[250] Also, in the third quarter of 2016 the informal economy accounted for 77.3% of all new jobs created.[251] However, no detail is provided as to the specific informal sectors that provided these jobs. Generally, in Nigeria, the informal economy is said to account for 80% of non-agricultural employment, 60% of urban employment and over 90% of new jobs.[252] In addition, the informal economy is said to contribute to almost half of the new Nigerian economy.[253]

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[245] Meagher K and Yinusa MB "Passing the buck: structural adjustment and the Nigerian informal sector" (1996) UNRIS Discussion Paper at 2.

[246] Op cit note 223 at 3: The population is expected to increase by over 18 million people in 2025. Available at https://www.livepopulation.com/country/nigeria.html accessed on the 22nd of August, 2017.

[247] Op cit note 61 at 89.

[248] Op cit note 61 at 49.

[249] Op cit note 61: "Women and Men in the Informal Economy; A Statistical Picture" (2002) Employment Sector ILO Geneva at 6.

[250] Igudia EO *The Nigerian Informal Economy: A Regional Analysis* (2014) Unpublished PhD Thesis, Nottingham Trent University at 172: "3rd 2014 Quarter Job Creation Survey Report" National Bureau of Statistics available at www.nigeriastat.gov.ng/pages/download accessed on the 30th March 2015.

[251] "Job Creation Survey, 2nd and 3rd Quarters 2016-Summary findings and selected tables" (2016) Available at file:///C:/Users/user/Downloads/job%20creation%20selected%20tables%20q2%20q3%202016.pdf accessed on the 21st of April 2017 1-12 at 3.

[252] Op cit note 61.

[253] "Formal and informal sector split of Gross Domestic Product" (June 2016) National Bureau of Statistics available at www.nigeriastat.gov.ng/pages/download accessed on the 2nd of October, 2017: The informal economy contributed 41.18% which is about 38, 773, 565 Naira to the Nigerian economy in 2015.

The size of the informal economy in Nigeria continues to expand: this has been linked to the nation's weak/unstable socio-economic and political circumstances, among other factors.[254]

3.2.4 Factors contributing to the expansion of the Nigerian informal economy

Broadly, it has been argued that the economic role of the informal economy in reducing poverty, providing access to cheap goods and services, and generating employment is responsible for its continued persistence and expansion in developing countries.[255] Although this may be true, in Nigeria, there are additional factors aiding the expansion and continuous persistence of the informal economy.

3.2.4.1 Political instability

Although Nigeria attained the status of an independent country on 1st October 1960, about half of the nation's post-independence period has been under the rule of the military.[256] The change in leadership was usually violent and by coup.[257] These violent changes in leadership have resulted in political instability in Nigeria.[258] The various military administrations were also known for inappropriate economic policies which contributed to the current financial instability of the country.[259]

Today, Nigeria is a democratic federal republic with a presidential system of government. Despite this democracy, the nation has continued to experience significant political challenges reflected in her weak institutions resulting in poor governance. A major reason for this is the lack of continuity.[260] Successive government(s) have unconnected agendas, with little consideration for building on the work of the previous administrations, hence facilitating policy uncertainity and

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[254] Op cit note 61 at 85.

[255] "Links with economic crisis" WIEGO available at http://www.wiego.org/informal-economy/links-economic-crises accessed on the 10th of March, 2018: Loayza NV"Informality in the process of development and growth" (2016) 39(12) *The World Economy* 1856-1916.

[256] Olorungbemi ST "The impact of military coup d'etat on political development in Nigeria" (2015) 6(10) *International Journal of Business and Social Science* 194-202.

[257] Ibid

[258] Obioha EE "Role of the military in democratic transitions and successions in Nigeria" (2016) 8(1) *International Journal of Social Sciences and Humanity Studies* 251-268.

[259] Op cit note 61 at 71

[260] "Lack of continuity a major Nigerian problem-Obasanjo" (August 2015) *The Cable* Available at https://www.thecable.ng/obj-lack-continuity-major-nigerian-problem accessed on the 21st of April, 2017: Makinde T "Problems of policy implementation in developing nations: the Nigerian experience" (2005) *Journal of Social Science* 63-69.

poor governance which the ILO has linked to the expansion of the informal economy in developing countries like Nigeria.[261]

3.2.4.2 Institutional fragility

Deficits in the management of resources and poor governance undermine the efficiency of institutions. According to Richard Joseph, 'no one will describe Nigeria, in large part as a well-governed country…', this captures the governance challenge of Nigeria which can also be linked to the culture of corruption embedded in the political and economic system in Nigeria.[262]

Corruption, defined as behaviour which 'involves the violation of established rules for personal gain and profit',[263] is a global phenomenon and a challenge to good governance.[264] Corruption is stated to be the major reason for various development issues including poverty in Nigeria.[265] In the 2016 Corruption Perception Index (CPI), Nigeria ranked 136 out of 176 countries in terms of corruption.[266] The almost uncontrollable misappropriation and stealing of national resources by government officials at every level attests to this ranking.[267] Such corruption is

[261] "Transitioning from the informal to the formal economy" (2014) Report V(1) International Labour Conference, 103rd Session, 2014 at 7.

[262] Joseph R "Economic transformation and development governance in Nigeria: the promise of the Obama era" (May 2009) paper presented at the Inaugural BusinessDay Scholars in Society Forum in Lagos, Nigeria available at https://www.brookings.edu/on-the-record/economic-transformation-and-developmental-governance-in-nigeria-the-promise-of-the-obama-era/ accessed on the 21st of April 2017: Fajana S "The Nigerian Informal Economy Instigating Decent Work and pay, and National Development through Unionisation" (2008) 30(4). *Employees Relation* at 373: *The Africa Competitiveness Report: Addressing Africa's demographic dividend* (2017) World Economic Forum at 138.

[263] Sen A *Development as Freedom* (1999) Borzoi Books at 275: John Atangba *The jinx of African leaders* (2014) AuthorHouse.

[264] Ogundiya IS "Political corruptions in Nigeria: theoretical perspectives and some explanations" (2009) 11(4) *Anthropologist* 281-292 at 287.

[265] Ibid: Schwab K (ed) *The Global Competitiveness Report 2017-18* World Economic Forum: Awojobi ON "Cultivating policy for development in Nigeria: Ana appraisal of President Goodluck Jonathan's transformation agenda (2011-2014)" (2015) 9 *International Research Journal of Humanities, Engineering & Pharmaceutical Sciences* 1-11.

[266] This index was created by Transparency International in 1995. The data for the CPI is received directly from data sources where the data is proprietary or not yet available publicly; or the data is sourced from the internet. The CPI is the most quoted corruption index globally: Srinivasan S "The human factor: explaining the error in the 2014 and 2015 Corruption Perceptions Index results" (2017) Transparency International available at https://medium.com/@anticorruption/the-human-factor-explaining-the-error-in-the-2014-and-2015-corruption-perceptions-index-results-11da3f0a90d2 accessed on the 2nd of October, 2017: available at https://www.transparency.org/news/feature/corruption_perceptions_index_2016 accessed on the 2nd of October, 2017.

[267] Prior to the recent fall of international oil prices, Nigeria generated $50.3 billion in 2011 from the sale of crude oil alone. This was converted by government officials for personal use rather for the socio-economic development of the country: "Nigeria" Natural Resource Governance Institute available http://www.resourcegovernance.org/our-work/country/nigeria at accessed on the 21st of April, 2017: Okon BA *et al* "Corruption as a social problem and its

institutional and has contributed to the inability of government ministries to provide infrastructure as well as incentives for structural reforms and this can linked to the expansion of the informal economy.[268]

Furthermore, it is suggested that informality is more prevalent in countries that have weak monitoring mechanisms.[269] In the labour market, the primary monitoring mechanism is through labour inspection.[270] For example, Nigeria's Factories Act provides for labour inspection, to ensure that existing work conditions in industries comply with labour laws.[271] However, there are inadequate resources to monitor the implementation and enforcement of labour standards in industries.[272] This makes it easier for employers to introduce elements of informality into the workplace. In addition, this Act which is the only labour regulation providing for labour inspection, does not take into account all categories of workers and inspections conducted by the Ministry of Labour are primarily done in the formal sector.[273] As a result, many workers continue to operate outside the protection of labour law. Hence, as recommended in chapter eight, labour inspection is an important tool for the formalisation process and to promote decent work for all.

3.2.4.3 High rate of social inequality and income gap

Nigeria is a highly unequal country; over 50% of her population live in poverty and over 65% of the national resources are controlled by 20% of her population.[274] This inequality, as measured by the Gini Index (48.4), makes it the highest in West Africa as at 2013.[275] Inequality is a social

implication on Nigerian society: A review of anti-corrupt policies" (2013) 4(1) *Meditterranean Journal of Social Sciences* 423-30.

[268] Op cit note 262 (fajana) at 337: recently, the federal government introduced the implementation of the Treasury Single Account (TSA) to promote accountability of the government's revenues and cash flows. Also, between 2015 and 2016, the government enforced the Bank Verification Number (BVN) as means to curb corruption through the monitoring of financial transactions of Nigerians. These process have curbed financial crimes to a certain extent: Social and financial services are examples of infrastructure needed to halt the expansion of the informal economy:

[269] Op cit note 184 (Aryeetey) at 8.

[270] "International Labour Standards on Labour Inspection" available at www.ilo.org accessed on the 15th of July, 2017.

[271] Section 65 No. 16 of 1987 Laws of the Federation.

[272] Adedeji GA *et al* "Ergonomic evaluation and labour inspection in cluster-sawmill in Port Harcourt, Nigeria" (2016) 12(2) *Pro Ligno* at 39: Adewumi F & Adenugba A *The state of workers rights in Nigeria:An examination of the banking,oiland gas and telecommunication sectors* (2010) Friedrich-Ebert-Stiftung, Nigeria at 62.

[273] Hameed T " The Factories Act and the development of occupational health and safety in Nigeria" (2013) 7(3) *Labour Law Review (NJLIR)* 24-63 at 63: "Nigeria 2016 Human Rights Report" (2016) available at https://www.state.gov/documents/organization/265500.pdf accessed on the 9th of May, 2017 1-48 at 45.

[274] Hagen-Zanker J & Holmes R "Social protection in Nigeria" (2012) *Synthesis Report* Overseas Development Institute available at https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7583.pdf accessed on the 5th of May, 2017 at 1.

[275] Gini Index is a measure of the inequality of income or consumption expenditure among individuals or households within an economy: Bloch R *et al* "Economic development in urban Nigeria" Urbanisation Research Nigeria (URN)

problem which is closely linked with poverty and this is a concern in Nigeria.[276] Also, this inequality implies that upward mobility opportunities like access to decent jobs and good income are limited.[277] Furthermore, the government and the private formal economy lack the ability to create quality work.[278] Consequently, many Nigerians work partly or fully in the informal economy.[279]

3.2.4.4 Low economic performance and poor trade patterns

Presently, the inflation rate in Nigeria is 13.3.[280] The various causes of inflation includes fluctuations in the price of crude oil, increases in foreign exchange rates, increase in the costs of production, unsuitable monetary policies, and other fiscal reasons.[281] Inflation has implications on levels of employment and poverty, particularly for women and children, who participate in informal economic activities for survival.

Furthermore, the attitude of government towards the informal economy has been largely indifferent and as a result, government has failed to initiate effective policies, or provide adequate funds and create an enabling business environment to encourage the formalisation of informal enterprises. Yet, the fall in international oil prices in the 1980s and recently in the 2000s, has resulted in more Nigerians relying on the informal economy for affordable goods and services contributing to the growth of this economy.[282]

Research Report (2015) ICF International. Available at http://urn.icfwebservices.com accessed on 3rd November 2015 at 12: "Income Gini coefficient" (2013) *Human Development Reports* United Nations Development Programme available at http://hdr.undp.org/en/content/income-gini-coefficient accessed on the 2nd of October, 2017.

[276] Op cit note 274.

[277] Holmes R *et al Social Protection in Nigeria, mapping programmes and their effectiveness* (2012) Overseas Development Institute available at https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7582.pdf accessed on the 10th of October, 2017.

[278] "The informal economy: enabling transition to formalisation" *Background Document* Tripartite Interregional Symposium on the Informal Economy: Enabling Transition to Formalisation" (2007) International Labour Office, Geneva available at http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/meetingdocument/wcms_125489.pdf accessed on the 2nd of October, 2017 at 10.

[279] Op cite note 245 at 3.

[280] "Inflation rates (per cent)" Data & Statistics, Central Bank of Nigeria Available at https://www.cbn.gov.ng/rates/inflrates.asp accessed on the 18th May, 2018: However, Nigeria just officially came out of recession: a good inflation rate is about 2.0 % and below: "Inflation, detailed information about inflation" available at http://www.global-rates.com/economic-indicators/inflation/inflation-information.aspx accessed on the 15th of June, 2018.

[281] Asekunowo VO "The Causes of Persistent Inflation in Nigeria" (December 2016) 7(2) *CBN Journal of Applied* 49-75 at 70-1.

[282] "Informal economy survey report" (2014) available at http://www.phillipsconsulting.net/files/informal-economy-survey-report-nov-2014.pdf accessed on the 14th January 2018 at 16.

3.2.4.5 Globalisation

Globalisation has been linked to the rapid expansion of the informal economy in Sub-Saharan Africa including Nigeria.[283] Globalisation entails new patterns of global trade, cross-border capital movements and international migration of workers, which have implications for the economy broadly and specifically for the informal economy in developing countries..[284] Particularly, the increase of non-standard work as employers make use of arrangements such as outsourcing and casual work as a means of remaining competitive.[285] This implies more workers work in conditions where their rights are not protected under the law or formal arrangements.[286] These forms of work all fall within the sphere of the informal economy.

Furthermore, the private sector which would have created additional jobs to complement the public sector lacks a conducive business environment.[287] This is explained by the structuralist school approach, which views the informal economy as being integral to capitalism because it seeks to supress labour costs.[288]

Generally, within the context of informality, three phases of development can be identified in Nigeria since independence: 1) the pre-oil boom; 2) the post-oil boom era; and, 3) the present Nigerian informal economy.[289]

3.2.5 Development phases of the Nigerian informal economy

The pre-oil boom phase, from 1960 to 1970, was the first decade of Nigeria's independence from the British. During this phase, the informal economy was not considered a separate 'sector'.[290] Traditional crafts and petty trade were lumped together with the rural subsistence sector for

[283] Op cit note 21.
[284] Op cit note 21 at 10.
[285] Danesi R "The changing nature of work: causes and effects on employment relationships in Nigeria" (2015) Available at https://www.ilera2015.com/dynamic/full/IL92.pdf accessed on the 18th of April, 2017 1-32 at 5-7.
[286] Ibid.
[287] Op cit note 61 at 86
[288] Nchito WS "formalising trading spaces and places: An analysis of the informal sector in Lusaka, Zambia" (2011) in Banik Dan (ed) *The legal empowerment agenda: Poverty, labour and the informal economy in Africa* at 92.
[289] Igudia E *et al* "Austerity measures or entrepreneurial development? The case of the Nigerian informal economy" (2014) Discussion Papers in Economics Nottingham Trent University No 2014/1. Available at http://www.ntu.ac.uk/research accessed on 16th September, 2015 at 8.
[290] Nwaka GI"The urban informal sector in Nigeria: towards economic development, environmental health and social harmony" (May 2005) 1(1) *Global Urban Development* at 4.

statistical purposes.[291] Informal activities that produced 'modern' goods and services were often placed in the small-scale industry within the formal sector.[292]

Policy reflected an attitude that the informal economy had some contributions to make in terms of creation of employment and the increased use of local raw material, but the formal sector was regarded as the real engine of economic growth.[293] In addition, the informal economy was seen as only valuable for the maintenance of indigenous participation in sectors such as retail trade.[294] However, low levels of technical education led to poor productivity and the contribution of the informal economy was fairly marginal.[295] In response, the government drafted the second National Development Plan (NDP) 1970-1974 in which 800,000 NGN were allocated for the creation of three Industrial Development Centres (IDC).[296] This was done to encourage the growth of the informal economy.[297] However, this initiative was largely sabotaged by underfunding, political lending and its inappropriateness to the needs of informal economy actors.[298] Nonetheless, the average Nigerian worker had a decent standard of living comparable to the international standards irrespective of whether the worker was employed in the formal or informal economies.[299] However, this changed with the expansion of the oil industry in the 1970s.[300]

Crude oil was discovered in commercial quantities in Nigeria in 1956 and production commenced in 1958.[301] With this discovery, Nigeria was regarded as an oil rich state.[302] This oil boom led to an increase in urban based opportunities in administration, construction and services.[303] However, these new opportunities led to the neglect of agriculture and the small and micro enterprises which were hitherto the nation's backbone as a result of migration from rural to

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[291] Op cit note 68 at 10.
[292] Op cit note 68.
[293] Op cit note 68 at 11.
[294] Op cit note 68 at 11.
[295] Op cit note 68 at 11.
[296] Op cit note 68 at 11.
[297] Olutunla G "Entrepreneurship for economic development" (2001). Available at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.465.5268&rep=rep1&type=pdf accessed on 22nd October, 2015 13.
[298] Op cit note 245 at 3.
[299] Adesipe B " Impact of Oil on Nigeria's economic policy formulation" (2004) a paper presented at the conference organised by Overseas Development Institute in conjunction with Nigerian Economic Summit Group. Available at http://www.odi.org/sites/odi.org.uk/files/odi-assets/events-documents/117.pdf accessed on 14th October, 2015 1.
[300] Ibid.
[301] Ibid.
[302] Ibid.
[303] Op cit note 61 at 86.

the urban areas to partake in the growing and prosperous oil driven economy.[304] This resulted in the rapid growth of the urban population, with numerous environmental and socio-economic effects.[305] Clearly, not all these migrants could be absorbed into the formal economy.[306] This consequently led to the expansion of the informal economy to meet the demands for moderately priced goods and services by low income earners.[307] The basic demands of low income earners were for food, beverage and tobacco.[308] Furthermore, this oil boom led to the dependence on readily available imported goods which, coupled with the low quality of production in informal sectors, further expanded the informal economy.[309] This import oriented consumption turned Nigeria into a perennial net importer.[310]

The economic environment created by the oil boom led to the emergence of an informal economy 'which though expanding, energetic and diversified was also highly vulnerable on the supply side to formal and international market conditions, and on the demand side, dependent on the buoyancy of working class incomes'.[311] As earlier stated, although polices were drafted to enhance productivity and earnings in agriculture and small scale industries, there was inadequate protection of indigenous products from unfair competition with imported and mass produced goods.[312] Consequently, informal activities were reduced to trading, services and transportation.[313] By the 1980s, Nigeria began to experience economic crisis when revenue decreased with low international oil prices.[314] Consequently, the government introduced the Economic Stabilization

[304] Akpan NS "From agriculture to petroleum oil production: what has changed about Nigeria's rural development?" (2012) 1(3) *International Journal of Developing Societies* at 103-4: Aworemi JR *et al* " An appraisal of the factors influencing rural-urban migration in some selected local government areas of Lagos State Nigeria" (2011) 4(3) *Journal of Sustainable Development* at 138.
[305] Watts M & Bassett TJ "Politics, the state and agrarian development: A comparative study of Nigeria and the Ivory Coast" (1986) 15(2) *Political Geography Quarterly* 103-25.
[306] Op cit note 61 at 86.
[307] Op cit note 61 at 86.
[308] Op cit note 211.
[309] Op cit note 61 at 87.
[310] Op cit note 299 at 3.
[311] Op cit note 245 at 3
[312] These policies led to the creation of small IDC and small scale industry credit scheme (SSICS) with the aim of providing technical advice, training and credit: Op cite note 290 at 4.
[313] Ibid.
[314] Ayedun CA *et al* "Towards ensuring sustainable urban growth and development in Nigeria: Challenges and strategies" (2011) 1(2) *Business Management Dynamics* at 100.

Act in 1982 and later the International Monetary Funds' (IMF) Structural Adjustment Plan (SAP) in 1986.[315] This ushered in the 2nd development phase of the informal economy.

For the first time, the so-called informal sector was recognised as a distinct sector of the economy in the third NDP (1975-1980).[316] This recognition came amidst government's concern over the increasing unemployment rate.[317] The NDP focused on the informal economy as offering opportunities for labour absorption by virtue of its steady growth.[318] Despite this official recognition, there was no concerted state support for the informal economy as the formal economy was still perceived as the real engine of the economy.[319]

In line with the dualist theory that the informal economy was as a result of imbalanced economies making it dependent of the formal sector, the informal sector in Nigeria was equally impacted by the economic crisis in the formal sector.[320] Inflation, scarcity of imported goods, a high unemployment rate and falling wages in the formal sector had a causal effect on the informal economy in terms of increased input costs, contracting markets and erosion of capital because of rising household expenses.[321] Consequently, leading to increased unemployment in the informal economy which became a national issue that was addressed in the fourth NDP (1980-1985).[322] It became increasingly clear that the informal economy could not absorb labour without government's intervention to raise incomes.[323] However, despite this obvious problem, policy toward to the various sectors in the informal economy such as street vending, became even more negative and repressive.[324]

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[315] Okezie CA & Amir BH "Economic crossroads: the experiences of Nigeria and lessons from Malaysia" (August 2011) 3(8) *Journal of Development and Agriculture Economics* at 370.
[316] Op cit note 68 at 12.
[317] The reduction of unemployment was a major objective of the third NDP. It has been opined that though this NDP had good objectives and priority was given to projects like agriculture, the meagre allocations to these projects showed government's insincere intention to achieve the objectives of this plan: Iheanacho EN "National development planning in Nigeria: an endless search for appropriate development strategy" (August 2014) 5(2) *International Journal of Economic Development Research and Investment* at 53.
[318] It was estimated that the informal sector had grown to consist of 30% of non-agricultural wage employment in the country. This was particularly obvious in Lagos (the then capital of Nigeria) where about 50% of its workforce were employed in the informal sector: Op cit note 212.
[319] Op cit note 68 at 12.
[320] Op cit note 68: see the discussion on the dualist perspective under heading 2.2.2.
[321] Op cit note 68 at 16.
[322] Op cit note 68 at 18
[323] Op cit note 68 at 18
[324] Op cit note 61 at 87.

In 1983, the second republic in Nigeria was overthrown by the military and Major-General Muhammadu Buhari became the military leader in Nigeria.[325] This military administration was dissatisfied with the conditions of the urban environment and it made some misguided efforts to curb urban growth.[326] This was done through an aggressive environmental awareness and sanitation programme called War Against Environmental Indiscipline (WAI).[327] Unfortunately, informal activities were the worst hit by this campaign, as informal operators were blamed for the bulk of societal evil and ills.[328] Although the campaign had potential merit, the overzealousness of government officials in its enforcement led to the continuous harassment of informal sector operators such as street vendors who were forced to relocate to remote areas on the outskirts of cities.[329] In addition, many buildings and structures were destroyed and this forced informal operators into informal housing structures thereby increasing their operational costs.[330] This harassment of informal sector operators continues today in many states in Nigeria.[331]

Furthermore, the IMF's SAPs such as tighter monetary policy, fiscal constraints, an exchange rate depreciation, privatisation, capital market and external trade liberalisation which were adopted in Nigeria had negative repercussions on the informal economy.[332] In particular, with respect to its inability to absorb workers who were rendered unemployed as a result of the dramatic cuts in waged jobs in the public and private sectors.[333] In addition, the lines between the formal and informal enterprises became blurred, as formal enterprises began to establish linkages (which were sometimes exploitative) with their informal sector counterparts to enable them to cope with the economic difficulties.[334]

Subsequently, as a palliative measure, the federal government created two institutional measures under the SAPs which directly impacted the informal economy.[335] These measures were

[325] Joseph R "The overthrow of Nigeria's second republic" (March 1984) 83(491) *Current History* 122.
[326] Op cit note 61: Op cit note 290 at 7.
[327] Op cit note 290 at 7.
[328] Op cit note 61 at 87.
[329] Op cit note 290 at 7.
[330] Op cit note 68 at 18: the increased costs was a result of rental costs which they did not pay as street vendors.
[331] Chukuezi CC "Urban informal sector and unemployment in third world cities: the situation in Nigeria" (August 2010) 6(8) *Asian Social Science* at 132.
[332] Op cit note 21 at 15.
[333] Op cit note 61 at 88.
[334] Op cit note 61 at 88.
[335] Op cit note 68 at 21.

the National Directorate of Employment (NDE) and the People's bank. These were basically shock absorbers to enable the informal economy to cope with the negative effects of SAPs.[336]

In the last two decades, the Nigerian government has not formulated any detailed policy with respect to the informal economy. The post-fourth NDP (1986-1998) period has had no articulated development plan, although key policies of SAPs remained prominent at this time.[337] In 1999, a four year development plan (1999-2003) was formulated with the objective of pursuing a strong broad-based economy.[338] In reality, the objective of this plan did not materialise.[339] This prompted the ruling party to design a new economic programme in 2003, called National Economic Empowerment and Development Strategy (NEEDS). The objective of NEEDS was to confront macroeconomic imbalances, social challenges and structural problems in the Nigerian economy.[340] The intention was to create wealth and reduce poverty which would have had a ripple effect on the informal economy. Unfortunately, NEEDS had only a marginal impact on the Nigerian economy.[341]

Recently, since 2009, the regulatory activities of the Central Bank of Nigeria (CBN), after Sanusi Lamido Sanusi became the CBN governor, has had two major implications for the growth of the informal economy.[342] The CBN implemented restructural reforms leading to the recapitalisation of banks.[343] In a bid to comply with this reform, many bank employees were

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[336] The NDE had the goal of solving the increasing unemployment particularly among youth while the Peoples' bank had the mandate of providing finance for petty businesses. The Peoples' Bank was created by the government to promote rural financial empowerment and had the objective of tackling poverty through the provision of financial loans. This bank was established by the Peoples Bank Decree (now Act) of 1990. Although, the bank was initially successful in providing empowerment to poor citizens there were allegations that officials ran it like a personal charity. In addition, it was limited by low repayment rate and lack of sustainability because of its dependence on government subsidy: Iheduru N "Women entrepreneurship and development: The gendering of microfinance in Nigeria" (July 2002) Paper presented at the 18th International Interdisciplinary Congress on Women, Makerere University, Kampala-Uganda. Available at http://www.gdrc.org/icm/country/nigeria-women.html accessed on the 2nd of December, 2017.

[337] Op cite note 300 at 102.

[338] Ibid.

[339] Ikeanyibe OM "Development planning in Nigeria: Reflections on the National Economic Empowerement and Development Strategy (NEEDS) 2003-2007" (2009) 20(3) *Journal of Social Sciences* at 203.

[340] Op cit note 331 at 132: Abdul-Azeez I *et al* "Projecting the possible impacts of the National Economic Empowerement and Development Strategy (NEEDS) on Human Development in Nigeria" (2011) 3(4) *International Journal of Economic and Finance*.

[341] Olusoji M & Oloba O "Impact of National Economic Empowerment and Development Strategy (NEEDS) on the private sector: A case study of power sector" (2014) 4(3) *Journal of Public Administration and Governance* 144-58 at 146-7: Indermit GS "Nigeria-National Economic empowerment and Development Strategy and joint IDA-IMF staff advisory note" (2005) *Report No. 33305-NG*.

[342] Ogbuabor JE & Malaolu VA "Size and the causes of the informal sector of the Nigerian economy: Evidence from error correction mimic model" (2013) 4(1) *Journal of Economics and Sustainable Development* 99.

[343] Recapitalisation means the leap of the minimum capital base of a bank to increase its ability to absolve losses: Dumbili E "McDonaldization of Nigerian Banking Industry in the Post-consolidated Era: An exploration of the

retrenched leading to such employees seeking refuge in the informal economy.[344] Similarly, informal enterprises that could no longer access credit from banks resorted to informal financial institutions to fund their operations.[345] In addition, the liberalisation of the communication sector led to the expansion of the informal economy because of the increase in the number of telecommunication call centres around Nigeria.[346]

More recently in the last five years, the informal economy has been credited with contributing to more than half of the Nigeria's GDP.[347] Despite this contribution, government has not formulated policy to harness the potentials of the informal economy and to protect the rights of workers. Old and repressive laws still govern the activities of the informal economy despite Nigeria being a signatory to R204.[348]

3.2.6 The role and importance of the informal economy in Nigeria

The significance of the informal economy to domestic production and growth in Nigeria is not in doubt.[349] Millions of Nigerians gain their livelihood through participation in informal economic activities.[350] Increasingly, the role and importance of the informal economy with respect to revenue generation and employment creation is becoming more obvious.

Although this thesis is broadly concerned with aspects of informal employment, the revenue generation contribution of the informal economy will be briefly highlighted.

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unavoidable consequences" (2013) 4(1) *Mediterranean Journal of Social Sciences* 343-53: Kenn-Ndubuisi JI & Akani HW "Effects of recapitalisation on commercial banks survival in Nigeria: Pre and post colonial analysis" (2015) 3(9) European Journal of Accounting, auditing and Finance Research.

[344] Op cit note 342.

[345] Op cit note 342 at 100: informal financial institutions are institutions that conduct transactions, loans and deposits outside the regulation of a central monetary or financial market authority: Aryeetey E, Hettige H, Nissanke M and Steel W "Financial market fragementation and reforms in Ghana, Malawai, Nigeria and Tanzania" (1997) 11(2) *The World Bank Economic Review* at 196: Yusuf N, Ijaiya G and Ijaiya M "Informal financial institutions and poverty reduction in the informal sector of Offa town, Kwara state: A case study of rotating savings and credit associations (ROSCAs) (2009) 20(1) *Journal of Social Science* 71-81.

[346] Op cit note 342 at 100: for discussions on the liberalisation of the telecommunication sector in Nigeria, see Obokoh L and Goldman Ge "Infrastructure deficiency and the performance of small-and-meduim-sized enterprises in Nigeria's liberalised economy" (2016) 16(1) *Acta Commercii* 1-10: Araromi A "Regulatory framework of telecommunication sector: A comparative analysis between Nigeria and South Africa" (2015) 23(2) *African Journal of International and Comparative Law* 273-90.

[347] Awojobi ON *et al* "The Role of the Informal Sector in the Development of the Nigerian Economy" (July 2014) 2(7) *International Journal of Education and Research* 301.

[348] An example of such laws are the various state laws in Nigeria which criminalise street vending which is an informal sector. One of such law is discussed in chapter four.

[349] Op cit note 184 (Aryeetey) at 21.

[350] Op cit note 262 (fajana) at 372.

3.2.6.1 Revenue generation

As earlier stated, with rebasing, Nigeria's GDP increased to 80.22 trillion NGN ($509.9 billion) making it the largest economy in Africa in 2013.[351] The number of economic activities surveyed for this rebasing increased from 33 to 44 including the Nigerian informal economy.[352] The agriculture sector contributed N17.6 trillion; the industrial sector contribution being N20.7 trillion and the service sector contributed the highest with N41.9 trillion in 2013. The largest component of the service sector is the wholesale and retail trade within which the informal street vending sector falls.[353] The contribution of the service sector is about 51.89% of the total GDP. Overall, the informal economy accounted for 57.7% of this new rebased GDP.[354] Similarly, in a more recent survey, the informal trade sector contributed 10, 041, 419 NGN of the informal economy contribution to the Nigerian economy.[355] This demonstrates the pivotal role the informal economy plays in the economic development of Nigeria.

Rebased Sectors of GDP (Nm)

Sector	**2010**	**2011**	**2012**	**2013**
Agriculture	12,988,809.19	14,421,928.95	15,918,631.70	17,625,142.90
Industry	13,992.438.93	17,615,537.36	19,024,322.24	20,671,951.45
Services	27,223,541.01	31,221,112,69	36,243,580.95	41,925,033,96
Total Nominal GDP	**54,204,795.12**	**63,258,579.00**	**71.186,534.89**	**80,222,128.32**

[351] The last rebasing Nigeria had prior to this current one was in 1990. This is contrary to the guidelines of the UN Statistical Commission which recommends that rebasing be done every five years: available at http://www.nigeriastat.gov.ng/news/display/32 accessed on 5th November, 2015.

[352] Available at http://www.cnbafrica.com/news/western-africa/2014/04/11 accessed on 5th November, 2015.

[353] "Measuring better: Presentation of preliminary results of the rebased nominal GDP estimates for Nigeria" delivered by the Statistician-general of the Federation chief executive officer, National Bureau of Statistics (April 2014) National Bureau of Statistics Abuja. Available at http://www.google.co.za/ accessed on 5th November, 2015 at 9.

[354] Op cit note 347 at 309.

[355] "Formal and Informal sector split of Gross Domestic Product-2015" (June 2016) National Bureau of Statisticss available at https://nairametrics.com/wp-content/uploads/2016/06/2015-gdp-formal-and-informal-sector-split.pdf accessed on the 21st of April 2017 1-2 at 2.

Rebasing of GDP

Sector	2010	2011	2012	2013f
Agriculture	24.0	22.80	22.40	21.97
Industry	25.81	27.85	26.72	25.64
Services	50.22	49.35	50.91	51.89

Source: National Bureau of Statistics 2014

Despite the rising GDP of Nigeria and the immense contribution of this economy, poverty, inequality and decent work deficits persist within the informal economy.

3.2.6.2 Employment generation

Across Sub-Saharan Africa including Nigeria, the informal economy is recognised for its ability to generate employment outside of the regulatory system of government. Indeed, Mr Wogu, the former Nigerian minister of labour and productivity, stated that the informal economy has the potential to absorb the large population of people that are of working age in the country.[356] As previously stated, the informal economy accounts for 80% of non-agricultural employment, 60% of urban employment and over 90% of new jobs.[357] Although the last detailed survey on the informal economy ('informal sector') was carried out in 2010,[358] its contribution to employment creation can be deduced from the data of the 2013 rebasing of the Nigerian economy.[359] The wholesale and retail trade component of the service sector made the largest contribution to the Nigerian economy. This provides insight to the number of informal workers within the sector. Prior to the rebasing, the wholesale and the retail sector employed the second highest number of people. Therefore consequent to the rebasing, the service sector contributed the highest to revenue generation, which, it could be argued, also had positive implications for employment generation.

[356] *Reports of the Chairperson of the Governing Body and of the Director-General: Discussion (cont.)* (May-June 2012) Provisional Record 101st Session, International Labour Conference Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_183312.pdf accessed on the 21st of April, 2017 1-44 at 41
[357] Ibid.
[358] Op cit note 214.
[359] Op cit note 353.

Labour Statistics of workers in various informal sectors in Nigeria-2010

Sector	**Number Employed**	**%**
Agriculture	14,837,693	30.5
Wholesale and Retail trade (street trading), Repair of Motor Vehicles and Motorcycles	12,097,189	24.9
Manufacturing	5,337,000	11.0
Other Services Activities	3,471,702	7.1
Accommodation and food services activities	2,730,308	5.6
Transportation and storage	2,009,183	4.1
Education	1,557,665	3.2
Construction	1,142,569	2.4
Administration and support services activities	986,480	2.0
Public administration and defence, compulsory social security	800,333	1.6
Professional, scientific and technical activities	710, 511	1.6
Human, health and social work	739,936	1.5
Activities of households as employers, undifferentiated goods	551,353	1.1
Information and communication	469,513	1.0
Arts, entertainment and recreation	390,275	0.8
Financial and insurance services	171,403	0.4
Electricity, gas steam and air conditioning supply	152,610	0.3
Mining and quarrying	146,488	0.3

Water supply, sewage, waste management and remediation activities	86,778	0.2
Activities of extraterritorial organisations and bodies	75,633	0.2
Real estate activities	68,697	0.1
Total	**48,602,017**	**100**

Source: National Bureau of Statistics 2010

Furthermore, the informal economy provides productive outlets for a large number of people, particularly youth, who prefer to be self-employed.[360] Also, this economy provides experienced specialists of human resources from the formal and public sectors with an outlet to be self-employed with minimal capital requirement.[361]

Similarly, studies examining the contribution of the informal economy to employment creation in Nigeria indicate that informal firms were better at job creation.[362] A sample of 360 firms in Kano State, Nigeria affirmed this.[363] In addition, in Lagos State, the informal economy was proven to have high labour absorption capacity.[364] Despite this important role of job creation, informal employment is not without controversy.

[360] Fapohunda T "Reducing unemployment through the informal sector in Nigeria" (2013) 1(7) *International Journal of Management Sciences* 239: as previously stated, given the barriers to starting a business in Nigeria, it is easier for young entreprenuers to generally start their businesses informally.
[361] Ibid.
[362] Fasanya IO & Onakoya AB "Informal sector and employment creation in Nigeria: An error correction model" (2012) 2 (7) *Research on Humanities and Social Sciences* 48-55: the above paper adopted the Ordinary Least Square (OLS) estimation methodology. The authors proxied development by the rate of unemployment, the dependent variable (y) in equation (2) became level of eunemployment as a percentage (%) of total population. This study affirms the dualist school which argued that the expansion of informality was because population growth was higher than economic growth. As a result, the informal economy was a source of employment because of the lack of opportunities in the formal economy: see the discussion on the dualist school under heading 2.2.2 of this thesis.
[363] Ibid.
[364] Fapohunda T "Women and the informal sector in Nigeria: Implications for Development" (2012) 4(1) *British Journal of Arts and Social Sciences* at 36.

3.3 Informal work arrangements in Nigeria

This section provides a brief overview of the various work arrangements in the informal economy in Nigeria and highlights the vulnerabilities experienced by women. Broadly, informal employment can be categorised into: (a) informal self-employed workers and (b) informal waged workers.[365] Informal self-employed workers include employers in informal enterprises, own account workers (they operate single family businesses and do not employ anyone) and unpaid family workers (in informal and formal enterprises).[366] Informal waged employees are employees without formal contracts, benefits or social protection who are employed by formal of informal enterprises, or in households.[367]

Informal workers are visible on city streets and village lanes in most developing countries and in many developed countries too.[368] Informal workers in urban areas include barbers, waste collectors, street vendors, taxi drivers, cart pullers, roadside mechanics and cobblers. In rural areas, informal workers majorly earn their living through farming, making handicrafts and, collecting and processing minor forest products.[369] Other less visible informal workers are found in small factories or workshops that repair vehicles or motorcycles, make furniture and do welding; make and embroider garments.[370] The least visible informal workers are homebased and mostly women.[371] The largest sub-sectors where informal workers are found are agriculture, the retail sector, construction, domestic workers and homeworkers.[372] The above sub-sectors are basically workers in informal enterprises. However, there are other types of informal workers. This includes casual workers in restaurants and hotels, sub-contracted janitors, security guards, gardeners and temporary (casual or outsourced) workers in formal organisations.[373] Many of these workers find themselves in arrangements outside of the traditional employment relationship.

[365] Op cit note 140 at 2132.
[366] Op cit note 140.
[367] Op cit note 140.
[368] Op cit note 81 at 1: Yatmo Y "Street vendors as 'out of place' urban elements" (2008) 13(3) *Journal of Urban Design* at 388.
[369] Ibid.
[370] Ibid.
[371] Ibid.
[372] Ibid.
[373] Ibid.

Historically, the 'employment relationship' is the central legal concept around which labour law protects the rights of workers.[374] Universally, employment relationships represents a notion that links an individual (the employee) with another person (the employer) to whom labour services are provided under certain conditions in return for remuneration.[375] It is through this relationship that corresponding rights and obligations are created. Self-employed workers have always been excluded from this concept. However, the concept of the employment relationship also excludes informal waged workers who the ILO reports have found themselves with no legal protection or recognition because their work arrangements are not clearly defined, and instead are disguised and ambiguous.[376] Workers in these relationships tend not to be protected under labour law or any other formal arrangement, and in many cases, are found in formal firms.[377]

Since the 1980s, formal firms began to favour flexible labour relationships as a means to reduce operational costs.[378] Increasingly, many formal firms in developed countries have moved their production units to developing countries like Nigeria as a result of the lower costs of labour.[379] In addition, in Nigeria, indigenous formal firms also moved their production to informal units to reduce cost.[380] In these developing countries, the labour laws have not been amended to reflect the changing realities in the labour market.[381] Consequently, informal workers find themselves without protection under the legal system. This is the case in Nigeria, where the national labour legislation

[374] Chen M "Rethinking the informal economy: Linkages with the formal economy and the formal regulatory environment" (2007) 46 *DESA Working Paper*. Available at http://www.un.org/esa/desa/papers/2007/wp46_2007.pdf accessed on 15th September, 2013 at 8.
[375] Ibid.
[376] "The scope of the employment relationship" *Report V* International Labour Conference 91st Session 2003. Available at http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-v.pdf accessed on 9th November, 2015 6: an employment relationship is deliberately disguised by giving it the appearance of a different legal nature. In such an instance the relationship might look like a commercial one rather than a sub-contracted employment relationship. An ambiguous employment relationship objectively leaves in doubt as to whether there is really an employment relationship. An example is the case of street vendors in Nigeria who depend on a single supplier for goods which they sell on commission for the distributor. In this case there is independence and dependence. In an unclear employment relationship, the rights of the employee and the obligations of the employer are not clearly defined. This is usually the case in value chain production or temporary work.
[377] Ibid.
[378] Op cit 191 at 9.
[379] Op cit note 109: Op cit note 124.
[380] Arimah B "Nature and determinants of the linkages between informal and formal sector enterprises in Nigeria" (2001) 13(1) *African Development Review* 114-47: indigenous formal firms are firms that operate within the purview of state regulation and are owned solely by natives of Nigeria. While formal firms are foreign owned firms.
[381] *Changing patterns in the world of work* (2006) Report 1(C) Report of the Director-General, International Labour Conference 95th Session.

has not been amended since its enactment in 1974 notwithstanding the changes in labour market dynamics.

As may be expected, working arrangements in the informal economy in Africa share similar features. In this regard, taking a cue from Ghana (a West African country and Nigeria's neighbour), the following are common characteristics of informal labour relationships in Nigeria.[382]

3.3.1 Family labour

This is a distinctive feature of the rural labour market and can be found in most informal sectors particularly domestic work, agriculture, fishing, farming and retail trade.[383] All members of the family participate in this informal activity for the family's economic survival.[384] Furthermore, the need for additional labour has been historically linked to the prevalence of polygamy among Nigerians.[385]

3.3.2 Casual labour

Casual labour is prevalent in both rural and urban areas, and exists under different headings in Nigeria.[386] It is more visible in the agricultural and construction sectors.[387] In formal firms, casual workers are known as contract staff.[388] Furthermore, such workers are found in many indigenous, transnational or multi-national firms.[389] According to a study carried out in Osun state, Nigeria, a

[382] Osei-Boateng C and Ampratwum E "The informal sector in Ghana" (2011) Friedrich Ebert Stiftung Ghana Office available at http://library.fes.de/pdf-files/bueros/ghana/10496.pdf accessed on the 2nd of December, 2017 12-4.
[383] *Trade Unions in the informal sector: finding their bearings* Nine Country papers (1999) Labour Education 1999/3 No 116 at 3.
[384] Ibid.
[385] Aluko MAO and Aransiola JO "Peoples' perception of polygyny in contemporary times in Nigeria" (2003) 5(3) *Anthropologist* 179-84: Elisabeth Cudeville *et al* "Polygamy and female labour supply in Senegal" (2017) *WIDER Working Paper 2017/127*: for more details on the intersection of polygamy and labour supply in Nigeria see, Arthi V & Fenske J "Intra-household labour allocation in colonial Nigeria" (2016) 60 *Explorations in Economic History* 69-92: Egboh EO "Polygamy in Iboland(South-Eastern Nigeria) with special reference to polygamy practice among christian ibos" (1972) 22(3) *Civilisations* 431-44 at 432.
[386] Op cit note 61 at 92.
[387] Op cit note 61 at 92.
[388] Okafor E "Nonstandard employment relations and implications for decent work deficits in Nigeria" (July 2012) 6(3) *African Research Review* 96.
[389] Ibid at 97.

major characteristics of casual labour is the high mobility rate.[390] In addition, a 2010 survey of informal sectors in Nigeria estimates that there about five million casual workers in the country.[391] However, this figure does not include casual workers in formal firms.

3.3.3 Apprenticeship arrangements

Apprenticeship predates colonial Nigeria and is used as a means to pass on skills and trade secrets to the next generation.[392] It is also one of the commonly used tools for capacity building, knowledge/skill transfer and training in most informal settings.[393] Ideally, apprenticeship should be a way of compensating for the low skill levels of Nigerian school leavers.[394] However, apprentices are required to do some form of work which translates to economic gains for their employers.[395] Characteristics of apprenticeship include training as determined by the master, lack of claim to any fixed remuneration and payment of training fees.[396] In many cases, apprentices are subject to exploitative work conditions.[397]

Apprentices are recognised as a special class of workers under part III of the Nigerian Labour Act of 1974.[398] The recognised apprentice age is between 12 and16 years. Also, section 50 of the Act provides there must be a written contract of apprenticeship authorised by a labour officer which sets out the rights and obligations of the master and apprentice. However, this is not enforced in Nigeria.[399] Furthermore, in terms of technical capacity, the master in an apprenticeship relationship might have limited experience or lack access to credit to expand the informal enterprise.[400] In addition, the unconducive business environment in Nigeria impacts negatively on

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[390] Op cit note 382: Aladekomo FO "Casual labour in Nigerian urban centre" (2004) 9(3) *Journal of Social Sciences* 207-13: high mobility rate, in this context, means high employee turnover. The implication of this is increased turnover costs on the part of the employer which include the high cost of recruitment, interviewing, hiring and, lack of continuity and consistency in the organisation's process: Fapohunda T "employment casualization and degradation of work in Nigeria" (2012) 3(9) *International Journal of Business and Social Science* at 262-3.
[391] Op cit note 213.
[392] Atuwokiki SJ "Nature and funding of the informal apprenticeship scheme in Port Harcourt, Rivers State" (December 2013) 2 *European Scientific Journal* 350-60.
[393] Op cit 208 (Onokala & Adeleke) at 4.
[394] Op cit note 275 (Robin Bloch) at 51.
[395] Rapu op cit note 46 at 92.
[396] Rapu op cit note 46 at 92.
[397] Liadi OF & Olutayo OA "Traditional apprenticeship, normative expectations and sustainability of masonry vocation in Ibidan, Nigeria" (2017) 6(2) *International Journal of Sociology of Education* at 204.
[398] Cap L1, Laws of the Federation of Nigeria, 2004.
[399] Eusebius A & Chigbo CC "Empowering, regulating and controlling apprenticeship in Nigeria for employment and development" (2014) 2(6) *International Journal of Research in Applied Natural and Social Sciences* at 222-25.
[400] Op cit note 392.

apprenticeship. Nonetheless, apprenticeship is commonly seen in the following informal sub-sectors; wielding, carpentry, catering, hair and nails salon, electricians, generator and phone repairing, and plumbing.[401]

3.3.4 Communal labour

This is primarily found in rural agricultural settings. In this instance, farmers within a community pool their labour resources together and rotate working on each other's farmland.[402] Each farmer shows appreciation by providing food and drinks for others.

3.3.5 Child labour

This is an integral part of the informal economy in Nigeria.[403] Despite the criminalisation of child labour, children are used as workers in retail trade and domestic work sectors in Nigerian urban cities.[404] Also, in rural areas parents hire out their children as farmworkers.[405] Child labour is cheap and in spite of the fragility of children, they are made to work as adults for pittance and in some cases they are unpaid.[406]

According to the ILO, Sub-Saharan Africa has the highest number of working children who are involved in hazardous and exploitative work: roughly, 29% of them are between ages 5 to 14.[407] In Nigeria, it has been estimated that more than 15 million children are engaged in child labour.[408] About 31% of such children are engaged in hazardous work which includes commercial

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[401] Op cit note 392 at 351: Fajobi TA *et al* "Challenges of apprenticeship development and youths unemployment in Nigeria" (2017) 5(2) *Sociology and Criminology-Open Access*.
[402] *Trade Unions in the informal sector: finding their bearings* Nine Country papers (1999) Labour Education 1999/3 No 116. Available at http://www.ilo.org/wcmsp5/groups/public accessed on the 20th of March, 2017 at 3.
[403] Ikeije UU *et al* "Labour practices in the informal of Nigerian economy: A critical analysis" (2016) 4(2) *Global Journal of Arts, Humanities and Social Sciences* at 9.
[404] Op cit note 61 at 47: Section 28 of An Act to Provide and Protect the Right of the Nigerian Child and Other Related Matters, 2003 ('The Childs Rights Act').
[405] Togunde D & Carter A "Socioeconomic causes of child labour in urban Nigeria" (2006) 12(1) *Journal of Children and Poverty*.
[406] Ugal D & Undyaundeye F "Child labour in Nigeria: Causes and consequences for National Development" (2009).
[407] Op cit note 143 at 25-26.
[408] Jones N "Strengthening linkages between child protection and social protection systems in Nigeria" (September 2011) No. 62 *Project Briefing* UNICEF Available at https://www.unicef.org/nigeria/62_Strengthening_linkages_between_child_protection_and_social_protection_system.pdf accessed on the 9th of May, 2017 1-4 at 1.

agriculture, domestic work, mechanical work, exploitative pastoral and herding activities and construction.[409] All of these forms of work are found in the informal economy.

3.3.6 Disproportionate representation of women

Globally, women are over-represented in the informal economy.[410] The informal economy is a primary source of employment for many women in developing countries.[411] In Nigeria, the informal economy employs over 46% of the female labour force.[412] Also, it provides more employment to women than men.[413] According to global trends, female workers in the informal economy exceed men.[414] This is confirmed by available ILO data which indicates that the share of women informal workers outside agriculture is higher than men.[415]

Generally, women have less access to decent work than men and work in the more vulnerable forms of informal employment where earnings are low and unstable.[416] The earnings of women within employment categories are generally lower than men.[417] This gap is seen in both self-employed and waged informal work especially with respect to unpaid work in family enterprises.[418] Furthermore, the ILO reports that women work fewer hours on average in paid work than men.[419] This is mostly due to unpaid household work resulting in labour segmentation whereby women are restricted to own-account or home based employment.[420]

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[409] Op cit note 273 (Nigeria 2016 Human Rights Report) at 46: in 2016, the Nigerian government made moderate advancement in efforts to eliminate the worst forms of labour through the National Social Protection Program: "Child labor and forced labor report: Nigeria" (2016) Bureau of International Labour Affairs, US department of labour available at www.dol.gov accessed on the 29th of November, 2016.
[410] "Women and men in the informal economy: a statistical picture" (second edition) (2013) International Labour Office Geneva. Available at http://www.ilo.org/wcmsp5/groups/public accessed on the 19th of November, 2015 1-219: "Report of the working group on the issue of discrimination against women in law and in practice" (April 2014) *A/HRC/26/39* twenty-sixth session Human Rights Council at 48.
[411] Chen M "Women and informality: A global picture, the global movement" (2001) *SAIS Review* Vol. 21(1) 74.
[412] Op cit note 364 at 36.
[413] Ibid. Chen
[414] Op cit note 405.
[415] Ibid.
[416] Op cit note 61: Chen M, Vanek J et al *Progress of the world's women- women, work and poverty* (2005) United Nations Development Fund for Women (UNIFEM). Available at https://www.unngls.org/orf/women-2005.pdf accessed on 18th November, 2015 at 8-9.
[417] Ibid at 9.
[418] Chen M "Women and informality: A global picture, the global movement" (2001) *SAIS Review* Vol. 21(1) 74.
[419] Op cit note 411 at 9.
[420] Op cit note 411 at 9.

Nigerian women, generally have low participation rates in the formal economy.[421] Apart from informal self-employment, women dominate informal waged employment in Nigeria.[422] The population of women working in informal enterprises are 27.7 million as against 27.1 million men.[423] In addition, women are mainly found in services sectors like street trading.[424] As discussed in the next chapter, women face gender specific barriers as workers in the street vending sector. They operate in hostile environments and are not considered in the formulation of public policy. In addition, women have limited access to start-up capital.[425] The above factors make women more vulnerable to exploitation in the informal economy. Despite being seen as second class citizens in Nigeria, the income of women from informal economic activities sustains families.[426]

A study was carried out in 2012 in Lagos state, Nigeria to determine the role of women in the informal economy with respect to national development.[427] It was discovered that women in the informal economy were seen as invisible, alongside their contributions and needs.[428] The lack of access to affordable credit, resources, lack of education and training, lack of leadership and organisation etc. were seen as enhancing the vulnerabilities experienced by women in the informal economy.[429] In recent years, policies such as the ILO's R204, which is explored in more detail later in the thesis, have been rolled out containing mechanisms to address the vulnerabilities, including those experienced by women, attached to work in the informal economy.

3.4 Conclusion

Chapter three sketched the context for informal work in Nigeria. The history, growth, size and characteristics of informality were discussed. Furthermore, the chapter explored the heterogenous characteristic of the informal economy, evident from the varying types of informal enterprises, workers and workplaces. Yet, notwithstanding the significant role of the informal economy in

[421] Acha CK "Trend and levels of women empowerment in Nigeria" (2014) 2(6) *American Journal of Applied Mathematics and Statistics*: Okoyeuzu RC *et al* "Shaping the Nigerian economy: the role of women" (2012) 8(4) *Acta Universitatis Danubius: Oeconomica* at 22: Anugwom EE "Women, education and work in Nigeria" (2009) 4(4) *Educational Research and Review* at 130-31.
[422] Op cit note 213.
[423] Ibid.
[424] Op cit note 364 at 36.
[425] Op cit note 364 at 36.
[426] Op cit note 364 at 40.
[427] Op cit note 364 at 40-2.
[428] Op cit note 364 at 40-2.
[429] Op cit note 364 at 40-2.

Nigeria, informal workers, particularly women, continue to experience decent work deficits as a matter of course.

The following chapter focuses on street vending which is the sector this thesis uses as a lens to examine the conditions of work in the Nigerian informal economy.The chapter considers the development of street trading and demonstrates how the regulatory framework has failed to protect the rights of street vendors.

CHAPTER FOUR: STREET VENDING OPPORTUNITIES AND CONSTRAINTS: A STUDY OF DEVELOPMENTS IN LAGOS

4.1 Introduction

The most important characteristic of street vending is that it is practiced on the streets and in other related public spaces.[430] A concentration of street traders in a particular space can be called a street-market.[431] As previously mentioned, the informal economy serves as the main source of income in urban Africa.[432] As a result, most African cities have become *trading cities* serving as major economic meeting points for national and international commercial activities in which street traders are active participants.[433] They offer a spectrum of goods and services in easily accessible locations. Furthermore, they provide poorer members of society with access to cheap goods by offering low-cost goods in small quantities.[434]

Yet street vending is a contested economic activity in many developing countries including Nigeria.[435] Contest arises in the context of the varied interests of government, formal business owners and other members of society, on the one hand and, street vendors on the other. In addition, the use of public spaces for informal economic activities is a cause of contest. Nonetheless, the street vending sector continues to expand. However, a major challenge with this sector is the lack of accurate official statistics measuring the expansion of street vendors in many countries including Nigeria.[436] This has been linked to inappropriate labour surveys and inappropriate responses to

[430] Bromley R "Street vending and public policy: a global review" (2000) 20(1/2) *International Journal of Sociology and Social Policy* at 2.
[431] However, this should not be confused with formalised markets which have a market-regulator and are found in specific locations at fixed times consistently: Ibid Graaff at 3.
[432] Op cit note 23 at 666.
[433] Bryceson DF "Vulnerability and vitality of East and Southern Africa's Apex Cities" (2006) in DF Bryceson & D Potts(eds) *African Urban Economies: viability, vitality or vitiation* Palgrave Macmillian UK : Indeed,there are various historic accounts of travelling merchants who sold their wares in the various towns they passed through by going from house to house: Op cit note 97 at 5: Op cit note 24 at 225:
[434] Op cit note 26 at 37
[435] Kusakabe K. "Policy issues on street vending: An overview of studies in Thailand, Cambodia and Mongolia" (2006) *Informal Economy, Poverty and Employment* International Labour Office Bangkok 2-38 at 3.
[436] "Challenges of gathering statistics on street vendors" WIEGO Available at http://wiego.org/informal-economy/challenges-gathering-statistics-street-vendors accessed on the 18th of August, 2016: Nigeria's National Bureau of Statistics does not have any official statistics on the street vending sector. Rather this thesis, drew inference on size of the street vending sector from household and unemployment surveys produced by the Bureau:See the discussion in 3.2.3.

such surveys.[437] Furthermore, in cases where there are official statistics, the number of street vendors may be under-counted.[438] This is because vendors might not report their place of work for fear of reprisals from government officials and, for some, vending is a secondary and (or) seasonal occupation.[439] However, reliable information on their numbers and characteristics is important if street vending is to be included in urban planning processes.[440]

This chapter consists of three sections. The first section examines the nature, forms, positive contributions and constraints of street vending particularly as it affects female street traders. The examination of these constraints highlights the exclusion of street vendors from urban development, design and planning agenda. The second section explores the historical development of Lagos which culminated in the classification of street trading as an illegal activity. The final section analyses the Street Trading and Illegal Markets (Prohibition) Law and its enforcement in Lagos.

4.2. Nature and forms of street vending

Street vending has been and is being practiced in many different ways worldwide.[441] Categories of street vending may be identified based on location, time/period of business, size of business, workforce and, types of goods and services. Generally, most vendors sell goods, some provide services while others sell and provide a mix of goods and services.[442] Furthermore, the provision of these goods and services varies according to location.

The locations for conducting street vending activities are diverse.[443] Some vendors are stationary, using a kiosk or a heavy stall in the same place for a certain period.[444]A sub-category of stationary street vendors have mobile stalls which are pushed out at the beginning of the sales

[437] Ibid: inappropriate labour surveys means questions in labour surveys do not adequately capture the nature and forms of street vending. While inappropriate responses implies that street vendors do not answer the survey questions correctly.
[438] Ibid.
[439] Ibid.
[440] Roever S "How to plan a street trader census" (2011) WIEGO *Technical Brief (Urban Policies)* No. 2 at 1.
[441] Op cit note 430 at 2: Ackson T "Legal hostility towards street vendors in Tanzania: A constitutional quandary" (2015) 4(1) *SADC Law Journal* at 144.
[442]Street vending activities generally include the sale of perishable goods like food, snacks, beverages; shoe-shining, hair cutting, repair of shoes, clothes and vehicles parts etc: Ibid.
[443] Bhat GM & Nengroo AH "Urban informal sector: A case study of street vendors in Kashmir" (2013) 3(1) *IJMBS* at 112.
[444] Ibid.

day and returned at the end of the day.[445] Stationary street vendors might leave their stalls/kiosks under the supervision of a security guard when not in use. In addition, there are some stationary vendors who, though fixed in a specific location, simply lay out their goods on the ground, on a piece of cloth or plastic.[446] On the other hand, some street vendors are mobile. These vendors hawk their goods on their heads; push their goods around on a wheelbarrow or from a cart.[447]

A major difference between street vendors and other components operating in the urban retail system is the lack of legal claims by street vendors to the space they trade from. This is largely determined by the legal framework which regulates property rights and access to public spaces.[448] As a result of this framework (explored in more detail in chapter 6) regardless of the number of years a vendor may have traded from a specific spot, or the permanence of the structures they operate from, vendors can be evicted at any time by government authorities.[449] An example of this is the shutdown of the informal electronic market in Oshodi, Lagos state that occurred on the 6th of January 2016. According to the traders, this market had been in existence for over 40 years and there was no reason for government to shut it down.[450] However, officials of the taskforce justified their actions based on the market's violation of the state environmental law.[451]

Street vending activities may be practiced full-time, part-time, seasonally or occasionally.[452] In addition, it can take place at a specific time or at all hours of the day and night. The trading hours depends on the vendor, the location and type of the business. As an example, formal workers doing street vending to get additional income would likely commence business in the evenings or late afternoons after their formal work hours.

Although street vending is generally seen as a one-person business, it may expand beyond this. Participants can range from one-person micro-enterprises, partnerships and family business and even to franchises.[453] In addition, some vendors are branches of off-street retail shops.[454]

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[445] Ibid.
[446] Ibid.
[447] Bhomwik S *Street Vendors in the Global Urban Economy* (2010) Routledge at 6.
[448] Di Gregorio M *et al* "Property rights, collective action and poverty" (2008) *CAPRi Working Paper No.81* at 8.
[449] Ibid.
[450] "Why we demolished Oshodi Market-Lagos" *The Nation*. Available at http://thenationonlineng.net/why-we-demolished-oshodi-market-lagos/ accessed on 6th April, 2016.
[451] Oladeinde L "Lagos shuts down electronic market over planned Biafra protest" *News24*. Available at http://www.news24.com.ng/National/News/lagos-shuts-down-oshodi-electronic-market-over-planned-biaf accessed on the 6th of April, 2016.
[452] Op cit note 430 at 2.
[453] Op cit note 430 at 2.
[454] Op cit note 430 at 2.

Others divide their goods and distribute it to a relative or employee for sale in a different location, thereby creating a branch operation.[455]

Furthermore, street vending activities differ in terms of the demographic profile of the workforce, and the types of goods and services provided. In most parts of Africa, the majority of street vendors are women.[456] However, in Northern Africa and Middle East Asia, due to cultural and religious norms, the economic activities of women are restricted.[457] As a result, women in these regions account for less than 10% of street vendors.[458] In addition, children form part of the workforce in the street vending sector. There are reports of a high incidence of children working outside the family in the informal economy in developing countries including Nigeria.[459]

Contextually relevant to the workforce of the street vending sector is the issue of disguised employment. As earlier stated, the employment relationship is the legal link through which reciprocal rights and obligations are created between the employer and the employee.[460] In many countries including Nigeria, labour and social security laws only apply in an employment relationship.[461] However, there are ambiguous and vague 'work relationships' which, although not employment relationships, are in essence disguised employment. According to the ILO, employers use these arrangements to hide the employment relationship and thus employees are denied of the legal protection they are entitled to.[462] A disguised relationship is 'an attempt to conceal or distort relationship, either by cloaking it in another legal guise or by giving it another form in which the worker enjoys less protection'.[463] In addition, this kind of employment might involve hiding the

[455] Op cit note 430 at 2.
[456] Op cit note 410.
[457] Available at www.wiego/informal-economy/occupation-groups/streetvendors accessed on 7th March, 2018.
[458] Ibid.
[459] Clark CID and Yesufu S "Child street trading as an aspect of child abuse and neglect, Oredo Municipality of Edo state, Nigeria as a case study" (2015) 8(5) *European Scientific Journal*: Ashimolowo OR *et al* "Child street trading activities and its effect on the educational attainment of its victims in Epe Local Government Area of Lagos" (December 2010) 2(4).*Journal of Agriculture*
[460] "Employment relationship" Available at http://www.ilo.org/ifpdial/areas-of-work/labour-law/WCMS_CON_TXT_IFPDIAL_EMPREL_EN/lang--en/index.htm accessed on the 29th of August, 2016.
[461] Ibid.
[462] *Fifth item on the agenda: The employment relationship* (2006) Provisional Record Ninety-fifth Session ILO Geneva Available at http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/pr-21.pdf accessed on the 29th of August at 8.
[463] *The scope of the employment relationship* (2003) Report V International Labour Office Geneva Available at http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-v.pdf accessed on the 29th of August, 2016 at 25.

identity of the employer, which frees such a person from an obligation to the workers.[464] This is the situation of some street vendors.

As earlier mentioned, the poorer members of society access cheaper goods through street vendors.[465] These goods are made available in poorer areas through informal stores or stalls.[466] In developing countries, the popularity of consumer products like Coca-Cola, Pepsi among others, are dependent on small-scale distribution channels which make use of informal distributors that reduce the final cost to people in poor areas.[467] Arguably, the use of these informal distributors is a form of disguised employment. Bromley also argued that *commission sellers* are in disguised employment relationships.[468] Commission sellers sell the products of a limited number of manufacturers/wholesalers.[469] These sellers charge the public a fixed sum and receive as commission a fixed difference between the purchase and sale price.[470] In his study of neighbourhood stores in Mexico City, Alonso argued that store owners are disguised employees of large corporations.[471] According to these authors, whether they are considered employees or independent contractors, their low overhead costs allows for a broader distribution of these popular products and big corporations to increase their profits use this as a deliberate business strategy.[472] The relationship between the street trader and these corporations such as Coca-Cola, Pepsi among others, is designed to maintain a form of independence by the seller and to protect the company from additional costs that would have been incurred in a typical employment relationship.[473]

Street vending is usually perceived negatively by other members of the society.[474] Vendors are held responsible for congestion in cities[475] In many cities, street vendors are concentrated in

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[464] Ibid.
[465] Op cit note 24 at 225: Lina Martinez *et al* "The urban informal economy: Street vendors in Cali, Colombia" (2017) 66 *Cities*.
[466] Op cit note 26.
[467] Op cit note 26.
[468] Bromley R "Organisation, regulation and exploitation in the so called 'Urban Informal Sector': The street traders of Cali, Colombia" (1978) 6(9/10) *World Development* at 1165.
[469] Ibid.
[470] Ibid.
[471] Op cit note 26.
[472] Op cit note 26 at 40.
[473] Zlolniski C *Janitors, street vendors, and activists: The lives of Mexican Immigrants* (2006) University of California Press at 85-94.
[474] Boojubun C "Conflicts over streets: The eviction of Bangkok street vendors" (2017) 70 *Cities* at 26: Yatmo YA "Perception of street vendors as 'out of place' urban elements at day time and night time" (2009) 26 *Journal of Environmental Psychology*.
[475] Forkuor JB *et al* "Negotiation and management strategies of street vendors in developing countries: A narrative review" (2017) 7(1) *SAGE OPEN* at 3.

areas with the highest level of vehicular and pedestrian traffic where the highest demand for their services are. Passing pedestrians, people sitting in stationary or moving vehicles are attracted to patronise street vendors at the sight of the exposed goods and services. This leads to increased sales and traffic congestion.[476]

In addition, formal businesses argue that street trading constitutes unfair competition.[477] This is because non-payment of taxes or other over-head costs means street traders make more 'profit'. Street traders also easily distract shoppers who otherwise would patronise formal enterprises.

Similarly, street traders are usually associated with criminals and prostitutes.[478] This may be because the congestion caused by street vending is used as an avenue for pickpocketing, snatch thefts, assault and for potential burglars to eyeball properties and businesses within the street.[479] However, only a small minority engage in disreputable and illegal activities. Nevertheless, these negative characteristics are exaggerated.

4.2.1 Positive characteristics (contributions) of street trading

Street vendors contribute to the economy of developing countries including Nigeria.[480] According to Kusakabe, in three developing countries studied, street vending grew both under economic recession and economic growth.[481] During economic recession, street vending served as a cushion for the unemployed.[482] On the other hand, when the economy experienced growth, demand for goods and services of street vendors went up, invariably making it an attractive occupation for many people.[483]

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[476] Ibid.
[477] Mitullah WV "Street vending in African cities: A synthesis of empirical findings from Kenya, Cote D'Ivoire, Ghana, Zimbabwe, Uganda and South Africa" (2005) *Background paper for the 2005 World Development Report* (draft) 1-20 at 17: Fagge AM and Zubairu MA "Private sector and youth employment generation in Nigeria: A review" (2014) 2(3) *International Journal of Business & Law Research* at 53.
[478] Sassen S *et al* "Women's experiences of informal street trading and well-being in Cape Town, South Africa" (2018) 46(1) *South African Journal of Occupational Therapy* 28-33: Sidzatane NJ & Maharaj P "On the fringe of the economy: Migrant street traders in Durban" (2013) 24 *Urban Forum* 373-87.
[479] Op cit note 475.
[480] Op cit note 430 at 12: Onodugo VA *et al* ''The dilemma of managing the challenges of street vending in public spaces: The case of Enugu city, Nigeria'' (2016) 59 *Cities*.
[481] The three countries studied are Thailand, Cambodia and Mongolia: Op cit note 435 at 24.
[482] Op cit note 435 at 24.
[483] Op cit note 435 at 24.

Street vending activities may also have the potential to eliminate monopolies and reduce unfair competition. Monopoly being 'an economic market structure where a specific person or enterprise is the only supplier of a particular good'.[484] It could be argued that this outweighs the argument that street trading constitutes unfair competition to formal businesses in that street vending provides affordable and accessible goods to the working poor which reduces the control formal businesses would have had over such goods. Also, as earlier stated, many formal businesses and corporations may indeed have a form of business relationship with street vendors.[485] A portion of the profits of these formal businesses thus depends on street vending.[486] In many cases, formal businesses are the suppliers of the goods sold by street vendors.[487] This co-dependence, suggests that street vendors support formal business.

Recently, attention has been drawn to the potential revenue benefits of the informal economy.[488] Broadly, the informal economy forms a growing share of the GDP of many developing countries especially through licencing fees, sales tax and VAT.[489] In Lagos state, Nigeria, the state government recently embarked on the process of taxing some sectors of the informal economy.[490] However, the duty of paying tax must be hinged on the right to *livelihood* which is free of oppression. The process of tax payment leads to the establishment of a set of rights and responsibilities; and for informal workers, this will be a means to legitimise their activities.

Street vending accounts for a significant share of employment in cities in developing countries including Lagos.[491] Through street vending, workers sustain themselves and their

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[484] "Defining monopoly" Available at https://www.boundless.com/economics/textbooks/boundless-economics-textbook/monopoly-11/introduction-to-monopoly-69/defining-monopoly-260-12357/ accessed on the 1st of September, 2016.

[485] Roever Sally "Informal economy monitoring study sector report: Street vendors" (2014) WIEGO at 53.

[486] Ibid.

[487] Ibid.

[488] Joshi A *et al* "Taxing the informal economy: the current state of knowledge and agendas for future research" (2014) 50(10) The *Journal of Development Studies* at 1325: Jonathan Ogbuabor *et al* "Informal sector and domestic resource mobilization in Nigeria: A community taxation option" (June 2014) 43(4) *European Journal of Social Sciences* 360-70.

[489] Schneider F. & Klinglmair Robert "Shadow economics around the world: what do we know?" (2004) Discussion Papers No. 1043. Available at http://ftp.iza-org/dp1043.pdf accessed on the 9th of March, 2016: street vending contributes significantly to the GDP of Nigeria. As previously stated, in 2013, the service sector in Nigeria under which street vending falls, contributed the highest to the country's GDP.

[490] Popoola N "Domestic workers, artisans to pay tax in Lagos" (March 2016) The Punch Newspaper. Available at http://www.punchng.com/domestic-workers-artisans-to-pay-tax-in-lagos/ accessed on 11th March 2016.

[491] Op cit note 121 at 3: Otekhile CA and Matthew O "An explorative study of the contribution of the informal sector to economic activities in Lagos, Nigeria" (2017) A paper presented at the 20th International Scientific Conference "Enterprise and competitive Environment" March 9-10 2017, Brno, Czech Republic Available at

dependents without which a life of crime might be an alternative.[492] Therefore, street vending provides a social safety net especially in developing countries where there is no comprehensive welfare system.[493] Furthermore, street vending attracts entrepreneurs because of its minimal overhead costs such as rent for fixed premises.

A further dimension of street vending as a source of employment is in terms of regional and international migration.[494] Social and political crisis have generated high levels of migration and foreign migrants in many cases drift towards the informal economy where the barriers and start-up costs are low. Thus, street vending also serves as a safety net for many migrants.[495]

Similarly, it has been stated that food vendors play a significant role in the provision of urban food security for the poor.[496] In a study of 11 cities in Sub-Saharan Africa, it is reported that 70% of households got their food from informal trade outlets.[497] Furthermore, it was shown that the more insecure a household was, the more likely it relies on informal sources for food.[498] It has also been asserted that food vendors are a source of more affordable food in Nigeria.[499]

Street vending gives animation to the streetscape.[500] They offer colourful stores and goods which are generally attractive to tourists.[501] Furthermore, they can witness and report criminal activities. For example, in May 2010 two street vendors prevented a car bombing when they reported an unusually parked car to the New York police department.[502]

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http://eprints.covenantuniversity.edu.ng/9051/1/CATHY%20TOYIN%20PAPER.pdf accessed on the 14th of March 2018.

[492] Op cit note 430 at 5: Willemse L "Opportunities and constraints facing informal street traders: evidence from four South African cities" (2011) 59 *Town and Regional Planning* Issue at 8.

[493] Op cit note 430 at 5

[494] Sheehan C and Riosmena F "Migration, business formation, and the informal economy in urbam Mexico" (2013) 42(4) *Social Science Research* at 1103-05.

[495] Skinner C "Street trade in Africa: A review" (2008) No. 51 *School of Development Studies Working Paper* Available at https://www.africancentreforcities.net/wp-content/uploads/2013/10/skinner_street_trade_in_africa.pdf accessed on the 16th of May, 2017 1-38 at 10.

[496] Roever S and Skinner C "Street vendors and cities" (2016) 28(2) *Environment and Urbanisation* at 362.

[497] Crush J & Frayne B "Supermarkets expansion and the informal food economy in Southern African cities: Implications for urban food security" available at http://www.afsun.org/wp-content/uploads/2016/03/Web-Crush-and-Frayne-Supermarket-Expansion.pdf accessed on the 8th of May, 2017 at 19-21.

[498] Ibid.

[499] Omemu AM & Aderoju ST "Food safety knowledge and practices of street food vendors in the city of Abeokuta, Nigeria" (2008) 19(4) *Food Control* 396-402 at 396.

[500] Perera N *Transforming Asian cities: Intellectual impasse, Asianizing space, and emerging translocalities* (2013) Routledge at 125.

[501] Ibid.

[502] Baker AI & RashBaum W "Police find car bomb in Times square" (May 2010) The New York Times. Available at www.nytimes.com/2010/05/02/nyregion/02timessquare.html accessed on the 9th of March, 2016.

Finally, De Soto argues street vending is a noteworthy example of self-help and grass-roots initiative.[503] He described street vendors as the 'most visible manifestations of a peacefully, informal revolution by hardworking poor people against an obstructive "mercantilist system" which is controlled by the vested interests of career bureaucrats and big corporations'.[504] Despite these positive contributions of street vending to the economy of many developing countries; this informal economic activity is persistently faced with structural and legal constraints.

4.2.2 Major constraints faced by street vendors

In a small city in central Tunisia on the 17th of December 2010, a young fruit and vegetable vendor, Mohammed Bouazizi set himself on fire.[505] Bouazizi's action ignited demonstrations all over Tunisia which eventually led to the toppling of the country's autocratic ruler.[506] Much more than causing a political change, his desperate action shone light on the volatility of the economy of the street.[507] The issues of operating without a permit, confiscation of goods by government officials, evictions, bribery of officials to avoid confiscation, lack of access to credit among others, make street vending volatile.[508] Despite these challenges, many urban residents in developing countries make their living on the streets.[509] A major reason for this might be the fact that the street economy is usually the first resort for people with few marketable skills and the last place for former employees of the formal economy who have been retrenched.[510] Nonetheless, the action of Bouazizi reflects on the challenges street vendors face.

Tambunan identifies economic pressures, sociocultural challenges, negative policies and environment as some of the globally faced by small and medium scale entrepreneurs.[511] These are discussed below within the Nigerian street vending context.

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[503] Op cit note 430 at 5.
[504] Op cit note 430 at 5: De Soto H *The other path: The invisible revolution in the Third World* (1989) New York Harper and Row.
[505] Fahim K "Slap to a man's pride set off tumult in Tunisia" New York Times 21st January 2011 Available at http://www.nytimes.com/2011/01/22/world/africa/22sidi.html accessed on the 26th of February 2016.
[506] Ibid.
[507] Hansen KT *et al* "Introduction Street Economies in the Urban South" (2013) in Hansen KT *et al* (eds) *Street Economies in the Urban South* SAR Press at 3.
[508] Ibid.
[509] Ibid.
[510] Ibid at 8.
[511] Tambunan T. "Women entrepreneurs in Indonesia: their main constraints and reasons" (2009) V (3) *Journal of Asia Entrepreneurship and* Sustainability at 46: Op cit note 492 at 8.

4.2.2.1 Economic pressures

Economic pressures present a major barrier from the outset.[512] Many people become street vendors because of the lack of other opportunities of employment or as a means of escaping poverty.[513] However, they are faced with initial or sustained capital constraints.[514] Finding capital or a loan to start or sustain informal trading is difficult particularly for the poor in developing countries. In addition, street vending is characterised by daily transactions and capital (cash) is needed to access wholesale markets from where vendors get their goods.[515]

Many vendors do not have access to credit because of the collateral requirements for bank loans.[516] According to the World Bank, about 66% of adults in Nigeria lack access to formal financial system.[517] Given Nigeria's huge informal economy, it can be argued that informal workers constitute the majority of the 66% adult that lack access to formal banking. Consequently, they have to find alternative sources of credit, including savings and loans from money lenders and family members.[518] Typically, money lenders charge high interest rates making it difficult for informal traders to repay the loan.[519] Similarly, money lenders may use extreme measures to recover the loaned sum when the terms of repayment are breached.[520]

In Nigeria, an alternative source of funding for informal trade is 'Esusu'. Esusu is one of the major informal economic institutions among the 'working class' members of the Nigerian society.[521] This institution though distinctive, has elements of a credit union, insurance scheme

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[512] Webb JW *et al* "Research on entrepreneurship in the informal economy: framing a research agenda" (2013) 28 *Journal of Business Venturing* at 610.

[513] Op cit note 38: Jennifer Cohen "How the global economic crisis reaches marginalized workers: the case of street traders in Johannesburg, South Africa" (2010) 18(2) *Gender & Development* at 277.

[514] Callaghan C "The effect of financial capital on inner-city street trading" (2012) 5(1) *Journal of Economic and Financial Sciences* at 85

[515] Debdulal S *Informal markets, livelihood and politics: street vendors in urban India* (2017) Routledge at 31.

[516] Ligthelm AA & Masuku T *Size, structure and profile of the informal retail sector in South Africa* (2003) Bureau of Market Research, University of South Africa at 58

[517] "Nigeria: New credit infrastructure to improve access to credit and financial inclusion" (March, 2017) Available http://www.worldbank.org/en/news/feature/2017/03/14/nigeria-new-credit-infrastructure-to-improve-access-to-credit-and-financial-inclusion at accessed on the 11th of July, 2017.

[518] Op cit note 507 at 611: Oleka C & Eyisi N "The effect of informal financial institutions on poverty alleviation in Nigeria" (2014) 5(6) *Journal of Economic and Sustainable Development* at 102-3: Karthikeyan R & Mangaleswaran R "Problems faced by the street vendors in their workplace: A study with special reference to Tiruchirappalli city, Tamil Nadu, India" (2017) 4 1(8) *International Journal of Recent Research and Applied Studies* at 31.

[519] Anifowose OL "An analysis of the effects of informal capital market on the Nigerian economic growth" (2016) 6(3) *Arabian Journal of Business and Management Review* at 3.

[520] Ibid.

[521] Oshodi BA *An integral approach to development economics: Islamic finance in an African context* (2014) Routledge.

and a savings club.[522] Esusu is a fund wherein a group of individuals contribute a fixed sum at fixed intervals which is then assigned to different members of the group in rotation.[523] It is popular among street traders because it enables them to access a lump sum which they can use to expand or sustain their business.[524] However, the impact of esusu as an alternative source of funding is limited by the financial status of the contributors who in many cases are poor.

Furthermore in Sub-Saharan Africa, female informal traders face gender-specific economic barriers.[525] This could be linked to the patriarchal system which is prevalent in most parts of Africa.[526] These gender barriers include a lack of collateral to access financial services and low literacy levels.[527] For example in Nigeria, about 65% of the adult active population most of whom are women do not have access to credit from formal financial institutions.[528] Although regulatory policies on the informal economy have been generally repressive, the government recognised the need to encourage women in their informal activities through the provision of credit.[529] This led to initiatives like the Peoples' Bank of Nigeria (PBN), the Family Economic Advancement Programme (FEAP) and the National Poverty Eradication Programme among many others.[530] However, these efforts did not succeed as they recorded $100 billion bad debt. [531]

The persistence of gender inequality in Sub-Saharan Africa has been suggested as being a deterrent to development.[532] This is seen in terms of women rights' to access property, access credit and protection against gender-based violence among others.[533] Yet, women account for over half of the food produced, consist of a majority of the labour force particularly in the street vending

[522] Bascom WR "The Esusu: A credit institution of the Yoruba" (1952) 82(1) *The Journal of the Royal Anthropological Institute of Great Britain and Ireland* at 65.
[523] Ibid.
[524] Op cit note 521.
[525] Akinboade OA "A review of women, poverty and informal trade issues in East and Southern Africa" (2005) 57(184) *International Social Science Journal* at 257 -58.
[526] Anumonwo J.I and Doane D. L. "Globalisation, economic crisis and Africa's informal economy women workers" (2011) 32(1) *Singapore Journal of Tropical Geography* at 8-21.
[527] Op cit note 525.
[528] Madichie NO & Nkamnebe AD "Micro-credit for microenterprises?: A study of women "petty" traders in Eastern Nigeria" (2010) 25(4) *Gender Management: An International Journal* at 303.
[529] Ibid.
[530] Ibid.
[531] Ibid.
[532] Duflo E "Women empowerment and economic development" (2012) 50(4) *Journal of Economic Literature* at 1059: *Accelerating gender equality and women's empowerment in Africa* (2016) Africa Human Development Report 2016, UNDP: *Women, business and the law 2016: Getting to equal* (2015) World Bank.
[533] Ibid.

sector, and, also are responsible for unpaid care work within the continent.[534] Their contribution to the economic growth of African countries would be far more but for constraints like access to financial services.[535] For example, a 2013 survey by the Central Bank of Nigeria (CBN) show that women make up about 54.4% of those excluded from formal financial services in Nigeria.[536] This is significant given that women are the majority and a vulnerable group within the informal economy. Yet, unlike other countries in Sub-Saharan Africa, Nigeria does not have any gender specific financial inclusion policy.[537] Nonetheless, there are regulations that might impact on financial inclusion, such as the micro-finance policy framework.

In December 2005, the CBN introduced a microfinance policy to enhance the access to formal financial services by actors in the informal economy "and low income households" to expand their operations and contribute to the economic growth of the country.[538] The basis for this policy was that, there can be no economic growth if the access of informal workers to factors of production like financial services is not improved.[539] The objectives (aspirations) of this policy include:[540]

- The provision of instant, cheap and reliable financial services to the economically active poor (such as street vendors);
- The mainstreaming of informal financial services into the formal financial system.

The targets are the indicators to determine the successful achievement of the objectives of this policy are to, *inter alia*:[541]

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[534] Anyanwu JC "Women's education and the use of bank credit in Nigeria: Challenges for the twenty-first century" (1994) 9(2) *Journal of Social Development in Africa* at 45.
[535] Ibid: The UNDP report of 2016 estimates that gender inequality costs Sub-Saharan Africa an average of 95 billion US$ annually: Ibid UNDP Report.
[536] "National financial inclusion strategy" (2013) Financial Inclusion in Nigeria. Available at https://www.cbn.gov.ng/Out/2013/CCD/NFIS.pdf accessed on the 16th of July, 2016 at 8.
[537] Ibid at 9: Op cit note 527 (*Women, business and the law*) at 18.
[538] This was revised in 2011 as part of the reforms in the nation's financial industry. According to the CBN governor, the revision was as a result of the increased understanding of how the poor use money and the growing demand for financial services: "CBN to review microfinance policy" available at https://www.proshareng.com/news/Capital%20Market/CBN-to-review-microfinance-policy/8902 accessed on the 26th of February,2019:"Microfinance policy framework for Nigeria" (2011) (Revised) Central Bank of Nigeria Available at http://www.cbn.gov.ng/Out/2011/publications/dfd/Reviewed%20Microfinance%20Policy%20July%2012%202011.pdf accessed on the 16th of August, 2016 at 4.
[539] Ibid at 4.
[540] Ibid at 9.
[541] Ibid at 10.

- Increase access of the economically active poor to formal financial services by 10% annually;
- Eliminate barriers against the access of women to formal financial services by 15% annually.

This seemly laudable microfinance policy framework is faced with many challenges in the context of the informal economy. One of such challenges is the lack of banking culture among the urban poor.[542] Traditionally, informal workers like street vendors borrow money from relatives or participate in 'Esusu' and repay the exact sum borrowed.[543] This might make it difficult to understand the rationale behind the interest on money loaned from the bank. Also, in northern Nigeria where the majority are Muslims, the issue of interest on loans is frowned upon.[544] In addition, there is a popular historical distrust of formal financial institutions. Prior to the establishment of microfinance institutions, there were community banks where community members conducted financial transactions.[545] These banks failed and caused many Nigerians to lose their money. As a result, microfinance institutions find it difficult to persuade people to conduct business with them.[546] This was further compounded by the withdrawal of the licence of over 224 microfinance banks by the CBN in 2010.[547]

Corruption has further undermined development in many sectors of the Nigerian economy including the microfinance sector. This manifests through poor corporate governance, frauds, forgeries of bank documents and non- servicing of loans by customers.[548] In addition, bank

[542] Acha IA. "Microfinance banking in Nigeria: problems and prospects" (2012) 1(5) *International Journal of Finance and Accounting* at 108.
[543] Ibid.
[544] Mohammed AD & Hassan Z "Microfinance in Nigeria and the prospects of introducing its Islamic version there in the light of selected Muslim countries' experience" (2009) Munich Personal RePEC Archive (MPRA) MPRA Paer No. 8287 Available at http://www.iefpedia.com/english/wp-content/uploads/2009/11/Microfinance-in-Nigeria-and-the-Prospects-of-Introducing-its-Islamic-Version-there-in-the-Light-of-Selected-Muslim-Countries-Experience.pdf accessed on the 16th of August, 2016 at 1.
[545] Ayadi FO *et al* "The role of community banks in economic development: A Nigerian case study" (2008) 2 *Savings and Development* at 159.
[546] Op cit note 542.
[547] Available at https://www.cbn.gov.ng/Out/2010/pressrelease/gov/REVOCATION%20LIST.pdf accessed on the 16th of August 2016.
[548] Op cit note 542: Kanu C and Isu G "Microfinance banks operation in Nigeria, constraints and suggested solutions: An evaluation" (2015) 1(2) *Global Journal of Contemporary Research in Accounting, Auditing and Business Ethnics (GJCRA)* at 318-21: in this thesis, corruption is the abuse of public power or resources. Corruption as a concept is multidimensional, one of such dimension is poor corporate govenance: Ogundiya IS "Political corruption in Nigeria: Theoretical perspectives and some explanations" (2009) 11(4) *Anthropologist* 281-92: Poor corporate governance means actions/behaviours contrary to the interests of a company's (organisation's) stakeholders: Oghojafor B, Olayemi O, Okonji P and Okolie J "Poor corporate governance and its consequences on the Nigerian banking sector"

officials may use their power to obtain loan facilities personally or for friends above the regulatory limit, which are often unpaid.[549] Although the CBN has the responsibility of supervising such institutions, the diverse nature and multiplicity of the Nigerian financial market poses a regulatory challenge.[550] For this reason, many microfinance institutions get away with sub-standard activities. As a result the access of the informal economy to the financial services of these microfinance institutions are limited.

Nevertheless, in a bid to ensure financial inclusivity, the federal government of Nigeria in 2017 signed into law two bills.[551] These laws are called Secured Transactions in Moveable Assets Act and the Credit Reporting Act.[552] The Secured Assets Act ensures that Micro, Small and Medium Enterprises (MSMEs) –many of which are informal- can register their moveable assets, tools of trade and account receivables and use these as collateral to access credit.[553] This is a departure from the previous credit regime where loans could only be accessed through the use of immovable assets as collaterals. Likewise, the Credit Reporting Act allows credit bureau, lenders (banks) and other institutions that provide services on credit (telecommunication companies) to collate financial information to determine the credit ratings of individuals.[554] These laws address access to credit which is potentially one of the pathways to formalisation.[555] However, more consideration need to be given to the heterogeneity within the informal economy.[556]

(2010) 5(2) *Serbian Journal of Management* 243-50: fraud is anything calculated to deceive and forgery is a type of fraud which is mainly the falsification or manipulation of documents: Owolabi SA "Fraud and fraudulent practices in Nigeria banking industry" (2010) 4(3b) *African research Review* 240-56.

[549] Op cit note 542.

[550] Op cit note 548.

[551] "Osinbajo signs laws to ease access to credit facilities for MSMEs" (20th May, 2017) *Vanguard* Available at http://www.vanguardngr.com/2017/05/osinbajo-signs-laws-ease-access-credit-facilities-msmes/ accessed on the 11th of July, 2017.

[552] Secured Transactions in Moveable Assets Act, 2017 (otherwise known as Collateral Registry Act) and the Credit Reporting Act, 2017

[553] Sections 1 to 9 Secured Transactions in Movable Assets Act, 2017.

[554] Section 1 Credit Reporting Act, 2017.

[555] "Closing the credit gap for formal and informal Micro, Small and Medium Enterprises" (2013) International Finance Corporation Available at http://www.ifc.org/wps/wcm/connect/4d6e6400416896c09494b79e78015671/Closing+the+Credit+Gap+Report-FinalLatest.pdf?MOD=AJPERES accessed on the 11th July, 2017 1-34 at 21-27: in addition, the federal government recently introduced a loan programme called TraderMoni. This scheme was created for street vendors and artisans in Nigeria as part of the Government Enterprise and Empowerment Programme (GEEP). With TraderMoni, workers can receive interest-free loans starting from N10, 000 ($27.6) to N100, 000($276.6). Although the aim of the scheme is to address extreme poverty in the country, there have been allegations that this is vote buying by the present government given that the scheme was introduced a few months to the general elections of Nigeria: https://www.tradermoni.ng/about.html.

[556] See chapter one at 1.1 for details on the heterogeneity within the informal economy.

Aside from access to credit and other financial services, Willemse argues that unhealthy rivalry causes disunity among street traders which might ultimately affect their ability to increase or maintain their income.[557] Similarly, overall economic downturn affects the demand for goods by customers and this has an impact on the earnings of the vendors.[558]

4.2.2.2 Socio-cultural constraints

This may be in the form of gender-specific barriers. Segregation by gender in the labour market remains prevalent in developed and developing economies.[559] Despite advances in the human rights 'theory' and the expansion of the participation of women in the labour market, women and men still continue to work in different industries depending on the socio-cultural and political climate they are found.[560] This gendered pattern of employment is also experienced in the European context. For example, in the United Kingdom, men are usually found in industries like construction, transport, storage and communication, and energy and water supply.[561] While women are the majority in health, social work and education.[562] Similarly, gendered pattern ofemployment is seen around Africa. In Ghana, for example, street food vending is traditionally an occupation for women.[563] Also, in Nigeria about 46% of the active female labour force are found in petty trading and home based manufacturing jobs.[564]

In addition, segregation operates horizontally and vertically; producing different types of job and occupational hierarchies with women usually at the low levels.[565] In street vending, men

[557] Op cit note 492.
[558] "Street vendors- vital contributors to urban economies" WIEGO available at http://wiego.org/informal-economy/occupational-groups/street-vendors accessed on the 18th of August, 2016: Anyidoho AN & Steel W "Informal-formal linkages in market and street trading in Accra" (2016) 8(2) *African Review of Economics and Finance* at 179: Anyidoho AN & Steel W "Perceptions of costs and benefits of informal-formal linkages: market and street vendors in Accra, Ghana" (2016) *WIEGO Working Paper No 35*.
[559] Cross S & Bagilhole B "Girls' jobs for the boys? Men, masculinity and non-traditional occupations" (2002) 9(2) *Gender, Work and Organisation* 204-05.
[560] Ibid: See Sen A "Elements of a theory of human rights" (2004) 32(4) *Philosophy & Public Affairs* 315-56 for a detailed discussion on the human rights theory.
[561] Ibid.
[562] Ibid.
[563] Forkuor JB *et al* "Food vending among men in Kumasi: Socio-cultural advantages, constraints, and coping strategies" (2016) 4(2) *International Journal of Social Science Studies* at 94.
[564] Kale Y & Doguwa SI "On the compilation of labour force statistics for Nigeria" (2015) 6 (1a) *CBN Journal of Applied Statistics* at 192: "Women in a transforming Nigeria" (2011) *Gender Statistics Newsletter* Quarterly Publication of National Bureau of Statistics at 3: "Review of the Nigerian Economy" (2003) Federal Office of Statistics.
[565] Horizontal segregation is the under-representation/over-representation of a given gender in certain occupations or sectors. Vertical segregation is a situation whereby career progression for a particular gender within a sector or organization is limited: Fapohunda T "Towards improved access to full employment and decent work for women in

tend to have better tools of trade, operate from better public spaces, have greater access to financial capital, and sell more valuable goods and products at a higher volume.[566] While women generally sell more perishable products.[567] In addition, female street traders are excluded from decision making processes, have lower levels of education, less income and access to social services, and smaller networks.[568]

4.2.2.3 Political conditions, environment and policies

This refers to the regulatory framework of the environment in which street vendors conduct their business. Street vending as an economic activity generates controversy in many developing countries including Nigeria.[569] This is interwoven with the policy responses of government to issues like the registration and taxation, rights of street vendors, health and safety regulations, and urban planning and governance.[570] Governments of many developing countries tend to restrict informal trading activities and their actions exacerbate the vulnerabilities of street vendors.[571] Similarly, inappropriate government policies have exclusionary effects on street vendors which leads to income vulnerability, limited trade participation and worsened work conditions.[572] This is also reflected in the definition and scope of labour laws which excludes workers in the informal economy.[573] In addition, these policies have a gendered bias which affects the abilities of women to take up opportunities afforded by some economic reforms. This is systemic and sustained by many laws and cultures that are paternalistic.[574] This bias results in the differential access and

Nigeria" (2012) 2(8) *International Journal of Humanities and Social Science* (special issue) 104-12: "Segregation" (February 2017) EurWORK available at https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/segregation accessed on the 26th of February, 2019.

[566] Op cit note 148 at 40.

[567] Bass LE "Enlarging the street and negotiating the curb: public space at the edge of an African market" (2000) 20(1/2) *International Journal of Sociology and Social Policy* at 82.

[568] Madichie NO & Nkamnebe AD "Micro-credit for microenterprises?: A study of petty traders in Eastern Nigeria" (2010) 25(4) *Gender in Management: An International Journal* at 305.

[569] Op cit note 558.

[570] "Key debates about street vending" WIEGO Available at http://wiego.org/informal-economy/key-debates-about-street-vending accessed on the 20th of August, 2016.

[571] Op cit note 24: Canagarajah S & Sthuraman SV "Social protection and the informal sector in developing countries: Challenges and opportunities" (2001) *Social Protection Discussion Paper Series* No 0130 Social Protection Unit World Bank at 5.

[572] Op cit note 24: Onyenechere EC "The constraints of rural women in informal economic activities in Imo state, Nigeria" (2009) XXXIV (1) *Africa Development* at 97-98.

[573] For example, the definition of a worker under Nigerian labour laws only considers those in traditional employment relationships. This limits the ability of the law to influence current labour market dynamics which includes the informal economy.

[574] Op cit note 572 at 85: as highlighted in 4.2.2.1 above, as a result the prevalence of patriacry within the African context, the rights and interests of women are viewed as secondary to that of men.

command which women have in the wider economy. Invariably, these gendered biases reflect in the rates of poverty and promote gender inequality.

Closely linked to policies are the political conditions of the environments where street vendors conduct their activities which determine the provision and access to infrastructure like public spaces. The lack of access to roads, an efficient public transport system, limited affordable accommodation and health care, restrain street vendors from doing their work. In addition, lack of access to essential services like water and electricity are hindrances to street vending.[575]

As earlier mentioned, prevailing political unrest in many parts of the world has increased immigration and many foreigners have turned to informal activities like street vending for survival.[576] However, these foreigners face additional policy barriers by virtue of their status, as many governmental policies are designed with the interests of their citizens as the priority.[577] In addition, the lack of proper documentation or work permit, racial or ethnic discrimination and the threat of deportation are other challenges faced by many foreign street vendors.[578] The ILO has however called for an integrative approach in dealing with the labour rights of migrants.[579]

A major effect of inappropriate policies is that vendors are open to abuse and harassment and this intersects with their legal status. As a result of their 'inconsistent legal status', vendors in many cities in developing countries work under the continuous possibility of forceful removal

[575] Skinner C "Falling through the policy gaps? Evidence from the informal economy in Durban, South Africa" (2006) 17 (2) *Urban Forum* at 136-37: the limited access to these infrastructures hinder the economic growth of these vendors. For example, street vendors that sell perishable goods, the lack of electricity affects their ability to store these goods. This means their operational costs increases because they can not purchase perishable goods in bulk.

[576] de Hein H "Euro-Mediterranean migration futures: The cases of Morocco, Egypt and Turkey" (2014) in Bommes Michael *et* al (eds) *Migration from the Middle East and North Africa to Europe* Amsterdam University Press Available at https://www.imiscoe.org/docman-books/250-migration-from-the-middle-east-and-north-africa-to-europe-past-developments-current-status-and-future-potentials/file accessed on the 22nd of August, 2016 at 45: Op cit note 487 at 9.

[577] Hunter N & Skinner C "Foreign street traders working in inner city Durban: Local government policy challenges" (2003) 14(4) *Urban Forum* 301-19.

[578] Ibid.

[579] *Resolution concerning a fair deal for migrant workers in a global economy* (2004) Ninety-second session ILC ILO Available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/genericdocument/wcms_178658.pdf accessed on the 24th of May, 2017: Nicola Piper *et al* "Redefining a rights-based approach in the context of temporary labour migration in Asia" (2016) Working Paper-11 available at http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/72E2E53E545B067BC12580250043BA1D/$file/Piper%20et%20al.pdf accessed on the 24th of May, 2017 1-21 at 11-14: Migration for Employment Convention (Revised), 1949 (No. 97).

from public spaces and the seizure of their goods.[580] Furthermore, these policies lead to operational challenges which could deter informal traders from their economic activities.[581] Canagarajah and Sethuraman summarise these constraints by stating that,

> 'Informality compounded by market imperfection, renders the activities of street traders less viable and vulnerable. Their ability to compete in the market is diminished, especially against some products and services of the formal sector, which tends to enjoy a favoured treatment in the policy framework in many countries. Street traders are unable to minimize the cost; nor are they able to diversify their output. They have few incentives to accumulate capital, acquire skills, and improve technology'.[582]

The effects of these constraints were seen in the events that led to the self-immolation of a street vendor in Tunisia.

In summary, street vending is connected to the overall economy in more complicated ways which are not necessarily illegal and if appropriately regulated has the ability to contribute to poverty reduction in Nigeria. However, the aforementioned constraints impact on the opportunities and benefits of street trading. Nonetheless, many governments in cities in developing countries persistently make and enforce laws that repress and restrict street vending. This is the case in Lagos state, Nigeria.

4.3 The development of Lagos State as a Metropolitan City

A metropolitan city is a city of great affluence and economic importance in a country.[583] Lagos occupies this enviable position as the economic hub of Nigeria.[584] Its history and advantageous location makes it attractive to both local and foreign investors.[585] However, Lagos, which is partly

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[580] Roever S "Street Vendors" (2012) *AAPS Planning Education Toolkit: The Informal Economy* at 5: The risk of displacement occurs more frequently during preparations for huge events such as the FIFA World Cup and campaigns for modernisation of cities

[581] Op cit note 492 at 9: Obamuyi TO "Credit delivery and sustainability of micro-credit schemes in Nigeria" (2009) 3 (1) *Journal of Enterprising Communities: People and places in the global economy* at 80.

[582] Op cit note 564 at 14.

[583] Agamah FU and Adebayo AA "Contemporary issues of mixed-use development concept: An approach towards making great places: The Lagos mega city scenario" (2014) in Patel Yusuf *et al*(eds) *Planning Africa 2014: Making great places* South African Planning Institute (SAPI) at 322.

[584] Adebayo P and Okesoto O "The changing form and function of the inner city of Central Lagos: Implication for sustainable great city" (2014) in Patel Yusuf *et* al(eds) Planning *Africa 2014: Making great places* South African Planning Institute (SAPI) at 342: Onuwa O *et al* " The challenges of urbanization" Available at http://devnet.org.nz/sites/default/files/Okwuashi.The%20Challenges accessed on the 16th of March, 2016 at 7.

[585] Ibid Adebayo and Okesoto: between 50 % and 70% of the Nigeria's commercial transactions are executed in Lagos: Op cit note 36 at 36.

an island, has the smallest state land mass and the highest urban population in Nigeria. It is one of the fastest growing cities in the world.[586]

It is generally accepted that the Portuguese gave Lagos its name, although there is little evidence that it entered into common usage until the later part of the 18th century.[587] Lagos became a British colony in 1861 and rose to become the major mercantile and administrative centre in Nigeria which attracted an influx of people from the hinterlands.[588] It is located in South-West Nigeria and was the political capital until 1991 when the capital was moved to Abuja by the then president, Ibrahim Babaginda.[589]

Transport is also vitally linked to the economic standing and overall development of Lagos.[590] This is because of its strategic location as the premier seaport in Nigeria.[591] This was further enhanced with the construction of Nigeria's foremost international airport in the city.[592] These facilities and the economic activities in Lagos have facilitated tremendous growth in the city.[593] This has made Lagos the most urbanised state in Nigeria.[594] However, Lagos has faced many challenges.

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[586] Olokesusi F "Lagos: The challenges and opportunities of an emergent African mega city" (2011) Paper presented at *NISER Seminar Series on 5th July, 2011* Available at http://misspgeogrocks.weebly.com/uploads/1/4/1/4/14146185/july2011nrsspaper.pdf accessed on the 2nd of September, 2016 at 7: It is also Africa's second most populous city: *Framework for city climate risk assessment* (2009) Fifth Urban Research Symposium. Available at www.uccn.org accessed on 14th March, 2016 at 25: Lagos is both a city and a state.

[587] Whiteman K *Lagos: A cultural and literary history* (2012) Signal books Limited.

[588] Smith R *The Lagos consulate 1851-1861* (1979) University of California Press at 2: *Annual Report on the social and economic progress of the people of Nigeria* (1932) Colonial Reports- Annual No 1625. Accessed at libsysdigi.library.illinois.edu on the 14th of March, 2016 at 24.

[589] Adebanwi W "Abuja" *(2012)* in Simon Bekker and Goran Therborn(eds) *Capital cities in Africa: Power and powerlessness* HRSC Press at 95.

[590] Omoegun A *Street traders displacements and the relevance of the right to city concept in a rapidly urbanizing African city: Lagos, Nigeria* (2015) Unpublished PhD Thesis School of Planning and Geography, Cardiff University at 91

[591] Mabogunje AL *Urbanization in Nigeria* (1968) University of London at 251

[592] Op cit note 590.

[593] Abiodun JO "The challenges of growth and development in metropolitan Lagos" in *The urban challenge in Africa: Growth and management of its large cities* (1997) UNC. Available at http://www.nzdl.org/gsdlmod?e=d- accessed on 16th March, 2016.

[594] Fourchard L"Lagos" (2012) in Simon Bekker and Goran Therborn(eds) *Capital cities in Africa: Power and powerlessness* HRSC Press 66-77: According to the World Bank, Lagos is one of the fastest growing megacities in the world: "World Urbanization Prospects: The 2014 Revision, highlights" (2014) (ST/ESA.A/352) Department of economics and social affairs, UN. Available at http://esa.un.org/unpd/wup/highlights/wup2014-highlights.pdf accessed on the 16th of March, 2016 1-32.

According to Mabogunje, the colonial and trade history of Lagos present a number of challenges to its contemporary development.[595] He stated,

> 'In many ways Lagos is the most spectacular of that class of Nigerian cities which owe their growth and development largely to European influence. Here the chance concentration of traffic imposed by the construction of the railways in 1895 and the later improvement of port facilities in 1914 gave Lagos maximum significance in the predominantly export-trade orientation of the Nigerian economy. Except for Port Harcourt, no other city in the country is favoured by being the joint termini of major land and sea routes. Nonetheless, for many towns and cities whose location remains of relevance to the modern economy, Lagos represents a type both in its rapid rate of growth and in the nature of the problems which are involved in such growth. However, the sheer magnitude of Lagos puts it in a class by itself and compounds many of its problems. For when the era of industrial development began, the port location and the political pre-eminence gave Lagos a peculiar advantage and transformed it into the major focus of the urbanization process of the whole country'.[596]

Prior to colonization, Lagos was a fishing and farming settlement.[597] However, due to its physical characteristics, it became an important slave exporting port until the mid-nineteenth century when the ban on slave trade was enforced.[598]

The slave trade market was substituted with trading in palm oil which attracted European merchants, freed slaves from other parts of the world and refugees from the hinterland.[599] However, this commerce was threatened by political instability in the interior.[600] The Egba people had closed down the trade routes because of certain actions by the Lagos colonial government.[601] As a result, the colonial masters decided to extend stable political conditions to the interior to ensure trade progress by making use of treaties or force depending on the attitude of the interior people.[602] Subsequently, the colonial rulers developed commercial agriculture, exploited mineral resources and built a main railway connecting the southern and northern protectorate.[603] These developments enhanced economic growth in the Lagos colony.[604]

[595] Op cit note 591 at 238.
[596] Op cit note 591.
[597] Op cit note 593.
[598] Op cit note 593.
[599] Op cit note 594 at 67
[600] Op cit note 591 at 244.
[601] Op cit note 591at 244.
[602] Op cit note 591 at 244.
[603] Op cit note 591at 244.
[604] Op cit note 591 at 244.

In 1914, Lagos became the capital of Nigeria.[605] After this, the British undertook the classification of Nigerian cities in a bid to segregate the Europeans from the natives in 1921.[606] A 'class A township' (Ikoyi) was reserved for residential purposes for the Europeans and a commercial area (Lagos Island) where Europeans also lived and conducted businesses with Africans.[607] However, the expanse of land left for Africans was insufficient and it was impossible to relocate them beyond the core of the city.[608] This caused a housing deficit and the colonial town planners classified the area where the natives lived as a slum.[609] By 1924, there was a severe plague outbreak which lasted for six years.[610] This forced the administration to begin an anti-plague campaign and house sanitary inspection opposed by the residents.[611] In a bid to provide a lasting solution, the British created the first town planning institution called the Lagos Executive Development Board (LEDB).[612] The establishment of this institution was also linked to the fact that Lagos at this time had the reputation of being one of the most insalubrious cities in West Africa.[613] Nonetheless, this institution primarily served the interests of the Europeans.[614]

Although the town planning institution sought to rid the city of its slum appearance and resettle some of the Africans to the mainland, overcrowding remained a challenge leading to disorderliness.[615] Similarly, the increasing monopoly of trade by the Europeans, the will to escape

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[605] Adebanwi W "Abuja" (2012) in Simon Bekker and Goran Therborn (eds) *Capital cities in Africa: Power and powerlessness* HRSC Press at 84.

[606] Segregation means to separate people based on their racial, ethnic or territorial differences. This separation could be spatial or ideological. Basically, segregation protects a majority or minority culture from pollution. In this instance, it was to protect the Europeans from pollution from the Africans. Residential segregation is the commonest. Albert IO "The concept of security in the context of urban crimes and segregation in West Africa" (2003) in Laurent Fourchard and Isaac O. Albert(eds) *Security, crime and segregation in West African cities since the 19th century* KARTHALA IFRA at 59: Acey C "Space vs. Race. A historical exploration of spatial injustice and unequal access to water in Lagos, Nigeria" (2007) *Critical Planning Summer* at 53-4.

[607] Otubu A "Conceptualizing zoning within the Lagos megacity project: A prognosis" (2012) 2(10) *Journal of Environment and Earth Sciences* at 41

[608] Op cit note 594 at 68.

[609] Fourchard L "Lagos and the invention of juvenile delinquency in Nigeria" (2006) *Journal of African History* Cambridge University Press at 120.

[610] Ibid: Immerwahr D "The politics of architecture and urbanism in postcolonial Lagos, 1960-1986" (2007) 19(2) *Journal of African Cultural Studies* at 171.

[611] Op cit note 609.

[612] Waziri AG and Roosli R "Housing policies and programmes in Nigeria: A review of the concept and implementation "(2013) 3(2) *Business Management Dynamics* at 61.

[613] This was because of its swampy setting, lack of portable water and a sewage system:Brown SH "Public health in Lagos, 1850-1900: Perceptions, patterns and perspectives" (1992) 25 (2) *The International Journal of African Historical Studies* 337-60.

[614] Op cit note 610.

[615] Op cit note 594 at 69: Olukoju A "Nigerian cities in the historical perspectives" (2004) in Toyin Falola and Steven J. Salm (eds) *Nigerian cities* Africa World Press, Inc. 11-46.

taxation on formal markets and lack of other employment opportunities especially during the depression of the 1930s contributed to the expansion of street trading.[616]

Trading in the geographical area now known as Nigeria predates the British colonial administration in the country.[617] Furthermore, street trading has always been seen as a 'legitimate' source of livelihood in the Lagos society.[618] However, the introduction of colonial administration saw a gradual shift in how street trading was perceived. It became synonymous with environmental woes and backwardness. This led to the negation of the identity of street vendors and the introduction of repressive laws to regulate their activities. This remains the status in Lagos today. The following section explores the series of events that contributed to the change in how street vending became viewed in Lagos state. This section is divided into three developmental eras: the colonial, post-independence and the modern day

4.3.1 Colonial development era (1930s to 1960s)[619]

As mentioned, segregation schemes were introduced into Nigeria between late 19th and early 20th centuries.[620] These schemes though developed as public health mechanisms, encouraged racial discrimination.[621] Therefore towns classified under 'class A' were more developed and sanitary because the expenditure of the public revenue, which was heavily sourced from natives, was

[616] Op cit note 594 at 69.

[617] There is evidence showing that Lagos had periodic markets where street trade was conducted during slave trade: Aderibigbe AB "Early history of Lagos to about 1850" (1975) in Aderibigbe AB (ed) *Lagos the development of an African city* Longman Nigeria at 9: Lovejoy PE "Interregional monetary flows in the precolonial trade of Nigeria" (1974) 15(4) *The Journal of African History* 563-585: goods such as palm oil and fish were traded between the natives and Europeans in periodic markets. Periodic markets were street markets which held at speicifc intervals, for example weekly or monthly. Asides this, women also sold things in front of their homes: Ehrensaft P "The political economy of informal empire in pre-colonial Nigeria, 1807-1884" (1972) 6(3) *Canadian Journal of African Studies* 451-90: Golub S and Hansen-Lewis J "Informal trading networks in West Africa: The Mourides of Senegal/The Gambia and the Yoruba of Benin/Nigeria" *The informal sector in Francophone Africa: Firm size, productivity, and institutions* (2012) World Bank Washington DC at 182 -90: House-Midamba B and Ekechi FK (eds) (1995) *African market women and economic power* Greenwood Press USA.

[618] Fourchard L & Olukoju A "States, local government and markets in Lagos and Ibadan since the 1950s" (2007) in Fourchard Laurent (ed) *Gouverner les villes d'Afrique. Etat, gouvernement local et acteurs prives* at 108: Ibid Stephen Golub and Jamie Lewis.

[619] During this era, apart from street trading being regularized, a specific law prohibiting street trading by young persons was also enacted. This law was called the Street Trading Regulation of the Children and Young Persons' Ordinance of 1943. This made street trading by young persons a punishable offence: George A "Within salvation: Girl hawkers and the colonial state development era Lagos" (2011) 44(3) *Journal of Social History*.

[620] Olukoju A "The segregation of Europeans and Africans in Colonial Nigeria" *century* (2003) in Laurent Fourchard and Isaac O. Albert (eds) *Security, crime and segregation in West African cities since the 19th* KARTHALA IFRA 264-86.

[621] Gale TS "Segregation in British West Africa" (1980) in *Cahiers d'etudes africaines* 20(80) 495-507.

concentrated in these areas.[622] This precipitated inter and intra-regional economic inequality and internal migration to Lagos. Having no other source of livelihood, these migrants began to participate in street trading activities.

By 1932, street trading had much opposition. This was linked to street vendors erecting temporary and unauthorised structures to sell their goods.[623] They also traded on main roads during the day and night; an evening market was discovered in 1932.[624] The administrator of the colony complained that there was no street in Lagos where hawking or street trading did not take place outside the houses.[625] The secretary of the Lagos town council reported that the population of street vendors was about 4000.[626] However, the administrator argued that the number was 10,000 which was equivalent to 10% of the overall population in Lagos.[627]

Residents began to exert pressure on the secretary of the town council to regulate and control the activities of street vendors.[628] The members of the commercial class argued for the diversion of street trading to side roads to reduce traffic congestion.[629] Another suggestion was that formal market accommodation be built for these vendors and as a potential source of revenue for the town council.[630] However, most of these vendors could not afford rental costs because they were poor.[631] Also, the Lagos Chamber of Commerce confronted the town council on the menace of street vending.[632] Consequently in 1932, the town council and the colonial administration conducted a covert study on the intricacies of street trading.[633]

The report identified the major streets where street trading took place.[634] Also the report condemned street trading from a public health perspective, blaming the sector for the

[622] Op cit note 505: in addition, Class A towns were towns governed directly from Britain.
[623] Lawal BA "Markets and street trading in Lagos" (2004) in Toyin Falola & Steven J. Salm (eds) *Nigerian cities* Africa World Press Inc. at 238.
[624] Ibid
[625] Op cit note 594 at 69.
[626] Op cit note 594 at 69.
[627] Op cit note 594 at 69.
[628] Op cit note 616 at 238.
[629]Op cit note 623.
[630] Op cit note 623.
[631] Op cit note 623.
[632] Op cit note 623.
[633]Op cit note 623.
[634] Ibid:these streets included Lewis, Araromi market, Freeman Moloney bridge, Oshodi, Anikantanmo, Idumagbo market area, Palm church area, Faji market, Alii, Agarawu, Ereko market, Egerton square, Alakoro, Elegbata, Obun Eko street, Docemo, Great bridge, Ebute Ero, Iddo, Oyingbo market, Kano, Griffin , Obada market and Apata:Ikioda FO "Urban markets in Lagos, Nigeria" (2013) 7(7) *Geography Compass* 517-26.

indiscriminate spread of rubbish in the city and the sale of unhealthy food.[635] Given that these vendors were mostly mobile; it was difficult for health inspectors to arrest them.[636] Similarly, street trading was condemned from a financial point of view.[637] According to the town engineer, the unclogging of drainages blocked by street vending activities were very expensive and a drain on the council's resources.[638] The engineer suggested that regulating street vending would enable a costs reduction.[639] However, street vendors avoided the payment of rent/tax to the council by forming associations.[640] These associations established a specific purse that compulsorily required street vendors to pay a certain sum which was remitted directly to the landlord of the houses or spaces for street vending activities. In doing this, payment to the council was bypassed.

Meanwhile, the Lagos press, popular for its sensitivity to social problems; conducted research into street trading activities.[641] This provided an opportunity for the general Lagos populace to express their views on street vending. The plans of the council to regulate street vending were harshly criticised. The *Lagos Daily Record* newspaper argued that street trading was not to be blamed for the plague.[642] Referring the council back to 1902 when there were protests against government's deliberate neglect of the drains, the newspaper argued that there was no direct link between the unsanitary conditions of the indigenous settlement and overcrowding.[643]

They further argued that the colonial restructuring of the administration of Nigeria and the concentration of development projects in Lagos caused the influx of various ethnic groups.[644] The press argued that cities in Great Britain, France and the United States which had over three hundred years of civilisation still contended with the menace of rat infestation despite having better facilities. They declared that street vending persisted in these cities and was not peculiar to Lagos. They suggested that government direct street vendors to clear their environments rather than prohibiting their activities.

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[635] Street traders were blamed for the spread of rodents who were attracted by garri that was scattered all over the road in Ebute Ero. The town council had to spend additional money derating the stores and warehouses in this area.
[636] Op cit note 623 at 239.
[637] George A "Within salvation: girl Hawkers and the colonial state in development era Lagos" (2011) 44(3) *Journal of social History* 837-50.
[638] Gandy M "Planning, anti-planning and the infrastructure crisis facing metropolitan Lagos" (2006) 43(2 *Urban Studies* 371-96.
[639] Op cit note 623 at 241.
[640] Op cit note 623 at 241.
[641] Op cit note 623 at 241.
[642] Op cit note 623 at 241.
[643] Op cit note 623 at 375.
[644] Op cit note 623 at 375- 80.

On the other hand, the news of government's plans to prohibit street trading was disconcerting to Lagos traders. The implementation of the plan would cause immense financial hardship on traders particularly as this was the period of the Great Depression.[645] However, the colonial administration was bent on turning Lagos to a modern utopia city which had no room for street trading.[646] This attitude was supported by the land administration regulatory framework.[647] Nonetheless, the press rejected this stance and argued for the control rather than the prohibition of street trading.[648]

Although, the colonial administration did not participate in this public debate, its silence was not an acceptance of defeat.[649] This administration was accustomed to criticisms in the Lagos press.[650] However, the attacks of the press provided the nine-member committee useful information that guided their recommendations to the government.[651] The committee deliberated on types and site of markets, prevention of street vending in some designated areas, limitations of street vending in some areas, prevention of overcrowding, and amount of rent in the market and improvement of existing conditions in the markets.[652] In addition, they recommended the charging of uniform fees which should not be burdensome to all stallholders.[653] Petty traders and stallholders were also required to sweep their environments.[654] Before long, sweeping became a normal occurrence among traders in Lagos.[655]

Nevertheless, overcrowding remained a major challenge in Lagos in the 1930s. The LEDB received loans from the British government to construct some buildings in Yaba which were

[645] Op cit note 623 at 243.
[646] Op cit note 623 at 243.
[647] This is discussed in chapter six of this thesis.
[648] In 1943, the Children and Young Persons Ordinance (CYPO) was promulgated. This law limited the age of female street vendors to 16years. This was the government's way of protecting the girl child from prostitution which street trading made them susceptible to. However, all the law achieved was to curtail the movement of young females around Nigeria: Op cit note 602 at 133.
[649] Op cit note 623 at 244.
[650] Op cit note 623 at 244.
[651] Op cit note 623 at 244.
[652] Op cit note 623 at 244.
[653] Op cit note 623 at 244.
[654] Op cit note 623 at 244.
[655] This was influenced by the cultural beliefs of the traders that they had to maintain a clean environment because of the deity, Aje, the god of profit, who gives profits to business people. According to their belief, Aje can only inhabit a clean environment.

completed in 1939.[656] However, Nigerians were not enthusiastic to leave the Island because of a lack infrastructure and public transport system from Yaba to the Island.

By the mid-1950s, plans were already being put in place for the independence of Nigeria with Lagos as the political capital. This necessitated Lagos being modern and without any form of informality. The LEDB was mandated to ensure this development. However, this scheme was difficult to implement and was delayed by citizens who opposed any development that will lead to their displacement.[657]

4.3.2 Post-independence era (1960s to 2000)

Lagos became the capital of Nigeria upon independence. This had implications for her urban development and population growth. With the spatial expansion of Lagos, government was confronted with the problem of street trading and inadequate market facilities.[658] The increased erection of illegal shops on major streets and hawking in traffic resulted in the initiation of the market development scheme in the 1970s and 1980s. A Market Development Board was created in 1980.[659] This Board erected modern shopping centres and wholesale markets at major entry points to Lagos; however, street trading persisted.[660] As a result, with the approval of the state government, the local government authorities created night markets as a way of legitimising the activities of street vendors.[661] But high rental costs of shops and increased population caused facilities to be overstretched.[662] Furthermore during this time, Nigeria was in recession and with the help of the IMF implemented SAP.[663] This led to massive job cuts in the public sector which resulted in increased participation in street trading as a source of income.[664] On the other hand, the government was more interested in making Lagos an orderly city. This quest for order resulted in government's WAI Campaign in mid-1980s which was introduced to restore environmental

[656] Ebehikhalu ON & Dawam DP "A review of governmental intervention on sustainable housing provision for urban poor in Nigeria" (2015) 3(6) *International Journal of Social Science Studies* at 41-2.
[657] Fourchard L"Lagos, Koolhaas and partisan politics in Nigeria" (2011) 35(1) *International Journal of Urban and Regional Research* at 46.
[658] Op cit note 623 at 246.
[659] Op cit note 623 at 112.
[660] Op cit note 618 at 113.
[661] Op cit note 623 at 247.
[662] Op cit note 618 at 113.
[663] Oyefara JL "Family background, sexual behaviour, and HIV/AIDS vulnerability of female street hawkers in Lagos metropolis, Nigeria" (2005) 57(186) *International Social Science Journal* at 689.
[664] Op cit note 618 at 113.

cleanliness to Nigeria.[665] However, it was used to repress the activities of workers in the informal economy who were blamed for the prevailing environmental and societal ills.[666]

4.3.3 Modern era (2000 till date)

In the last two decades, informal economic activities have expanded in Lagos state.[667] This is largely in response to the persistent economic crisis in Nigeria which has led to the proliferation of the urban poor whose only means of survival lies in street trading.[668] Apart from hawking their goods, these traders construct shops on residential or roadside setbacks.[669] Every space is potentially seen and utilized for commercial purposes. These activities are noticeable in major parts of Lagos Island and Mainland areas.[670]

Street vendors have been blamed for many environmental concerns of Lagos including the spread of Lassa fever which Nigeria has been battling with since the end of 2015.[671] On the 26th of January 2016, the Commissioner for Environment in Lagos state, Babatunde Adejare, issued a quit notice to street traders in the state.[672] According to him, street vending activities degrades the environment making Lagos a fertile land for rodents to thrive.[673] However, the stance of the state government with respect to the prevention/control of Lassa fever is contrary to the provisions of the World Health Organisation (WHO). According to the WHO, 'prevention of Lassa fever relies on promoting good community hygiene to discourage rodents from entering homes'.[674] Lagos as

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[665] Nwachukwu M "Environmental sanitation enforcement and compliance best management strategies for Nigeria" (2008) Paper presented at the Eighth International Conference on Environmental Compliance and Enforcement , Cape Town, South Africa at 215.
[666] Op cit note 290 at 7.
[667] Op cit note 638 at 387.
[668] Op cit note 638 at 387: Aluko O "Functionality of the town planning authorities in effecting urban and regional planning laws and control in Nigeria: the case of Lagos state" (2011) *African Research Review-An International Multidisciplinary Journal, Ethiopia* at 180.
[669] Ibid.
[670] Ibid.
[671] Lassa fever is a fatal viral disease which occurs in West Africa and is contacted through contaminated household items from the excreta of rodents: "Lassa Fever" Available at http://www.who.int/csr/disease/lassafever/en/ accessed on the 29th of March, 2016.
[672] "Lassa fever: Lagos issues quit notice to street traders, hawkers" *Vanguard* (January 26th, 2016) available at http://www.vanguardngr.com/2016/01/lassa-fever-lagos-issues-quit-notice-to-street-traders-hawkers/ accessed on 26th January, 2016.
[673] Ibid.
[674] Lassa Fever-prevention and control" available at http://www.who.int/csr/disease/lassafever/en/ accessed on the 5th of September, 2016.

earlier mentioned is a dirty city and this has nothing to do with the activities of street vendors.[675] Street vendors nonetheless remain a visible feature of Lagos state, notwithstanding a repressive regulatory framework.[676]

4.4 The prevailing legal constraints operating against street trading in Lagos State

As previously stated, street trading constitutes the majority of work in the informal economy in urban areas in Nigeria. Although, it is associated with different societal ills and environmental issues, street trading has positive characteristics as discussed in 4.2.1. Nonetheless, to curb street trading many state governments have enacted laws in different forms criminalising this activity.

Nigeria operates a federal system of government with three tiers of government; federal, state and local.[677] This implies the existence of more than one level of government within Nigeria, each with different responsibilities and powers.[678] With this system of government, there is political, administrative and fiscal decentralisation.[679] For legislative powers at the federal level, the national house assembly consisting of the senate and house of representatives makes laws for items listed in the exclusive and concurrent legislative list.[680] At the state level, the legislative arm is called the state house of assembly and can only make laws for items outside the jurisdiction of the national house of assembly.[681] It is by virtue of this power that the Lagos state house of assembly enacted the Street Trading and Illegal Markets (Prohibition) Law.[682]

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[675] Recently, the Economist Intelligence Unit ranked Lagos as the third worst world city to live in. The indicators used include environment, education, infrastructure, governance amongst others. "Best cities ranking and report" (2016) Economist Intelligence Unit. Available at http://pages.eiu.com/rs/eiu2/images/EIU_BestCities.pdf accessed on the 5th of September, 2016 1-20.

[676] This could be linked to the traditional culture of Nigerian tribes which recognise street trading as an occupation and a means of training young people in entrepreneurial skills.

[677] Nwoba MOE "Fiscal crisis and its impact on local government administration in Nigeria: A case of South-Eastern states" (2015) 9(5) *Journal of Policy and Development Studies* at 2: Suberu RT & Centre SA "Renovating the architecture of federalism in Nigeria: The option of non-constitutional renewal" (2006) Available at http://nigerianlawguru.com/articles/constitutional%20law/RENOVATING%20THE%20ARCHITECTURE%20OF%20FEDERALISM%20IN%20NIGERIA%20-%20THE%20OPTION%20OF%20NON%20-%20CONSTITUTIONAL%20RENEWAL.pdf accessed on the 9th of February, 2017 1-9.

[678] Chukwuemeka EEO & Amobi DSC "The politics of fiscal federalism in Nigeria: Diagnosing the elephantine problem" (2011) 6 (1) *International Journal of Business and Management* at 126.

[679] Ukwueze ER "Local government and fiscal federalism in Nigeria" (2010) 4(1) *Jos Journal of Economics* at 174

[680] Section 4 of the *Constitution of Nigeria* (1999) Available at http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm accessed on the 9th of February, 2017.

[681] Ibid Section 4(7).

[682] 2003 Laws of Lagos State.

4.4.1 Street Trading and Illegal Markets (Prohibition) Law Lagos State (STIML)

The STIML 2003 was first enacted as an edict in 1984.[683] This was the state government's means to curb the activities of street vendors by criminalising vending activities within the state. However, when this law was initially enacted, it had little effect except to lower the income of street vendors.[684] The initial ineffectiveness of this law can be partly linked to corruption in the police force, as offering of bribes to the police by vendors was sufficient to stop the enforcement of this law.[685] By 1989, holders of market stalls were leaving the confines of designated markets and street trading was flourishing.[686]

The STIML consists of eighteen provisions and three schedules. Section 1 provides that 'no person shall sell or hawk or expose for sale any goods, wares, articles or things or offer services whether or not from a sanitary position in any place or street specified in the First Schedule to this Law or within the vicinity of any public building in the state'. The first schedule provides that all the streets in all the Local Government Areas of the state are subject to this prohibition except the streets specified by the Commissioner. So far no street has been specified. Therefore, by inference, street trading is totally prohibited in Lagos state.

Arguably, the STIML contravenes section 17(3) (a) of the Nigerian Constitution which provides 'all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as we as adequate opportunity to secure suitable'.[687] However, although the Nigerian Supreme Court, in *Abacha v Fawehinmi,* held *inter alia* that any law in conflict with the constitution is void,[688] section 17 falls under socio-economic rights which

[683] This law was originally enacted as an edict because it was done during the military regime in Nigeria. Under the military, the Supreme Military Council (SMC) had legislative and executive powers. The SMC operated at the federal level as the law making and enforcement arm of the government. Laws made by the SMC were known as decrees. At the state level, military officials were appointed to be governors. These governors had both legislative and executive powers which were subject to the SMC. Laws made by the governors were knowns as edicts: Jegede OA "From military rule to constitutional government: The case of Nigeria" (2013) in Mbondenyi Kiwinda Morris *et al* (eds) *Constitutionalism and democratic governance in Africa: Contemporary perspectives from Sub-Saharan Africa* Pretoria University Law Press (PULP) South Africa at 340.
[684] Peil M *Lagos: the city is the people* (1991) London: Belhaven Press at 88.
[685] Ibid.
[686] Ibid.
[687] *Constitution of the Federal Republic of Nigeria* Act No. 24 (5th May 1999).
[688] *Abacha v Fawehinmi* (2000) SC.45/1997 Available at http://www.nigeria-law.org/General%20Sanni%20Abacha%20&%20Ors%20%20V%20%20Chief%20Gani%20Fawehinmi.htm accessed on the 16th of February, 2017.

are not guaranteed under the Nigerian Constitution.[689] In addition, the provision of section 1 of the STIML contravenes the first pillar in the DWA relating to fundamental rights at work and has implications for the other pillars. All of these are considered further in chapter five.

4.4.2 Enforcement of Street Trading and Illegal Markets (Prohibition) Law

Section 7 of the STIML provides that 'any authorised persons may seize any goods, wares, articles or things exposed or offered for sale in any place or street'. According to the interpretation schedule of this law, an authorised person means 'any member of the Task Force set up by the Governor or any other person authorised by the Governor in that behalf'.[690] The task force set by the government to carry out the duties in section 7 is called the Kick against Indiscipline Brigade; popularly called KAI.

The KAI Brigade was established on the 3rd of November, 2003 by the then Governor of Lagos, Asiwaju Bola Tinubu as the law enforcement unit of the State's Ministry of Environment.[691] A core part of KAI's vision statement is the elimination of all forms of street trading.[692] One of KAI's major responsibilities is to arrest and prosecute street traders and hawkers,[693] a task which is reportedly conducted in an inhumane manner and in breach of the traders fundamental human rights.[694]

The activities perpetuated daily by officers of KAI against street vendors are well known and have been documented, on multiple occasions, by the media.[695] These officers carry out violent evictions of street vendors and seize their goods. In late 2015, it was widely reported that officials arrested a young girl in Victoria Island and kept her in custody because she could not raise the 'bail sum' of 16,000 NGN ($80-the exchange rate at that time). Upon her release after three days

[689] *Arch. Bishop Olubunmi Okogie v. The Attorney- General of Lagos State* (1981) 1 NCLR. Available at http://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja accessed on the 23rd of March, 2016.
[690] Section 17 of the STIML
[691] Available at http://kailagos.simplesite.com/ accessed on the 12th of March, 2016.
[692] Ibid.
[693] Ibid.
[694] Ozikpu O "The criminal activities of KAI brigade in Lagos State" (11th February, 2016) *Sahara Reporters* available at http://saharareporters.com/2016/02/11/criminal-activities-kai-brigade-lagos-state-elias-ozikpu accessed on the 12th December, 2017.
[695] Ogbeche D"Lagos vendors lament KAI attack, call on Ambode to intervene" *Daily Post* (January 2016) available at http://dailypost.ng/2016/01/21/lagos-vendors-lament-kai-attack-call-on-ambode-to-intervene/ accessed on the 20th of March, 2016.

in captivity, her goods had disappeared. The detention of this street vendor for three days is contrary to the provisions of section 35(5) of the Nigerian Constitution which provides that any person arrested on the allegation of having committed an offence must be charged in court within 24 hours. This subsection further provides that if the distance of the police station where the suspect is held is more than 40 kilometres radius to the nearest court, the suspect must then be charged within 48 hours. The Lagos judicial division is within 40 kilometers of Victoria Island and the suspect could have been charged in court.[696] In addition, the various criminal justice laws in Nigeria make it mandatory for suspects to be released within 24 hours if they are not charged except if their offence is one punishable by death.[697] However despite these provisions, street vendors like the aforementioned female hawker are arrested daily and unlawfully detained without being charged in court.[698]

Sections 10 and 11 provide for punishment for breach of section 1 of STIML including the option of a fine or imprisonment with hard labour depending on whether the accused is a repeat offender. Furthermore, anyone who buys goods from a street vendor is guilty of an offence. It is important to note that, until mid-2016, this specific sub-provision was not enforced.[699] However, the government has announced that street vendors and their buyers will now be prosecuted.[700]

Section 11 provides that 'the fine imposed under section 7 of this law shall be paid on-the-spot by the offender immediately the offence is committed and he shall be issued a receipt, in the form of the Third Schedule to this Law'. There is no mention of the specific sum to be charged as a fine for conducting street trading activities in 'restricted' areas in Lagos. This gives unfettered

[696] Lagos state judiciary (directories) available at https://lagosjudiciary.gov.ng/jis_new/ViewDirectories.aspx accessed on the 4th November, 2017.
[697] Section 17 (1) Administration of Criminal Justice Law of Lagos State 2011: Section 17 of the Criminal Procedure Act, Cap. C41 LFN 2004: Section 27 of the Police Act.
[698] Hyde P "Loud and lonely on the streets- The life of a lagos hawker" (16th April, 20180 *Forbes Africa*.
[699] Enforcing of this provision has negative implications on the poorer members of the society who patronize street vendors. In addition, majority of the working population in Lagos spend so much time in traffic and street vending provides accessible ready to use household goods. Enforcing this sub-section will impact on a wider spectrum of Lagosians: Adegboye K"Lagos declares total ban on street trading" *Vanguard* (29th of November, 2011) available at http://www.vanguardngr.com/2011/11/lagos-declares-total-ban-on-street-trading/ accessed on the 29th of March, 2016: "Lagos to jail street hawkers, buyers" (2nd July, 2016) *Punch Nigeria* Available at http://punchng.com/lagos-jail-street-hawkers-buyers/ accessed on the 2nd of March, 2017
[700] Ibid.

powers to KAI officials, who are known as being corrupt, to arbitrarily fine street vendors.[701] This section undermines the rule of law.[702]

As earlier stated, upon conviction, anyone liable under the STIML will be fined or imprisoned with hard labour. To enforce this, the magistrate court has jurisdiction over the STIML. This court is an inferior court of record in Nigeria. Section 6(4) of the Constitution which provides for the powers of magistratecourts states that '…nothing in the foregoing provisions of this section shall be construed as precluding the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a high court'. This means States' Houses of Assembly can establish and confer jurisdiction on the Magistrate Court.[703] The court's jurisdiction, practice, procedure and grades are found under the Magistrate Courts Law of each state.[704]

Importantly, the Magistrate Court is known as a court of summary jurisdiction.[705] This means that proceedings or trials in this court are conducted with minimal formalities. Parties usually represent themselves because of its minimal rules. In some cases, the state ministry of justice could send a legal practitioner to represent the accused in criminal matters. In the case of street vendors, the vendors plead guilty and ask the court for leniency. Because of the way proceedings are conducted, parties are not given the opportunity to plead their case. This summary trial of street vendors contributes to the public and state actors' negative perceptions of informal work and workers.[706] If arguments were permitted, the contribution of street vendors to economic growth might at least be acknowledged and the socio-economic rights of street vendors advanced for due consideration.

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[701] This authority will be bothersome to street vendors and in any case, the total value of the goods they are selling is a paltry sum.

[702] The principle of rule under law was advocated by Aristole to prevent corruption and the abuse of power: Tamanaha BZ *On the rule of law: History, politics, theory* (2004) Cambridge University Press: Kohn L "Using administrative law to secure informal livelihoods: Lessons from South Africa" (2017) 10 WIEGO *Technical Brief (Law)* at 22.

[703] Pedro L "Criminal Jurisdiction of Magistrate Courts in Nigeria: A need for review" available at http://magistratesnigeria.com/man/downloads/criminal%20jurisdiction.pdf accessed on the 12th of April, 2016 at 3.

[704] Ibid.

[705] "Inferior courts in Nigeria" Available at http://www.researchfaculty.com/2015/06/inferior-courts-in-nigeria.html accessed on the 12th of April, 2016.

[706] As highlighted in chapter six, access to quality legal representation contributed to the protection of the livelihood of street vendors in Durban, South Africa.

To further accelerate proceedings against street vendors, the Lagos State government recently inaugurated the Special Offences (Mobile) court on the 5th of February, 2016.[707] This mobile court has the duty to summarily deal with environmental abuses in line with the STIML in Lagos State. These courts hold sessions daily in different parts of the state. While they may be well-intentioned because every suspect has the right of access to court, this is an additional challenge street vendors have to face.

4.5 Conclusion

This chapter discussed the nature, forms and constraints of street trading in Lagos state. It was argued that street trading, historically, was viewed as an economic activity and a legitimate source of income prior to colonial administration in Nigeria. The need for the British to fashion colonial cities similar to the cities in their home country, the provision of infrastructure in limited areas within the country and urbanisation were highlighted as some of the reasons which facilitated the expansion of the street vending sector. The subsequent enactment and enforcement of the STIML entrenched the decent work deficits in the street trading sector.

While law enforcement is a tool used to restrain street vending activities, the legal system can also be a powerful tool for promoting the rights of street vendors. This is done in the next chapter, within a human rights framework.

[707] "Lagos launches mobile court for traffic, environmental offenders" (5th February, 2016) *Vanguard*. Available at http://www.vanguardngr.com/2016/02/lagos-launches-mobile-court-for-traffic-environmental-offenders/ accessed on the 12th of April, 2016.

CHAPTER FIVE: A HUMAN RIGHTS FRAMEWORK FOR DECENT WORK

> '…the main route out of poverty, and the key to reducing the risk of falling into poverty, is decent and productive work for women and men'.[708]

5.1 Introduction

Poverty is multidimensional, characterised by low income, high levels of vulnerability and insecurity and weak or no voice;[709] which are characteristics prevalent in the informal economy, termed, by international organisations such as the ILO, as working poverty.[710] The overlap between working in the informal economy and being poor, is furthermore complicated by the heterogeneity of the informal economy,[711] which was discussed in chapter two. Nevertheless, decent work is recognised as the most effective way out of poverty. Decent work means work that respects the rights of the worker. Indeed human rights are essential to achieving decent work and eradicating poverty.[712]

As mentioned,[713] informal work occupies a distinctive position in the debates on decent work, which may be traced back to the ILO's *the dilemma of the informal sector*[714] and is reflected in the *Recommendation concerning the Transition from the Informal to the Formal Economy*

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[708] *Working out of poverty* International Labour Conference 91st Session International Labour Office 2003. Available at http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-i-a.pdf accessed on the 12th of September, 2016 at 69.

[709] Poverty manifests in various forms such as informality, impoverishment, inequalities, homelessness, unemployment, malnutrition, hunger and marginalisation. In many developing countries, these manifestations are characteristics of low level of socio-economic development: Sisay AY *The justiciability of economic, social and cultural rights in the African regional human rights system* (2013) Intersentia at 1: Sen A "Social exclusion: Concept, application, and scrutiny" (2000) *Social Development Papers No. 1* Office of Environment and Social Development Asian Development Bank at 3-6: Kakwani N and Silber J "Introduction: Multidimensional poverty analysis: Conceptual issues, empirical illustrations and policy implications" (2008) 36(6) *World Development* at 987-91: Op cit note 185 (Alkire Sabina and Foster James) at 476.

[710] Carr M and Chen M "Globalisation and the informal economy: How global trade and investment impact on the working poor" (2001) WIEGO available at http://ilo.ch/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_122053.pdf accessed on the 18th of December, 2017: *World employment and Social Outlook: Trends 2017* (2017) International Labour Office-Geneva, ILO.

[711] "Informality, poverty & gender: Summary of WIEGO findings" Available at http://www.wiego.org/informal-economy/informality-poverty-gender-summary-wiego-findings accessed on the 14th of July, 2017: Nazier H & Ramadan R "Informality and poverty: A causality dilemma with application to Egypt" (2014) *Working Paper N. 895* Economic Research Forum.

[712] Bedggood M & Frey D "Work rights: A human rights-based response to poverty" (2010) in Van Bueren G (ed) *Freedom from poverty as a human right: Law's duty to the poor* UNESCO Publishing, France at 79-112.

[713] See chapters one and two of thesis.

[714] Op cit note 129.

(Recommendation 204).[715] Recommendation 204 acknowledges that the informal economy, made up of sectors like the street vending sector, is a major source of employment and the challenge is to explore ways through which decent work can be achieved for informal workers. This chapter situates the achievement of decent work for street vendors within a human rights framework.

The chapter has three major sections. The first part highlights decent work deficits in the Nigerian informal economy. The second part examines a human-rights based approach to working poverty. The third part explores the legal framework of socio-economic rights in Nigeria as a medium to promote decent work. This is because the rights of workers ('work rights')[716] are socio-economic rights. The applicable framework is considered from the international, regional and national levels. Within this framework, property rights as an element of decent work for street vendors is analysed. This part concludes with a discussion on the justiciability of the socio-economic rights in Nigeria.

5.2 Decent work deficits in the informal economy

A decent work deficit is a deficiency in the quality and quantity of work.[717] It has also been expressed as the gaps and constraints in achieving dignifying work outcomes.[718] Within the definition of the ILO, it means, 'the absence of sufficient employment opportunities, inadequate social protection, the denial of rights at work and shortcomings in social dialogue'.[719] The deficits which characterise the informal economy are measured against the benchmarks for decent work in the discussion that follows.

5.2.1 Employment/Enterprise creation

To understand the continued expansion of the informal economy and the changing nature of work, global employment trends need to be examined. Globally, the number of unemployed persons in

[715] Op cit note 14: Roever S and Rogan M "Urban regulation and income stability for self-employed workers" (July 2017) Paper presented at the "5th Conference of the Regulating for Decent work Network" at the International Labour Office Geneva, Switzerland at 5.
[716] 'Work rights' refers to a wide-range of work-related rights enumerated in various international human rights instruments. They include trade union rights, right to social security among others: Op cit note 704 at 85.
[717] Op cit note 129 (ILO).
[718] Termine P & Wobst P "Decent work deficits in rural areas" (2011) *Module E: Seminars on Contemporary Global Market Challenges* ILO-ITC Turin Available at http://www.fao.org/fileadmin/user_upload/fao_ilo/pdf/MALEDmodule2.pdf accessed on the 26th of January, 2017.
[719] Op cit note 45.

2015 was estimated at 197.1 million.[720] This figure was expected to increase by 2.3 million in 2016 and an additional 1.1 million in 2017.[721] This means that over 200 million new jobs, constituting decent work, will need to be created in 2017 alone if we are to begin to make a dent in poverty. Given these figures, it is not surprising that the informal economy keeps expanding as that is where jobs are being created, particularly in developing countries.[722] However, this creates a dilemma as informal work is deficient in terms of the rights of workers, in terms of the working conditions, hazardous work environment and other pillars of decent work.

Furthermore, informal enterprises contend with the lack of a fair and appropriate enforceable legal framework, and an enabling business environment.[723] They lack an adequate property rights regime and access to formal sources of credit which would foster their growth and enhance productivity.[724] As chapter four starkly illustrates in the context of Lagos, street vendors face many constraints, at the heart of which is the lack of property rights in public spaces. In addition, informal enterprises face challenges such as high levels of competition and difficulty in formalising their businesses.[725] As a result of these barriers, jobs created in the informal economy are likely to be indecent.

5.2.2 Rights at work

All workers have rights regardless of where they work.[726] Yet, this is not the reality for many informal workers.[727] According to the ILO, 'work is as much about human rights as about income.

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[720] "Global unemployment projected to rise in both 2016 and 2017" *World Employment and Social Outlook-Trends 2016* Available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_443500/lang--en/index.htm accessed on the 24th of January, 2017.

[721] Ibid.

[722] The ILO's criteria for unemployment are without work, currently available for work and seeking work This definition and figures of unemployment excludes those working in the informal economy: "Definitions of International Labour Organisation (ILO) measures" Available at http://ww2.prospects.ac.uk/cms/ShowPage/Home_page/Main_Menu___News_and_information/Graduate_Market_Trends/Definitions_of_International_Labour_Organisation_measures/p!edXbLa accessed on the 24th of January, 2017: In Nigeria as highlighted in chapter three, the informal economy has created more jobs in the last few years.

[723] *Inception report for the Global Commission on the Future of Work* (2017) ILO at 30: "Decent work: Implications for DFID and for the Labour Standards and Poverty Reduction Forum" (November 2007) Background paper for DFID Labour Standards and Poverty Reduction Forum Available at http://www.ergonassociates.net/images/downloads/decent%20work%20final.pdf accessed on the 10th of January, 2016 at 7.

[724] Ibid (ILO) at 30.

[725] Ibid (ILO) at 30.

[726] Ghai D "Decent Work" (2006) in Ghai D *Decent Work: Objectives and Strategies* International Labour Organisation Geneva.

[727]However, it has been argued that rights have no connection to the inequality experienced by the working poor: Wolf M "The big lie of global inequality: the claim that globalization is increasing the gap between the world's rich and

The equity and dignity to which people aspire in employment must be assured for there to be decent work. In the twenty-first century, the employment challenge is about much more than a job at any price or under any circumstance'.[728] This stance is reinforced in the Declaration on Fundamental Principles and Rights at Work containing core rights which are applicable to all workers regardless of their status.[729] These core rights are freedom of association and the right to collective bargaining, the elimination of forced labour, the abolition of child labour and the elimination of all forms of discrimination in respect of employment and occupation.[730] However, the informal economy is characterised by varying degrees of exploitation of workers, child labour, hazardous work conditions and multiple forms of discrimination and exclusions. Ideally, the fundamental principles and core conventions of the ILO should be a regulatory framework for the rights of workers in the formal and informal economies.

Rights deficit in the informal economy can be traced to how such rights are expressed and enforced in the national legal framework.[731] For example, the phrasing of socio-economic rights in the Nigerian Constitution makes it unenforceable. This makes it difficult for street vendors to petition the courts for breach of their socio-economic right to work by virtue of the government's criminalisation of street vending in Lagos state. This also has ripple effects on other rights such as the freedom of association which *stricto sensu* is a civil right. In addition, the labour laws of Nigeria are framed in a manner that excludes their application to the informal economy. While there might be a need for a distinct legal framework to regulate business registration, taxation or subscription of informal enterprises; there should not be a different or 'lower' labour standards for informal workers.

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poor is not borne out by the facts" (9th February 2000) *Financial Times* Available at http://go.galegroup.com/ps/publicationSearch.do?lm=&qt=PU~%22The+Financial+Times%22~~DA~120000209&method=doLinkDirectedSearch&searchType=AdvancedSearchForm&userGroupName=unict&inPS=true&prodId=AONE accessed on the 20th of January, 2017.

[728] Op cit note 45.

[729] "ILO Declaration on Fundamental Principles and Rights at Work" Available at http://www.ilo.org/declaration/lang--en/index.htm accessed on the 11th of January, 2016.

[730] Ibid.

[731] Op cit note 143 at 8.

5.2.3 Social protection

Coupled with indecent conditions of work, many informal workers in developing countries lack access to adequate social protection.[732] These workers face low and uncertain incomes, hazardous conditions of work; they lack health insurance, maternity benefits, compensation for work related accidents, and access to pensions, among others.[733] Social protection, which consists of collective measures to protect against risks is recognised as one of the ways to reduce working poverty and eliminate inequality.[734] Yet about 73 per cent of the global population are outside the cover of adequate social protection.[735] This is not limited to the developing world. In developed countries, many governments and the private sector are pushing the obligation for social protection on to individual workers through outsourcing.[736] Globalisation and the effect of the global financial crisis have further enabled this negative effect of informality.[737] In addition, the heterogeneity of the workers in the informal economy influences the conditions of work and access to social protection.[738] Vulnerability experienced by workers is manifested in diverse ways and is dependent on whether they are self-employed, informal waged workers or unpaid family members.[739] Furthermore,

> 'The area of social protection illustrates the very real and direct interest on the part of workers with 'normal' employment status and of their organisations, in bringing informal economy workers into the mainstream of formal employment. With shrinking formal employment, workers bear an increasing direct burden of financing social needs, with adverse effects on their quality of life. That burden may also undermine the capacity of enterprises to compete in the global economy'.[740]

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[732] Lund F "Social protection and the informal economy: linkages and good practices for poverty reduction and empowerment" (2009) Available at https://www.oecd.org/dac/povertyreduction/43280700.pdf accessed on the 23rd of January, 2017 at 70

[733] "Social Protection" Available at http://wiego.org/wiego/core-programmes/social-protection accessed on the 23rd of January, 2016.

[734] Samuels F *et al* "HIV vulnerabilities and the potential for strengthening social protection responses in the context of HIV in Nigeria" (2012) ODI London at 35: Cook S "Rescuing social protection from the poverty trap: new programmes and historical lessons" (2013) in Katja Bender *et al* (eds) *Social protection in developing countries: Reforming the systems* Routlegde at 14: Cohen T and Moodley T "Achieving decent work in South Africa" (2012) 15(2) *PER/PELJ* at 331: Moser C "Insecurity and social protection-Has the World Bank got it right" (2001) 13 *Journal of International Development.*

[735] International Labour Organisation *World Social Protection Report 2014/2015: Building economic recovery, inclusive development and social justice* (2014) ILO Geneva at Xxi.

[736] Ibid.

[737] Ibid.

[738] Op cit note 732 at 71: there are important gender dimensions from social protection exclusion. In many countries, women form the majority in the informal economy. For these women, not having social protection is an indication of social exclusion. Also, not having social protection leaves women with a heavy burden particularly in their role as caregivers and for their children.

[739] Op cit note 732 at 71.

[740] "Social security: Issues, challenges and prospects" (2001) *Report VI* International Labour Conference 89th Session Available at http://www.ilo.org/public/english/standards/relm/ilc/ilc89/pdf/rep-vi.pdf accessed on the 23rd of January,

The social protection deficit can be linked to the applicable regulatory framework. Access to social protection is often limited to workers in formal employment,[741] which is the case in many countries in Sub-Saharan Africa including Nigeria. The access to social protection is through a contributory scheme and only workers in formal employment relationships can participate in it. Moreso, these social protection schemes are mostly retirement pension schemes.[742] The implication of this is that most informal workers are not covered by social protection.[743]

Nigeria does not have an overarching realistic social protection agenda or policy.[744] The Constitution provides for various forms of social protection under the Fundamental objectives and Directive Principles of State Policy which is in chapter two. However, these provisions are not justiciable and state actors cannot be compelled to provide these services. Although, piecemeal social security policies have been in place since 1942.[745] The first of such policies was the Workmen's Compensation Act which covered workers who suffered injuries in the course of employment.[746] In 1961, the National Provident Fund (NPF) started the regulation of the private

2017 at 3-4: This might also lead to a compliance problem. For example in Nigeria, formal workers and employers are required to bear the responsibility of financing social protection such as health coverage: Chima AO *et al* "Promoting universal financial protection: Constraints and enabling factors in scaling-up coverage with social health insurance in Nigeria" (2013) 11(20) *Health Research Policy and Systems*: Uzochukwu BSC *et al* "Health care financing in Nigeria: Implications for achieving universal health coverage" (2015) 18(4) *Nigerian Journal of Clinical Practice*: In cases, where the formal worker earns the minimum wage which is not sufficient to have a good quality of life, such worker would prefer not to contribute for social protection. In doing this, informality is introduced to the work dynamics: The current minimum wage in Nigeria is 18,000 ($50) per month making $1.6 per day. This means for many workers who earn this amount they live below the international poverty line of $1.9 per day. It has been argued that beneficiaries of Nigerian minimum wage are worse-off in terms of welfare and purchasing power parity. Apart from the lack of consideration for the cost living, the minimum wage led to disemployment and increase in the price of household necessities such as food, housing and transportation. To be effective, minimum wage need to be supported with a strong social policy: Akpansung AO "An empirical assessment of the effects of minimum wage increases on unemployment during democratic governance in Nigeria" (2014) 4(13) *International Journal of Humanities and Social Science*: Folawewo AO "Minimum wage legislation and its macroeconomic impact in developing countries: the case of Nigeria" (2009) 9(1) *Asian-African Journal of Economics and Econometrics*.

[741] "Social protection in Africa" Available at http://www.ilo.org/addisababa/areas-of-work/social-protection/lang--en/index.htm accessed on the 30th of January, 2017.

[742] Ibid.

[743]: Op cit note 274: Mwalimu C *The Nigerian Legal System* (2007) Volume 1 Public Law Peter Lang at 426.

[744] Akinola Olabanji "Graduation and social protection in Nigeria: A critical analysis of the COPE CCT programme" (2014) Paper presented at Conference on Graduation and Social Protection, Serena Hotel, Kigali at 7.

[745] Aiyede E *et al* "The political economy of social protection policy uptake in Nigeria" (2015) *Partnership for Africa Social and Governance Research Working Paper 002,* Nairobi Kenya Available at http://www.pasgr.org/wp-content/uploads/2016/08/The-Political-Economy-of-Social-Protection-Policy-Uptake-in-Nigeria.pdf accessed on the 30th of January, 2017 at 4

[746] Ibid.

sector pension scheme.[747] Through this, employers and employees in the private sector were to contribute a certain percentage each towards the pension of the employees. Its purpose was to provide income loss protection for the employee. In 2004 and 2011 respectively, the Pension Reform Act of 2004 and the Employers Compensation Act (this replaced the Workmen's Compensation Act) were introduced.[748] However, these policies cover only the public and the organised private sectors excluding workers in informal work arrangements. In terms of the current schemes, access to social protection in Nigeria is based on contribution, which may be difficult to implement in the informal economy.[749]

However, there has been a call for a broadened concept of social protection taking into account socio-economic challenges like informality in developing countries.[750] This led to formulation of the Social Protection floors Recommendation, 2012 (No 202) by the ILO. Article 5 of Recommendation 202 provides for basic social security guarantees which member states must provide.[751] The use of the term 'guarantees' underlines that the focus of the Recommendation is on the outcome in terms of the social security that can be achieved by different schemes.[752] The challenge to Recommendation 202 however, is its implementation within the Nigerian context.[753] The applicability of this as a pathway to formalisation and decent work within the context of Nigeria is discussed in chapter seven.[754]

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[747] Ibid.

[748] Mustapha H & Uyot C "Social Protection in Nigeria" (2012) in Kalusopa T *et al Social Protection Schemes in Africa* Available at https://www.ituc-africa.org/IMG/pdf/SOCIAL_SECURITY_BK_FINAL_COPY_5_March_2012_V11_1_.pdf accessed on the 30th of January, 2017 at 202

[749] Recently, a national social protection bill- the National Social Security Policy for Inclusiveness, Solidarity and Sustainable Peace and Prosperity, was drafted and submitted to the National Assembly for enactment. This bill aimed to include informal workers under social protection mechanisms. However, it has not been passed possibly because of the lack of political support which is discussed as a policy implication in chapter 8: Op cit note 273 at 16: *ILO Programme Implementation 2016-17*(February 2018) GB.332/PFA/1 International Labour Office, Geneva.

[750] Smit N & Letlhokwa George Mpedi LG "Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy" (2010) 14 *Law, Democracy & Development*: The traditional concept of social protection is set out in the following ILO instruments: the Income Security Recommendation 1944, 1944 Medical Care Recommendation and the Social Security (Minimum Standards) Convention of 1952. Some areas were identified for protection. They include health care, unemployment, workplace injury, family, maternity, old age, invalidity and survivors' benefit.

[751] These guarantees are similar to that provided in Recommendation 204 and are highlighted in heading 7.3.2.1 of this thesis.

[752] Article 4, Recommendation 202: Cichon M "The Social Protection Floors Recommendation, 2012 (No. 202): Can a six-page document change the course of social history?" (2013) 66(3-4) *International Social Security Review* 21.

[753] Bastagli F. "Feasibility of social protection schemes in developing countries" (2013) Belguim European Union.

[754] At the international level, this call led to that adaption of the ILO's Social Protection Floors Recommendation, 2012 (no. 202). This Recommendation is applicable to the informal economy and will be explored in chapter seven.

5.2.4 Social dialogue

According to the ILO, '…people in informal work represent the largest concentration of needs without a voice: the silent majority of the world economy'.[755] Generally, informal workers are excluded from social dialogue or under-represented in the social dialogue process and institutions.[756] This is primarily connected to the lack of legal recognition of the many forms of informal work like street vending. However, it is widely acknowledged that social dialogue is needed for workers and employers to achieve decent work conditions.[757] Social dialogue signifies representational security for actors in work spaces and is based on the freedom to form and join any organisation of choice without fear or intimidation.[758] Furthermore, social dialogue serves as an enabling right for all the other pillars of decent work.[759] The legal framework for protecting and enforcing the right to social dialogue is therefore critical.

In the world of work social dialogue is manifested as the right to form and join any association or trade union. In many countries, this is a fundamental human right. In Nigeria, this right is provided for under section 40 of the Constitution. This section provides that, 'every person shall be entitled to assemble and associate with other persons, and **in particular** he may form or belong to any political party, trade union or any other association for the protection of his interests….'[760] Also, in the event of any violation of this right; section 46 of the Constitution provides for a remedy through an application to a state high court.[761] The importance of this right was affirmed by the former Prime Minister of Nigeria, Sir Tafawa Balewa, at the first ILO-Africa

[755] Op cit note 45.
[756] Op cit note 740 at 7.
[757] "Organisation, representation and dialogue" Employment Policy Department, International Labour Office, Geneva Available at http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/documents/publication/wcms_210456.pdf accessed on the 10th of August, 2017 at 2: "Promoting decent work and protecting principles and rights at work in export processing zones" (21-23 November 2017) *Report for discussion at the Meeting of Experts to promote Decent Work and Protection of Fundamental Principles and Rights at work for workers in ExportProcessing Zones* Enterprise Department, International Labour Office Geneva at 39: *Social dialogue: Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalisation* (2013) Report VI International Labour Conference, 102nd Conference International Labour Office Geneva at 5.
[758] Ibid: there are international labour standards that regulate social dialogue, these include; Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Collective Bargaining Convention, 1981 (No. 154). This convention applies to all economic activities. However, article 2 provides that the convention extends to negotiations between employers and workers organisations to determine conditions and terms of employment. As discussed in this chapter, the use of term 'employment' is restrictive and excludes those in informal work arrangements.
[759] Op cit note 285 at 7.
[760] Section 40, Nigerian Constitution 1999.
[761] Section 46, Nigerian Constitution 1999.

Regional Conference, held in Lagos in 1960. He said this right is 'one of the foundations on which we build our free nations'.[762]

For workers, the concept of this right means that they can engage in collective bargaining to advance their interests, strike when necessary and participate in all union activities.[763] However in practice, many workers particularly informal workers are excluded from the protection of this right.[764] Specifically for informal workers, this exclusion is often in terms of anti-union discrimination and government interference. For example, in the case of street traders, the government prohibits their economic activities and any labour union formed by them will not be recognised by the government. The organisation of workers in the informal economy raises both conceptual and practical challenges.[765]

Although the 2002 ILC Resolution clarified the various concepts of informality, this clarification is not universally understood or acknowledged.[766] This is not surprising given the varying manifestations of informality and its heterogeneity globally making it difficult to distinguish between work arrangements. For example, in many countries, formal trade unions consider informal workers as own-account or self-employed workers and hence outside their ambit.[767] In many cases this is linked to the labour regulations of these countries which are phrased to be relevant in only formal settings.[768] In Nigeria, the central body that represents the interests of workers is called the Nigerian Labour Congress (NLC).[769] It was established in 1978 by section

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[762] Okene OVC "Measuring the democratic rights of Nigerian workers by international standards" (2016) in Otobo Dafe(ed) *Reforms and Nigerian labour and employment relations: Perspectives, issues and challenges* Malthouse Press at 65.

[763] Okene OVC "Curbing state interference in workers' freedom of association in Nigeria" 8(4) (2006) *The International Journal of Not-for-Profit Law* Available at http://www.icnl.org/research/journal/vol8iss4/art_2.htm accessed on the 10th of August, 2017

[764] Generally, in Nigeria the activities of trade unions are often demonized for being against the state and the nation's economic development: *The 2017 ITUC global rights index: The world's worst countries for workers rights* (2017) International Trade Union Confederation at 9.

[765] "Organisation, representation and dialogue" International Labour Office available at http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_210456.pdf accessed on the 22nd of January, 2017 at 2.

[766] Op cit note 410 at 2-11.

[767] Bonner C and Spooner D "Organising in the informal economy: A challenge for trade unions" (2011) 2 *IPG/2* at 88.

[768] For example in Nigeria, a worker is defined as one in an employment relationship. Therefore, only workers in traditional employment relationships can form unions: Ibid at 89.

[769] *Nigeria: Country profile on occupational safety and health* (2016) available at http://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-abuja/documents/publication/wcms_552748.pdf accessed on the 31st of October, 2017 at 52: Abu BP "An appraisal of the Trade Union Amendment Acts of 2005 in relation to the current labour-management relations in Nigeria" (2007) VI (1) *International Journal of African & African American Studies* 36-46.

1 of the Trade Union Decree of 1973.[770] In terms of this section, a trade union is 'any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers…'.[771] The use of 'conditions of employment' implies its relevance to only work in formal settings.

In addition, many informal activities do not take place in 'standard' work spaces. Informal workplaces are scattered, individualised (homebased and domestic workers), mobile (street vendors), divided (along gender lines) and multiple (waste pickers).[772] Consequently, there is no conventional forum for collective bargaining. This makes it difficult for these workers to organise themselves and this has contributed to a social dialogue deficit. In addition, organising is time consuming and voluntary.[773] Many informal workers are poor and the time spent on organising means a loss of income.[774] This is especially true for workers like street vendors and waste pickers.

The above decent work deficits contribute to widespread poverty in the informal economy.

5.3 A human rights-based approach to poverty

Poverty is currently perceived as the gravest human rights challenge globally.[775] This is related to the staggering percentage of the world population whose lived reality is ultra or moderate

[770] Now known as the Trade Union Amendment Act of 2005: one of the amendments of the Decree was the democratization and liberation of labour movement and trade union in Nigeria. Consequently, there are opportunities for the registration of more trade unions and employees have the freedom to decide which unions they wish to join.
[771] Section 1 of the Trade Unions Decree of 1973.
[772] Op cit note 767 at 90: "Organising informal workers: Benefits, challenges and successes" (2015) *Background Paper* UNDP Human Development Report Office at 33: Similarly, informal workers such as street vendors do not have 'employers' to whom they can make their claims. However, it has been argued that informal workers can make their claims to the state by virtue of their citizenship: Agarwala R "Reshaping the social contract: emerging relations between the state and informal labour in India" (2008) 37(4) *Theory and Society*: Agarwala R *Informal labour, formal politics, and Dignified discontent in India* (2013) Cambridge University Press.
[773] Mather C "WIEGO Research Project: Informal Workers' Organising" (2012) *Research Report to the Solidarity Centre* Available at http://www.solidaritycenter.org/wp-content/uploads/2015/02/infecon_wiego_organizing_final.pdf.pdf accessed on the 22nd of January, 2016 at 15.
[774] Op cit note 767 at 90.
[775] "Principles and guidelines for a human rights approach to poverty reduction strategies" (2012) Office of the UN High Commissioner for Human Rights Available at http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf accessed on the 13th of December, 2016 at iii: poverty is seen in terms of an individual's inability to live a life of dignity and enjoy basic human rights and freedoms: Singh D "Poverty and human dignity: A human rights approach" (2017) 22(6) *ISOR Journal of Humanities and Social Science* 44-55: Marks PS "Poverty and human rights" (2017) in Moeckli Daniel, Shad Sangeeta, Sivakumaran Sandesh and Harris David (eds.) *Textbook on international human rights law* 3rd edition Oxford University Press.

poverty.[776] Informal work is intricately linked with poverty.[777] Poverty manifests in the informal economy through low income, poor conditions of work, a lack of social protection and social dialogue and inadequate property rights. These deprivations are human rights.[778] The preamble of the Universal Declaration of Human Rights states that the highest aspiration of humankind is the attainment of 'a world free from fear and want'.[779] This aspiration remains distant unless poverty is addressed.[780] Here again it is an issue of human rights, whether political, civil or socio-economic rights.[781] It is also about implementing all classes of human rights so that no one is excluded.[782] For informal workers unless their rights are considered through the lens of human rights, decent work deficits will persist. The achievement of decent work and formalization of the rights of informal workers such as street vendors require the internalization of the values of human rights and the reorientation of the regulatory framework to respect, protect and fulfil human rights. Hence a human-right based approach to decent work is advocated.[783]

A human rights-based approach (HRBA) is

> 'a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress'.[784]

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[776] Stuart E *et al* "Leaving no one behind" (2016) *Flagship Report Summary Development Progress* Overseas Development Institute. Available at https://www.odi.org/sites/odi.org.uk/files/resource-documents/10691.pdf accessed on the 13th of December, 2016 at 4.

[777] See discussion in chapter two on poverty and informality.

[778] *Vienna Declaration and Programme of Action* adopted by the World Conference on Human Rights in Vienna on 25th June, 1993.

[779] "Preamble" *Universal Declaration of Human Rights* 1948.

[780] Pierre S"Foreword" (2010) in Van Bueren G(ed) *Freedom from poverty as a human right: Law's duty to the poor* UNESCO Publishing, France: D'Hollander *et al* "Promoting a human rights-based approach (HRBA) within the development effectiveness agenda" (2013) *Briefing Paper prepared for the CSO Partnership for Development Effectiveness (CPDE) Working Group on HRBA* at 9: "Poverty reduction and human rights: A practice note" (2003) UNDP available at http://content-ext.undp.org/aplaws_publications/1873321/povertyreduction-humanrights0603%5B1%5D.pdf accessed on the 18th of December, 2017.

[781] Ibid.

[782] Ibid

[783] The approach is in line with the framing of the Recommendation 204 which extends the elements of decent work for informal workers beyond the scope of ILO's Decent Work Agenda. Whereas the DWA includes narrow concepts of human rights at work, a human rights-based approach includes a wide range of work rights including property rights and connects these rights to human rights more broadly.

[784] "Frequently asked questions on a human rights-based approach to development cooperation" (2006) Available at http://www.ohchr.org/Documents/Publications/FAQen.pdf accessed on the 13th of December, 2016 at 15.

A HRBA places the realisation of human rights at the centre of policies and processes of development.[785] The following are the principles of HRBA.[786]

1. Equality and non-discrimination policies and practices applied to promote development.[787]
2. Participation and Empowerment: a HRBA seeks to empower people to participate in decision making processes that affect their lives.[788]
3. Accountability and the rule of law: accountability mechanisms are required to ensure that duty-bearers respect, protect and fulfil human rights obligation and duties.[789]
4. Indivisibility and universality: all human rights belong to everyone and no class of right is superior to another.[790]

In summary, human-rights based approaches require policies and process to be guided by the human rights framework which recognises the interdependence of human rights, that is, civil and political rights as well as economic, social and cultural rights as being integral components for poverty reduction strategies.[791] The idea of the indivisibility or interdependence of human rights is based on all rights having the same footing with the same emphasis.[792] This vision was built on the understanding that in order to guarantee human dignity, all human rights must be reached.[793] Although, the indivisibility of human rights is contested among various scholars,[794] the

[785] Although, there are many HRBAs developed by various inter-governmental and national agencies; they however, have common features: Frankovits A *The human rights based approach and the United Nations system* (2006) Strategy on Human Rights, Social and Human Sciences Sector UNESCO Paris: Piron LH & Watkins F *DFID human rights review: A review of how DFID has integrated human rights into its work, executive summary* Overseas Development Institute London.

[786] "Principles and guidelines for a human rights approach to poverty reductions strategies" (2012) available at https://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf accessed on the 18th of March, 2017 at 7-22: Hamm IB "A human rights approach to development" (2001) 23(4) *Human Rights Quarterly* at 1011.

[787] This highlights the extent to which poverty originates from discriminatory practices. Hence poverty reduction strategies must be broad and focused on socio-cultural and political-legal institutions which sustains systemic discrimination: OHCHR *Principles and guidelines for a human rights approach to poverty reduction strategies* HR/PUB/06/12 UN Office of the High Commissioner for Human Rights, Geneva at para 21.

[788] This entails the application of human rights as a means to empower the poor Ibid at para 18& 19.

[789] This means that policy makers are responsible and answerable for the impact of their decisions and actions with repect to human rights: Ibid at para 24.

[790] Ibid at para 27.

[791] Winston ME *Indivisibility and interdependence of human rights* (1999) University of Nebraska-Lincoln: Shue H *Basic rights: Subsistence, affluence, and US foreign policy* (1996) Princeton University Press: Donnelly J and Whelan D *International human rights* (2017) Hachette UK.

[792] Article 5, Vienna Declaration and Programme of Action (1993).

[793] Minkler L & Shawna S "On the indivisibility and interdependence of basic rights in developing countries" (2011) *Human Rights Quaterly* 351-396.

[794] See Nickel J "Rethinking indivisibility: Towards a theory of supporting relations between human rights" (2008) 30 *Human Rights Quaterly* 984: Neier A "Social and economic rights: A critique" (2006) 13(2) *Human Rights*

understanding of human rights as esstential and interdependent justifies the role of socio-economic rights.[795] This is particularly important in countries where socio-economic rights are unenforceable and the informal economy is prevalent. To deviate from the interdepence and indivisibility of all human rights, would lead to disparity and injustice.[796] In this chapter, the subsequent discussion on socio-economic rights as the umbrella class of right for the right to decent work and property right is rooted in the concept that human rights are interdependent and indivisible. Therefore, the right to decent work, which the UN High Commissioner for Human Rights, has emphasised as relevant for poverty reduction strategies,[797] requires a consideration of socio-economic rights.

5.4 Socio-economic rights[798]

Socio-economic rights are human rights that relate to 'the workplace, social security, family life, participation in cultural life and access to housing, food, water, health and education'.[799] However, for many decades, socio-economic rights were seen as being of less importance than civil or political rights,[800] these include rights to a fair trial, assemble, to life and vote, among others. As a result, socio-economic rights were treated differently while civil and political rights have always been treated as fundamental rights.[801] Even so, the UN has on numerous occasions affirmed that all classes of rights are interrelated, interdependent and indivisible rights.[802]

Quaterly 1: Roth K "Defending economic, social and cultural rights: Practical issues faced by international human rights organization" (2004) 26(1) *Human Rights Quaterly* 63-73.

[795] Op cit Sen A "Elements of a theory of human rights": Feinberg J and Jan N "The nature and value of rights" (1970) 4(4) *the Journal of Value Inquiry* 243-60: Coop D "The right to an adequate standard of living: Justice, autonomy and the basic needs" (1992) 9(1) *Social Philosophy and Policy* 231-61.

[796] Neves-Silva P *et al* "Human rights interdependence and indivisibility: A glance over the human rights to water and sanitation" (2019) 19(1) *BMC International Health and Human Rights* 14.

[797] Op cit note 787 at para 112.

[798] Socioeconomic rights are known as economic, social and cultural (ESC) rights.

[799] "Frequently asked questions on Economic, Social and Cultural Rights" Fact Sheet No 33, Office of the UN High Commissioner for Human Rights (2008) P. 1. Available at http://www.ohchr.org/Documents/Publications/FactSheet33en.pdf accessed on 12th December, 2015:Katherine G Young *Constituting economic and social rights* (2012) Oxford University Press at 1: Broadly, human rights are divided into civil, political and socio-economic rights.

[800] Mbazira C "A path to realizing economic, social and cultural rights in Africa? A critique of the new partnership for Africa's development" (2004) 4 (1) *African Human Rights Law Journal* 34-52.

[801] Khoza S (ed) *Socio-economic rights in South Africa:A Resource Book* (2nd Ed) (2007) Community Law Centre University of the Western Cape.

[802] Ibid: Davis DM "Socio-economic rights" (2012) in Michel Rosenfeld and Andras Sajo(eds) *The Oxford handbook of comparative constitutional law* Oxford University Press: *Report of the World Conference on Human Rights* (1993) A/CONF.157/24 United Nations.

The historical roots of a HRBA can be traced to the eighteenth century, where it crystallised in political philosophy and within the framework of the American and French revolution.[803] Liberal thinkers like John Locke advanced natural rights as predating the State whose fundamental duty was the protection of these rights.[804] According to him, the State is prohibited from violating these rights. Locke's concept of rights formed the basis for the American constitution.[805] In the last century, the origins of socio-economic rights can be traced to the socialist movement of early 20th century which was partly in response to the Great Depression of the 1930s.[806] In addition, these rights are said to have roots that are 'feudal, mercantilist, Methodist, utilitarian, radical, conservative, Roman Catholic and even liberal'.[807]

In terms of the non-justicable nature of ESC rights, laws were developed that underpinned the capitalist structure of the eighteenth and nineteenth century.[808] Areas of law like torts, contract and property were seen as the fundamental basis of the legal framework whereas ESC rights became considered as *programmatic rights* as opposed to enforceable rights.[809] The implementation of these rights was left to the discretion of political administrators.[810] Furthermore, the labour movement of the 20th century were more concerned with the redistributive model centred on labour relations.[811] This model focused on the development of labour related rights such as the protection against unfair dismissal, compensation for work injury, and rights to collective bargaining. Consequently, there was little space for the separate development of ESC rights which

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[803] Barak-Erez D & Gross AM "Introduction: Do we need social rights? Questions in the era of globalization, privatization, and the diminished welfare state" in Barak-Erez D & Gross AM(eds) *Exploring Social Rights: between theory and practice* (2007)Hart Publishing at 1.

[804]Locke J *The Second Treatise on Government* (1690) Available at https://www.marxists.org/reference/subject/politics/locke/ accessed on the 13th of February, 2017.

[805]The rights in this sense were primarily political and civil rights. However, this liberal conception of rights was criticised by Karl Marx. He argued that having civil rights did not guarantee human emancipation. He specifically mentioned as an example the right to private property as perpetuating inequality in the material conditions of living. It has been argued that Marx's criticism "shed light on the connection between human rights and distributive justice and on the lacunae in the liberal rights ideology in everything pertaining to the material conditions of life". The implication of this therefore is that civil or political rights cannot be adequately enjoyed without consideration for the welfare of the citizens. Hence, the need for socio-economic rights: Op cit note 803: Marx K "On the Jewish question" (1978) in Tucker RC (ed) *The Marx Engels Reader* (2nd Ed) W.W Norton & Company, Inc. Available at http://busin.biz/library/marx/The%20Marx-Engels%20Reader.pdf accessed on the 13th of February, 2017 at 26-52.

[806] Dowell-Jones M *Contextualising the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit* (2004) Vol. 80 Martinus Nijhoff Publishers at 17.

[807] Ibid.

[808]Courtis C *Courts and the legal enforcement of economic, social and cultural rights: Comparative experiences of justiciability* (2008) International Commission of Jurists at 13: Op cit note 799 (Young) at 2.

[809] Ibid.

[810] Ibid.

[811] Ibid at 14.

became subsumed within the labour movement and were seen as supplementary rights.[812] However, the development of the Universal Declaration of Human Rights led to the *equal* recognition of all classes of rights.[813]

Socio-economic rights are recognised as basic entitlements which are interwoven with other types of human rights and are necessary to eliminate poverty.[814] According to Sen, the different classes of rights strengthen each other.[815] Many international human rights instruments recognise socio-economic rights as human rights.[816] Within this legal framework, political, civil and, socio-economic rights are seen as equal.[817] However at many national levels, socio-economic rights 'are widely regarded as aspirational goals, rhetorically useful but having few practical implications for government policy and hence the distribution of resources within a polity'.[818] This is because unlike other types of human rights, socio-economic rights require positive action and therefore make budgetary demands on the government.[819] This has been suggested as being the major cause of the low recognition of these rights as fundamental human rights particularly in many developing economies.[820]

Specifically in Sub-Saharan Africa, there are two co-existing parallel regimes of socio-economic rights.[821] The first is represented by South Africa where socio-economic rights are validated in the same way as political/civil rights and mechanisms have been developed for their

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[812] Ibid at 14.
[813] Op cit note 803 at 2.
[814] Sen A *Development as Freedom* (1999) Oxford University Press: "Transnational justice and Economic, Social and Cultural Rights" (2014) *HR/PUB/13/5* Office of the United Nations High Commissioner for Human Rights, United Nations Geneva.
[815] Ibid at 11.
[816] Op cit note 801 at 19.
[817] Chenwi L & Danwood MC "Direct protection of economic, social and cultural rights in international law" (2016) in Danwood MC & Chenwi L (eds) *The protection of economic, social and cultural rights in Africa* Cambridge University Press at 33-71.
[818] Bilchitz D *Poverty and fundamental rights: The justification and enforcement of socio-economic rights* (2007) OUP Oxford.
[819]Tanzer Z "Domestic workers and socio-economic rights: A South African case study" (2013) *Transformation of Work Research Series* at 33.
[820] It has been argued that the distinction between the classes of human rights because of government budgets is useless. The full realisation of all human rights requires the use of resources to varying degrees by the State. Therefore a more useful way to categorise human rights in terms of budgetary allocation would be to look at the quantity of resources required for that realisation. Doing this extinguishes the categorisation of socio-economic rights from other classes of rights: *Realising human rights through government allocation* (2017) HR/PUB/17/3 Office of the United Nations High Commissioner for Human Rights, United Nations Geneva at 18-30.
[821] Ibe S "Beyond justiciability: Realising the promise of socio-economic rights in Nigeria" (2007) 7(1) *African Human Rights Law Journal*.

enforcement.[822] The second regime is led by Nigeria in which socio-economic rights are seen as mere aspirations. However, socio-economic rights remain the 'only means of self-defence for millions of impoverished and marginalised individuals and groups…'.[823]

Many legal instruments provide for socio-economic rights, operating primarily at three levels. These levels are the global-UN, regional and national levels; and 'national systems form the core of these levels'.[824] The regional level, 'lie[s] in the middle for reasons of commonly-shared interests, values and experiences of the states that constitute them and their closeness to the national systems'.[825] While, the global level is the outer layer.[826] Regional and national levels are more specific in terms of meeting the needs of the citizens therein.

The remainder of the chapter considers selected regulatory instruments that impact directly on Nigeria as an African nation and a member of the AU and the UN within the context of work rights for informal workers. The laws/instruments explored are the UDHR, ICESCR, the African Charter and the Nigerian Constitution.[827] The remaining section has two parts. The first explores work rights broadly with the Nigerian regulatory framework. The second part examines a specific component of decent work; that is property rights. As street vendors are the focus of this thesis, property rights are particularly relevant for their access to public spaces.

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[822] Liebenberg S "Direct constitutional protection of economic, social and cultural rights in South Africa"(2016) in Danwood MC & Chenwi L (eds) *The protection of economic, social and cultural rights in Africa* Cambridge University Press at 305-7: *Government of the Republic of South Africa v. Grootboom* 2001 (1) SA 46 (CC): However, the South African Constitutional Court has developed the model of reasonableness review to assess compliance by the state with positive duties imposes by socio-economic rights: *Mazibuko v. City of Johannesburg* 2010 (4) SA 1(CC): *Nokotyana v. Ekhurhuleni Metropolitan Municipality* 2010 (4) BCLR 312 (CC).

[823] Agbakwa SC "Reclaiming humanity: economic, social, and cultural rights as the cornerstone of African Human rights" (2006) in Heyns & Stefisszyn (eds) *Human rights, peace and justice in Africa: A reader* Pretoria University Law Press(PULP) P.70

[824] Op cit note 709 at 75.

[825] Op cit note 709 at 75.

[826] Op cit note 709 at 75.

[827] The UDHR is not a treaty and does not impose legal obligations: Other instruments that contain provisions relating to socio-economic rights are the Universal Declaration on Human Rights (1948), the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Convention on the Rights of the Child (1989): Heyns C and Brand D "Introduction to socio-economic rights in the South African Constitution" (1998) 2(2) *Law, Democracy and Development* at 156.

5.4.1 The regulatory framework for socio-economic rights in Nigeria

5.4.1.1 The Nigerian Constitution

The term 'decent work' does not appear in the Nigerian Constitution; however, its elements are phrased as socio-economic rights. In Nigeria, socio-economic rights first emerged in the 1979 Constitution and subsequently in the 1999 Constitution.[828] These are in the form of Fundamental Objectives and Directive Principles of State Policy (FODPSP) which is in chapter II of the Constitution.[829] The provisions in chapter II have been held to be for the benefit of Nigerians, particularly the poor and vulnerable.[830] This chapter was to fulfil the promises in the Preamble of the Constitution which is '…to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people….'.[831] It has also been argued that chapter II was included in the Constitution to ensure that governance is implemented to the advantage of all citizens.[832]

Similarly, the FODPSP are hinged on the necessity of pursuing the well-being of citizens with the state taking a pivotal role.[833] The Nigerian Supreme Court defined the word 'state' in *Attorney-General of Ondo state v. Attorney-General of the Federation* to include '… the three tiers of government, namely, the Federal Government, State Government and Local Government'.[834] Furthermore, section 13, which is the first section of chapter II of the Constitution provides that it

[828] Duru OWC "The justiciability of the fundamental objectives and directive principles of state policy under Nigerian Law" (2012). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2140361 accessed on the 12th of March, 2016 at 1.
[829] Fundamental objectives and directive principles of State policy are sections in the Constitution which prescribe the ultimate socio-economic goals of the government and the strategies for achieving these goals: Odike EA *et al* "Incorporation of fundamental objectives and directive principles of State policy in the constitutions of emerging democracies: A beneficial wrongdoing or a democratic demagoguery" (2016) 7 *Beijing Law Review* 267-77: Okeke GN "Fundamental objectives and directives principles of State policy: A viable anti-corruption tool in Nigeria" (2011) 2 *Nnamdi Azikwe University Journal of International Law and Jurisprudence* 175-84.
[830] Op cit note 823.
[831] "Preamble" Constitution of Nigeria, 1999.
[832] Akande J *Introduction to the Constitution of the Federal Republic of Nigeria, 1999* (2000) MIJ Professional Publishers: Ideally, chapter two of the Constitution should serve as a blue-print for social justice for every Nigerian.
[833] Ibid.
[834] (2002) 9 NWLR (Pt. 772) 222. Available at http://lawaspire.com.ng/2014/08/attorney-general-of-ondo-state-v-attorney-general-of-the-federation-ors/ accessed on the 23rd of March, 2016.

is the duty of all organs of government, all authorities and individuals to observe and apply the FODPSP.[835]

The importance of chapter II was captured by the Nigerian Supreme Court in *Attorney-General of Ondo state v. Attorney-General of the Federation* citing the words of the Supreme Court of India in *Minerva Mills Ltd. Ors v. Union of India & Ors:*

> '…to the large majority of people who are living an almost sub-human existence in conditions of abject poverty and for whom life is one unbroken story of want and destitution, notions of individual freedom and liberty, though representing some of the most cherished values of free society, would sound as empty words bandied about only in the drawing rooms of the rich and well-to-do and the only solution for making these rights meaningful to them was to re-make the material conditions and usher in a new social order where socio-economic justice will inform all institutions of public life so that the pre-conditions of fundamental liberties for all may be secured'.[836]

In relation to work, the first pillar of decent work, as a socio-economic right, section 17 of the Constitution provides that the state shall direct its policy 'towards ensuring that *inter alia* 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'.[837] It can be argued that the *opportunity for securing adequate means of livelihood* means providing the right environment to promote formal and informal work. For street vendors, this would require access to public spaces. In addition, it can be inferred from the use of livelihood and employment in the same sentence that this applies to self-employed and waged workers in both the formal and the informal economy.[838]

Livelihood entails a means through which a living is gained, including work and other sources of income that enable an individual to have food, shelter and clothing.[839] The Constitution's use of *livelihood* is broader than Nigeria's Labour Act of 1974's definition of a

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[835] The Constitution of Nigeria, 1999: Section 224 provides that programmes of political parties must conform to chapter II. Also, item 60 on the Exclusive Legislative List empowers the National Assembly to make laws for the establishment and regulation of authorities that promote the provisions of chapter II.

[836] *Minerva Mills Ltd. Ors v. Union of India & Ors* 1980 AIR, 1981 SCR (1) 206. Available at http://indiankanoon.org/doc/1939993/ accessed on the 23rd of March, 2016: in recent times, the courts in India have enforced socio-economic rights.

[837] Section 17 (3) (a) of the Nigerian Constitution.

[838] This section goes further to provide for rights at work, and the individual and communal welfare of citizens: Section 17(3) of the Nigerian Constitution. These are two of the decent work pillars.

[839] Ibid: Silva TE "Principles in International Development: Sustainable livelihoods and human rights based approaches" (2013) at 5.

worker which is restricted to formal work.[840] This means that street vending should be recognised as a source of work. Furthermore, section 1 (3) of the Constitution provides that 'if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void'.[841] Applied within the context of street vending, section 1 of the STIML is arguably a violation of section 17 of the Constitution. However, the enforcement of chapter II is hindered by section 6(6) (c) of the Constitution which provides that

> 'judicial powers vested in the courts…shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the FODPSP set out in Chapter II of this Constitution'.[842]

This means that Chapter II of the Constitution cannot form part of a legitimate claim in a court of law. The same applies to other work rights such as social protection, health and safety at work, just conditions of work and non-discrimination in the workplace, which would be derived from the provisions in chapter II of the Constitution.[843]

The provisions of the Nigerian Constitution are lacking: whereas, section 6(6)(c) prohibits the judiciary from 'interfering' with chapter II, section 13 makes it the duty of all organs of government to conform with and implement the provisions in chapter II. The judicial powers of courts are fettered and it cannot address issues or questions that arise from any action of any authority or a law which contradicts this chapter.[844] This was affirmed by the court in *Arch. Bishop Olubunmi Okogie v. The Attorney- General of Lagos State.*[845]

The interpretation of laws and the administration of justice is the function of the judiciary.[846] This is carried out through duly constituted courts of laws. Furthermore, judicial

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[840] A worker is defined under the Labour Act as 'any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour…'. The use of 'worker' is misleading however as, in practice, the definition retains a limited scope and application of labour law to employment relationships in regulated organisations: Ibekwe CS "Legal implications of employment casualization in Nigeria: A cross-national comparison" (2016) 7 *Nnamdi Azikiwe U.J.Int'l L. & Juris.* at 82-83.

[841] Constitution of Nigeria, 1999.

[842] Ibid.

[843] It is important to note that the Constitution does not use the term 'social protection' but can be deduced from its phrasing: Section 17(3) The Constitution of Nigeria, 1999.

[844] See section 6(6) (c) The Constitution of Nigeria, 1999 as discussed above.

[845] (1981) 1 NCLR. Available at http://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja accessed on the 23rd of March, 2016.

[846] Garner BA *Black's law dictionary* (1999) (9th ed).

power is 'the authority vested in courts and judges to hear and decide cases and to make binding judgements on them: the power to construe and apply the law when controversies arise over what has been done or not done under it'.[847] This power is vested in Nigerian courts by virtue of section 6 of the Constitution.[848] However, section 6(6)(c) limits the powers of the court to enforce socio-economic rights. As a result, 'Nigerian courts are almost always incapable of or unwilling to entertain socio-economic rights claims'. [849] This reluctance of the court to enforce chapter II because of the constitutional fetters is exacerbated by the principle of precedent upon which Nigerian laws are developed.[850] Consequently, it is difficult for informal workers to challenge the breach of their socio-economic rights under the Constitution. Whether the fundamental rights of informal workers (street vendors) are better protected under the regional legal framework is considered next.

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[847] Sokefun J & Njoku NC " The court system in Nigeria: Jurisdiction and appeals" (2016) 2(3) *International Journal of Business and Applied Social Science* at 2.

[848] See the decision of the Supreme Court of Nigeria in *A.G. Abia State v. A.G. Federation* where the court opined as follows, 'It is also important to bear in mind that the judiciary…is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purposes of safe guarding and protecting the Constitution and its goals. The judiciary when properly invoked has a fundamental role to play in the structure of governance by checking the activities of the other organs of the government and thereby promoting good governance respect for individuals' rights and fundamental liberties and also ensuring the achievement of the goals of the Constitution and not allow the defeat of such good intendments. It is the duty of the court to keep the government faithful to the goals of democracy, good governance for the benefit of the citizen as demanded by the constitution': 2007 2SC 146 Available at http://www.nigeria-law.org/Attorney%20General%20of%20Abia%20State%20&%202%20Ors%20V%20Attorney%20General%20of%20the%20Federation%2033%20Ors.htm accessed on the 22nd of February, 2017.

[849] Op cit note 821 at 241: In *Arch. Bishop Olubunmi Okogie v. The Attorney- General of Lagos State*, the appellants had asked the Court of Appeal whether the provision of educational services by a private citizen comes under section 16(1) (c) of chapter II of the 1979 Constitution. And if yes, whether the Lagos State government had infringed on this right. According to the court, the role of the judiciary is 'the obligation of the judiciary to observe the provisions of chapter II is limited to interpreting the general provisions of the Constitution or any other statute in such a way that the provisions of the chapter are observed…subject to the express provision of the Constitution': The implication of this therefore is, there is no organ/body empowered to enforce the provisions of Chapter II of the Constitution. Consequently, chapter II can be argued to be mere words which should rather be expunged from the Constitution. According to the Austin's theory of law, a necessary condition which distinguishes a law from mere words is that such law be enforceable: McNeilly FS "The enforceability of law" (Feb. 1968) 2(1) *Nous* at 47.

[850] Judicial decisions are sources of law in Nigeria. Hence, decisions of higher courts are considered as examples or authorities for lower courts for an identical or similar question of law. Some of the justified reasons for judicial precedents include: certainty and predictability of law; promotion of judicial efficiency; scientific development of law among other reasons. However, one of the major disadvantages of judicial precedents is rigidity. This prevents law from adapting to the changing socio-economic order of a country. For example, the persistent the development of the informal economy in Nigeria: Ogbu ON *Modern Nigerian legal system* (2013) (3rd ed) SNAPP Press Ltd, Nigeria: Ikegbu AE *et al* " The rationality of judicial precedent in Nigeria's jurisprudence" (2014) 4(5) *American International Journal of Contemporary Research* 149-58 at 150-52.

5.4.1.2 Regional law instruments: the African Charter on Human and Peoples' Rights (1981)

The creation of the African Union (formerly the Organisation of African Unity) led to a multi-lateral framework for inter-governance within the continent.[851] Unlike the charter of similar regional organisations, the OAU charter of 1963 was initially concerned with sustaining the hard-won independence of African states.[852] There was no clear and direct commitment to human rights, although, a passing reference to freedom, equality, justice and dignity for Africans and adherence to the UN charter and the UDHR was made.[853] Consequently, there has continued to be widespread systemic violations of human rights in independent African states between the 1960s and 1970s.[854]

In 1981 due to external and internal pressures, the African Charter on Human and Peoples' Rights 1981 was adopted by heads of states.[855] This is popularly called the Banjul Charter and entered into force on the 21st of October, 1986. This charter further led to the introduction of other human rights instruments including the African Charter on the Rights and welfare of the Child 1990, the Protocol on the Statute of the African Court of Justice and Human Rights 2008, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.[856] However, this thesis is focused on Banjul Charter approach to socio-economic rights.

Central features of the Banjul Charter are the provision for civil, socio-economic and political rights; including the right to development and corresponding duties of individuals.[857] This

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[851] Naldi GJ *The Organisation of African Unity: An analysis of its role* (1999) (2nd Ed) Mansell at 1-5.

[852] *Charter of the Organisation of African Unity* (13th September, 1963) Available at http://hrlibrary.umn.edu/africa/OAU_Charter_1993.html accessed on the 14th of February, 2017.

[853] Ibid at "Preamble".

[854] Udombana NJ "Toward the African Court on Human and Peoples' Rights: Better late than never" (2000) 3(1)(2) *Yale Human Rights and Development Journal* at 46.

[855] Ibid: De Vos P "A new beginning? The enforcement of social, economic and cultural rights under the African Charter on Human and Peoples' Rights" (2004) 8(1) *Law, Democracy & Development* 1-24.

[856] African charter on the rights and welfare of the child 1999 African Union Available at http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf accessed on the 15th of February, 2017: the charter on the rights and welfare of the child was adopted in 1990 and came into force in 1999: Available at http://en.african-court.org/images/Basic%20Documents/ACJHR_Protocol.pdf accessed on the 15th of February, 2017: Available at http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf accessed on the 15th of February, 2017.

[857] Op cit note 852 at Preamble: the right to development is the right of individuals to benefit from and participate in development policies: Nmehielle VOO *The African Human Rights System: Its laws, practice, and institutions* (2001) Kluwer Law International at 150-151: article 22 of the Charter provided for the right to development. This right guarantees all Africans the right to socio-economic and cultural development. Furthermore this right necessitates the fulfilment of all classed of rights including socio-economic rights: Baldwin C and Morel C "Group rights" (2008) in Malcolm Evans and Rachel Murray *The African Charter on Human and Peoples' Rights* (2nd ed) Cambridge University Press at 270-79: Hadiprayitno I "Poverty" (2013) in *Realising the Right to Development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development* HR/PUB/12/4 United Nations at 137-47. "The challenge of implementing the right to development in the 1990s" (2013) in *Realising the*

charter accords the same level of importance to all classes of rights.[858] Notably, the importance and intersectionality of socio-economic rights with other classes of rights was captured in the preamble of the Charter which records that member states are

> '…convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights'.[859]

Positioning of ESC rights at the same level with the other classes of human rights was seen as radical at that time.[860] In addition unlike the ICESCR, the charter does not contain a derogation clause and states' obligation to implement socio-economic rights obligation of is not expressed as progressive.[861] Rather the obligations of states are seen as immediate. This was necessary to address the socio-economic challenges the continent was facing.[862]

Article 15 of the Charter provides 'every individual shall have the right to work under equitable and satisfactory conditions….'[863] The African Commission in the 2004 *Pretoria Declaration on Economic, Social and Cultural rights in Africa* stated that the right to work entails among others:

- 'equality of opportunity of access to gainful work, including access for refugees, disabled and other advantaged person;
- Equitable and satisfactory conditions of work…; creation of enabling conditions and taking measures to promote the rights and opportunities of those in the informal sector, including in subsistence agriculture and in small scale enterprises activities…

Right to Development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development HR/PUB/12/4 United Nations at 55.

[858] Ibid: Naldi GJ "The African Union and the regional human rights system" (2008) in Malcolm Evans and Rachel Murray *The African Charter on Human and Peoples' Rights* (2nd ed) Cambridge University Press at 31-4: Sisay AY "Approaches to the justiciability of economic, social and cultural rights in the jurisprudence of the African Commission on Human and Peoples' Rights: Progress and perspective" (2011) 11 *African Human Rights Law Journal* 317-40.

[859] Op cit note 852 at Preamble.

[860] Op cit note 709 Sasiay at 87: Odinkalu CA "Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights" (2002) in Malcolm D Evans & Rachel Murray *The African Charter on Human and Peoples' Rights: The system in practice 1986-2000* Cambridge University Press at 188-190.

[861] Ouguergouz F *The African Charter on Human and Peoples' rights: A comprehensive agenda for human dignity and sustainable democracy in Africa* (2003) Kluwer Law International at 434

[862] Odinkalu CA "Analysis of paralysis or paralysis by analysis? implementing economic, social and cultural rights under the African charter on human and peoples' rights" (2001) 23(2) *Human Rights Quarterly* at 336.

[863] Ibid.

- The right to freedom of association…'.[864]

In 2011, the meaning of Article 15 was extended to include access to decent work which respects the fundamental rights of the workers.[865] With this, decent work was confirmed as respecting the rights of workers.

Similar to the ICESCR, the Charter addresses the obligations of states with respect to the realisation of rights. Article 1 provides that members have the obligation to recognise the rights, duties and freedoms in the charter. Also, legislative measures must be adopted to give effect to them.[866] Legislative measures mean the adoption of domestic national laws which protect and promote socio-economic rights. In addition, as envisaged under article 1, legislative measures can be supplemented by other policy measures to ensure the full realisation of this right.[867] Unlike the provision in article 2(1) of the ICESCR, article 1 of the Charter does not have resource-related qualifiers. However, the appropriate allocation of resources is necessary to give effect to socio-economic rights.

Nigeria domesticated the Charter in accordance with section 12 (1) of the 1979 Nigerian Constitution in 1983.[868] It thus became a domestic law by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of 1983.[869] In determining the status of this Act, the Supreme Court of Nigeria has held that its provisions are enforceable in the same manner as the fundamental rights in chapter IV of the Nigerian Constitution.[870] It was held that the rights in the Act are justiciable in Nigerian courts. Despite this affirmation however, the general justiciability of socio-economic rights is dependent on whether they are made part of the bill of rights or directive principles of state policy.[871] Directive principles are regarded as guides to the

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[864] *Pretoria Declaration on Economic, Social and Cultural rights in Africa* (2004) 3rd Extraordinanry Session of the African Commission on Human and Peoples' Rights, South Africa.

[865] "Principles and guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights" (2011) 50th Ordinanry Session of the African Commission on Human and Peoples' Rights, Gambia.

[866] Ibid at 21-22.

[867] One of such measures can be the development of a National Employment Policy.

[868] Ojukwu CN "Enforcement of the African Charter on Human and Peoples' Rights as a Domestic law in Nigeria" (2000) 25 *International Legal Practitioner* at 140: Udombana NJ "The patrimonial states and socio-economic rights in Africa" (2006) in Nsongurua J Udombana and Violeta Besirevic *Rethinking socio-economic tights in an insecure world* Center for Human Rights Central European University Press at 121.

[869] It is now contained in Cap 10, Laws of the Federation of Nigeria, 1990.

[870] *Abacha v Fawehinmi* (2000) SC.45/1997 Available at http://www.nigeria-law.org/General%20Sanni%20Abacha%20&%20Ors%20%20V%20%20Chief%20Gani%20Fawehinmi.htm accessed on the 16th of February, 2017: the rights in Chapter IV are mainly civil and political rights. However, this chapter also provides for the right to property as discussed in the latter part of this chapter.

[871] Op cit note 799 (Young).

executive and legislative arm of government in the exercise of their functions.[872] Given that the socio-economic rights are provided under chapter II which falls within the directive principles, it is unenforceable. Nonetheless, the Charter makes all human rights including socio-economic rights justiciable.[873] Therefore, the African Commission had no difficulty in holding Nigeria responsible for the violation of certain socio-economic rights.[874] Regrettably, the past decisions of the Commission with respect to the violations of socio-economic rights under the Charter have not been implemented by State Parties including Nigeria.[875] The predicament is similar under the provisions of international law.

5.4.1.3 International law: the Universal Declaration of Human Rights (UDHR) 1948

The UDHR, adopted in 1948, recognises socio-economic rights. A key characteristic of this instrument which provides for all classes of human rights is its universality.[876] Under its preamble, the provisions of the UDHR was said to be a common standard for the rights of all peoples and nations.[877] Article 2 further affirms that everyone is entitled to all the rights and freedoms within the declaration.

Article 22 reflects in general terms economic, social and cultural rights, providing that

> 'Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality'.[878]

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[872] Op cit note 829 (Odike).

[873] Op cit note 852 at article 45.

[874] In *the Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights v Nigeria* (2001) AHRLR 60, the African Commission was petitioned in respect of the socio-economic rights to health, housing and clean environment in the Niger-Delta area of Nigeria. The Commission found Nigeria guilty and made several recommendations. However, this judgement was not enforced: available at http://www.chr.up.ac.za/index.php/browse-by-subject/410-nigeria-social-and-economic-rights-action-centre-serac-and-another-v-ni accessed on the 21st of August, 2017.

[875] Yerima TF "Comparative evaluation of the challenges of African regional human rights court" (2011) 4(2) *Journal of Politics and Law* at 121-122: In many African countries, these rights are not enforceable and courts cannot make decisions with respect to their implementation because they require setting priorites and budgetary allocations: Coomans F "Some introductory remarks on the justicability of economic and social rights in a comparative constitutional context" (2006) in Coomans F(ed) *Justiciability of Economic and Social Rights-experiences from domestic courts* Intersentia Antwerpen.

[876] The UDHR is not 'country-specific, or particular to a certain era or social group. They are the inalienable entitlements of all people, at all times, and in all place…': *Universal Declaration of Human Rights Booklet* (2015) UN available at http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf accessed on the 11th December, 2017.

[877] "Preamble" UDHR.

[878] Bard-Anders A "Article 22"in Alfredsson Gudmundur and Eide Asbjorn *The Universal Declaration of Human Rights: A common standard of achievement* (1999) Kluver Law International 41 -775 at 453: Glendon Mary Ann "Knowing the Universal Declaration of Human Rights" (1998) 73(5) *Notre Dame Law Review* 1153-1190: *Universal Declaration of Human Rights* 1948.

For the above right to be fulfilled, there are other concomitant rights.[879] One of which is the right to work: specifically, article 23 (1) provides 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment'.[880] 'Work' is used broadly and includes informal work.[881] Nigeria as a member of the UN is obliged to facilitate the achievement of the rights in this declaration. Notably, the UDHR is not a treaty but has the weight of customary international law.[882] The UDHR is the basis for the conventions which address civil, political and socio-economic rights, these being the International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights (ICRSCR) 1966.[883]

5.4.1.4 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

Nigeria is a party to the ICESCR and ratified this covenant on the 29th of July 1993; it has not been incorporated into domestic law however.[884] Ratification of the covenant does not mean that socio-economic rights are protected and promoted. As argued elsewhere, there is no positive correlation

[879] Ibid at 479: Diller MJ *Securing dignity and freedom through human rights: Article 22 of the Universal Declaration of Human Rights* (2012) Koninklijke Brill NV Leiden, the Netherlands at 16-18.
[880] *Universal Declaration of Human Rights* 1948.
[881] Bonner C "Law and the informal economy: the WIEGO law project" (2017) in Alison Brown (ed) *Rebel streets and the informal economy: Street trade and the law* Routledge Abingdon, Oxon at 99.
[882] Op cit note 875 (Yerima TF) at 121: *Human Rights and Constitution making* (2018) HR/PUB/17/5 Office of the United Nations High Commissioner for Human Rights, United Nations Geneva at 21: see Crawford J *Brownlie's principles of public international la*w (2012) 8th ed. Oxford University Press: Baderin M and Ssenyonjo M "International human rights law: Six decades after the UDHR and beyond" (2010) in Baderin Mashood and Ssenyonjo Manisuli (eds) *International human rights law: Six decades after the UDHR and beyond* Ashgate Publishing Limited at 8-12.
[883] International Covenant on Economic, Social and Cultural Rights (ICRSCR) 16th December 1966, United Nations Treaty Series vol. 993 Assembly, UN General.
[884] "Status of ratification interactive dashboard" Available at http://indicators.ohchr.org/ accessed on the 16th of February, 2017: Section 12 of the Nigerian Constitution requires that an international treaty be domesticated by the Nigerian legislature before it can be enforced within the country. Thus the ICESCR and other international conventions to which Nigeria is a signatory has no effect until they are domesticated into law by an act of the National Assembly. In *Mhwun v. Minister of Health & Productivity & Ors* [2005] 17 NWLR pt. 953 at 120, the Court of Appeal held that the provision of an ILO Convention cannot be enforced in Nigeria until it has been re-enacted into domestic law by the National Assembly. However, the constitutional amendment of 2010 brought about some changes with respect to the status of some international treaties. Section 254 of the amended Constitution (third alteration) 2010 re-established the National Industrial Court of Nigeria. In terms of the jurisdiction of this court, section 254 (c) (2) provides for the application of "any international convention, treaty or protocol which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith". Therefore, section 12 of the Constitution will no longer apply as far as the enforcement of international labour standards, conventions or treaties in Nigeria is concerned: Onomrehinor Flora "A re-examination of the requirement of domestication of treaties in Nigeria" (2016) 7 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 17-25.

between being a party to a treaty and the respect for human rights.[885] This is because states generally become parties to treatises for the sake of their public image as members of the UN.[886]

The adoption of the ICESCR was as a result of the need to transform the socio-economic rights in the UDHR into *hard law*.[887] Although, the UDHR provided for these rights, its *non-treaty* status made enforcement of compliance difficult.[888] With the ICESCR, state parties are obliged to incorporate its provisions into their national laws. In addition, the ICESCR is concerned with poverty alleviation and addressing basic human needs, and the socio-economic rights provided for by this covenant are diverse and are conceptualised as being interrelated.[889] They include the rights to an adequate standard of living, to participate in cultural life, to education, to health, to work among others.

Arguably, the ICESCR is the most comprehensive international instrument on socio-economic rights.[890] Article 6 of this covenant, which provides for the right to work, states that 'States parties…recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right'. [891] Furthermore, this right to work includes rights to free choice of work; full employment and fair wages; an adequate standard of living; safe work conditions; to form and join trade unions and, to social security.[892] Importantly, this right overlaps with the ILO's agenda on decent work conditions.[893] Similarly, article 6 includes the right of everyone to the opportunity to gain a livelihood by any work which he or she freely chooses.[894] State parties have the duty to take appropriate steps to guard it.

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[885] Hafner-Burton EM & Tsutsui K "Human rights in a globalizing world: The paradox of empty promises" (2005) 110 (5) *American Journal of Sociology* at 1379.
[886] Ibid at 1379-1398.
[887] Rhona KM Smith *International Human Rights Law (2018)* (Eighteenth edition) Oxford University Press at 58.
[888] Ibid.
[889] Op cit note 819 (Tanzer).
[890]The convention has been ratified by 168 countries as of 26th May 2018 and applies to citizens of these countries: MacNaughton G and Frey D "Decent work for all: a holistic human rights approach" (2010) 26 *American University Inernational Law Review* at 462: O'Cinneide C "The right to work in international human rights law" (2015) in Mantouvalous Virginia (ed) *The right to work: Legal and philosophical perspectives* Hart Publishing at 102.
[891] Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx accessed on the 13th of February, 2017.
[892] Ibid articles 7-9.
[893] Prior to the strategic change in ILO's approach to work through its decent work agenda, the ICESCR had the advantage of being applicable universally. It covered all workers irrespective of their work status- informal or formal, waged or self-employed and without regard to their legal status.
[894] Das KJ *Human Rights Law and Practice* (2016) PH Learning Private Learning at 86.

Article 2 provides for general obligations of states regarding the provisions in the ICESCR. States are to take steps to achieve progressively the realisation of socio-economic rights through appropriate means particularly the adoption of legislative measures.[895] This requires states to incorporate its provisions into her national laws, in the case of Nigeria through domestication. Specifically, article 6(2) obliges states to take steps to achieve this right. These steps should include policies which safeguard the political and economic freedoms of workers. To ensure compliance with the ICESCR by states, a supervisory mechanism called the Committee on Economic, Social and Cultural Rights (CESCR) was established by the UN in 1985.[896] This committee has issued detailed comments on the normative content of the right to work.

The right to work was declared a fundamental right which is essential for the realisation of other human rights and forms an inherent part of human dignity.[897] This right contributes to the survival and recognition of an individual within the community as long as it is freely chosen.[898] According to the committee, State parties are obliged to assure individuals of their right to freely choose any work. Work must be decent, which respects the fundamental rights of the workers. Importantly, articles 6, 7 and 8 were declared to be interrelated and interdependent.[899] Furthermore, the definition of the right to work in article 6 is deliberately broad to ensure inclusivity and it encompasses all forms of work including informal work.[900] The work in this sense must also be decent.[901]

Article 9 recognises the right of everyone to social security. In recognising the relationship between poverty and informal work, the CESCR states that states parties need to consider the

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[895] "Article 2(1)"Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx accessed on the 16th of February, 2017: Not all obligations of States with respect to socio-economic rights are progressive; some obligations are immediate such as the adoption of measures to eradicate discrimination in the enjoyment of these rights. For the right to work, the obligation is immediate and would reflect through the removal of legislative measures that limit this right: "General comment No.3: the nature of states parties' obligations (article 2, para. 1 of the ICESCR)" (1990) CESCR available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4758&Lang=en accessed on the 31st of March, 2018 at paras 4&9.

[896] "Committee on Economic, Social and Cultural Rights" Available at http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx accessed on the 16th of February, 2017.

[897] "CESCR- General comment No.18 on the right to work (article 6 of the ICESCR) (2005) CESCR Available at file:///C:/Users/user/Downloads/G0640313.pdf accessed on the 16th of February, 2017 at 2.

[898] Ibid

[899] Ibid at Para. 8: Article 7 addresses work conditions, while article 8 provides for the right to social dialogue.

[900] Ibid at Para. 10.

[901] Ibid at Para. 10.

provision of social protection as a measure to combat poverty and marginalisation.[902] In addition, social protection must be accessible by all.[903]

Also, states must address informality through the use of appropriate measures.[904] Examples of these measures are found in various ILO policy documents as referred to by the CESCR.[905] In 2016, the committee explicitly referred to ILO policy documents for the realisation of this right.[906] The evolution of work and the expansion of the informal economy were also acknowledged as falling under article 6 of the ICESCR.[907] Despite this inclusivity, the obligation of state parties towards the realisation of this right is progressive (gradual). The term 'progressive' as used under article 2 of the ICESCR, may provide states with excuses for not achieving this right or taking urgent steps towards this. In addition, although the CESCR highlights the ways in which violations of article 6 may manifest, precisely what would constitute failure to comply is inconclusive.[908]

Apart from the work rights explored in this section, street vendors also require property right in public spaces; this is discussed within a HRBA in the next section.

5.4.2 Property rights[909]

The core of social and economic exchange is the streets which are the public spaces in every city.[910] These streets are the path through which the activities of old and new cities are sustained.[911] They

[902] "CESCR- General comment No.19 on the right to social security (article 9 of the ICESCR)" (2007) CESCR available at http://www.globalhealthrights.org/instrument/cescr-general-comment-no-19-the-right-to-social-security/ accessed on the 26thof May, 2018.
[903] Ibid at para 2&3.
[904] Op cit note 896 at Para. 10.
[905] According to the CESCR, these measures are found in relevant ILO Conventions and Recommendations some which are highlighted in chapter seven.
[906] "CESCR- General comment No.23 on the right to just and favourable conditions of work (article 7 of the ICESCR)" (2016) CESCR available at file:///C:/Users/user/Downloads/G1608751.pdf accessed on the 16th of February, 2017 at 1-3.
[907] Ibid.
[908] Op cit note 890 (Colm O'Cinneide) at 110.
[909] This section is concerned with situating property right as an element of decent work within the human rights framework. Discussions on the various thoeries and concepts of property rights are outside the purview of this thesis.
[910] "Placemaking and the future of cities" (2012) Project for Public Spaces, Inc. (PPS) produced under the auspices of the UN-HABITAT Sustainable Urban Development Network (SUD-Net) with funding from the United Nations Federal Credit Union Available at http://www.pps.org/wp-content/uploads/2012/09/PPS-Placemaking-and-the-Future-of-Cities.pdf accessed on the 27th of June, 2016 at 7: M. Chen *et al* "Editorial: Urban livelihoods: reframing theory and policy" (October 2016) 28(2) *Environment and Urbanization* 331-342 at 337-338.
[911] Lynch K *The image of the city* (1964) Cambridge Mass.: MIT Press.

can be likened to the blood vessels in the human body.[912] However, streets are daily congested in a similar manner as clogged blood vessels.[913] Given their significance particularly to street traders, their worth as an intrinsic part of urban space remains evident, as is the desirability to prevent untenable congestion. The concept of property right within this context signifies a *right*[914] existing within the complex legal relationship between individuals and the state with respect to economic rights.[915] Therefore, an individual who gets an income through the utilisation of a good can be said to have property rights[916] and this is different from the legal right of ownership.[917] In addition, property rights have been defined as the ability to enjoy a piece of property.[918] For street vendors, this would mean having secure rights in public urban spaces.[919]

Property rights are a fundamental human right; its importance magnified by the fact that property forms the foundation for many kinds of inequality, particularly gender inequality in developing countries.[920] This right is manifested through incorporation in various international instruments including the UDHR, African Charter, the UN Declaration on the rights of indigenous peoples among others.[921] Nevertheless, engaging property as a human rights concern is paradoxical

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[912] Adedeji J.A. *et al* "Spatial implications of street trading in Osogbo traditional city centre, Nigeria" (2014) 4(1A) *Architecture Research* at 34.
[913] Ibid.
[914] Geuting E "Proprietary governance and property development: Using changes in the property-rights regime as a market based policy tool" (2007) 78 (1) *Town Planning Review* at 27.
[915] Ibid.
[916] Bajt A "The property rights school: Is economic ownership the missing link" 13 *International Review of Law and Economic* (1993) 85-97 at 87-89: Smith A *An inquiry into the nature and causes of the wealth of nations* New York (1937) at 173.
[917] Ibid
[918] Barzel Y *Economic analysis of property rights* (1997) Cambridge University Press at 1: Similarly, property rights are a bundle of rights which consists of full private ownership, communal ownership and state ownership. It has also been defined as societal instruments which help a man form expectations which he can reasonably hold in his dealings with other members of the society. These expectations can be found in the law, customs and traditions of the society. This by implication means that someone that owns property rights has the consent of other members of the society to act in a particular way. In addition by virtue of this consent, it is expected that there will be no interference with the exercise of these rights: Demsetz H "Towards a theory of property rights" (1967) 57 (2) *The American Economic Review* at 347: op cit note 41 at 239: Ellickson RC "Property in Land" (1993) *Faculty law scholarship series* Paper 411 Yale Law School. Available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1410&context=fss_papers accessed on the 28th of June, 2016 1315-1400: Segal I and Whinston MD"Property Rights" (August 2010) Accessed at http://web.stanford.edu/~isegal/prights.pdf on the 13th of October, 2016 1-93 at 2.
[919] Ibid Segal & Whinston.
[920] Carruthers BG and Ariovich L "The sociology of property rights" (2004) 30 *Annual Review of Sociology* at 23, 27: Article 17(1) *Universal Declaration of Human Rights* available at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf accessed on the 29th of June, 2016.
[921] Xu T and Allain J "Introduction: Property and human rights in a global context" (2016) in Xu T and Allain J (eds) *Property and human rights in a global context* Hart Publishing at 1.

as there is a clash of paradigm; in terms of 'the self-regarding impulse towards personal appropriation and …the intrinsic merits of strangers'.[922] This can be resolved by recognising the complexities of property rights and clarifying the protected spheres of the right, which is an exercise beyond the scope of this thesis.[923]

By and large, property is regulated by national law. For example in Nigeria, land, as property, is regulated by the Land Use Act of 1978. Although, as mentioned, the acceptance of property as a human right is riddled with controversy. According to Moyn 'not surprisingly, it is probably the right of possession that has been the most frequently asserted and dogged fortified right in world history, albeit typically within legal systems that made no real claim to base entitlement on humanity'.[924] This was also seen in the disagreements between state parties of the UN on the inclusion of the right to property in international human rights instruments.[925]

Different understandings of property abound: property can refer to things, relations or the relations people have with things, with a popular understanding of property as the recognition of private property. That is, total ownership to the exclusion of any other person.[926] In Nigeria, private property right to land and its resources within legal limits is recognized in the Constitution as a fundamental right. Section 43 provides that 'subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria'.[927] However, this limits the scope of property to the maximization of wealth, largely

[922] Gray K "Land la and human rights' (2002) in Tee L (ed) *Land law: Issues, debates, policy* Willan Publishing at 211.
[923] See Xu T and Allain J (eds) *Property and human rights in a global context* Hart Publishing: Osiki Abigail "Property rights as a means of extending labour protection to the Nigerian informal economy" (2018) (in print) *International Journal of Comparative Labour Law and Industrial Relations*.
[924] Moyn S *The last utopia: Human rights in history* (2010) Harvard University Press at 17.
[925] The UK and Australia were opposed to the inclusion of property right in international human rights framework because it was felt that it spoke to the sovereignty of a state. While the Soviet Union and their allies wanted the inclusion of property right in a general sense: "Annotations on the text of the draft International Covenants on Human Rights" (1995) *UN Document A/2929* at para. 195-212: Krause C & Alfredsson G "Article 17" (1999) in Alfredsson GS & Eide A (eds) *The Universal Declaration of Human Rights: A common standard of achievement* Martinus Nijhoff Publishers, The Hague.
[926] The theory of private property was popularized by John Locke in his *Second Treatise on Government* (1969): Ely JW *The guardian of every other right: A constitutional history of property rights* (1992) Oxford University Press: Otubu A "Fundamental right to property and right to housing in Nigeria: A discourse" (2011) 7(3) *Acta Universitatis Danubius Juridica* at 29.
[927] However, subject to section 44 of the 1999 Constitution of Nigeria which addresses expropriation of land, this right can be infringed.

ignoring other forms of property such as open access, communal and common-pool property regimes.[928] It is the latter regime that resonates in the context of street vending.

Common-pool regimes functions as a hybrid of open access and communal property regimes.[929] In this regime, there is collective ownership, but it is too costly or impracticable to exclude people through physical or regulatory barriers. The consumption of this resource by an individual subtracts from the benefits available to others.[930] In addition, common-pool could be owned by the government, communal group, private individuals or corporations or used as open access. Challenges of this regime include congestion, overuse, environmental pollution and potential destruction.[931]

Public spaces in urban areas can be seen as common-pool resource.[932] It is a collectively consumed good. However, as mentioned in chapter four, congestion from multiple-users such street vendors and the general public is problematic.[933] Nonetheless, little consideration has been given to property rights in public spaces for street traders; even though these spaces are recognised as a common resource in which complex and ambiguous rights exist.[934] Hence the thesis argument for a HRBA linking decent work to property rights in the context of Nigerian street vendors.

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[928] Common property regimes where members of a specific group have the legal right to exclude non-members from using a particular resource: Open access regimes allows anyone access to use particular resources. There are no rules to govern access to these resources as a result there is no incentive to protect the consumption or use of the resources. This might lead to over-consumption or mismanagement. Open access regimes are usually based on public policies which guarantee access of citizens to particular resources. It has been opined that this regime will not work in this modern age particularly because of the geometric population growth in the world. Open and uncontrolled access to common resource will lead to what has been popularly called *tragedy of commons*: Hardin Garrett "The tragedy of the commons" (1968) 162 (3859) *Science* at 1243-48: In considering this overconsumption or mismanagement effect of open access regimes, Hardin opined a person's conscience cannot be left to determine the extent of use of a common resource. Because an average person does not believe that his personal decisions affect the society as a whole. This concept is contrary to Adam Smith's belief which suggests an individual's decision will be guided by an invisible hand for the best interests of the society: Op cit note 41 at 240.

[929] Op cit note 41.

[930] Ostrom E and Hess C "Private and common property rights" (2007) presented in Workshop in Political Theory and Policy Analysis, Indiana University at 8-15.

[931] Anderson TL & McCormick B "The contractual nature of the environment" in Colombatto E (ed) *The Elgar companion to the economics of property rights* Edward Elgar Publishing Inc, (2004) 293: Dagan H & Heller MA "The liberal commons" (2001) 110(4) *The Yale Law Journal* 549-623: Rose C "The comedy of the commons: customs, commerce, and inherently public property" (1986) 53 (3) *The University of Chicago Law Review* at 744.

[932] Webster C "Property rights, public space and urban design" (2007) 78(1) *Town Planning Review* at 82: Brown A "Claiming the streets: Reframing property rights for the urban informal economy" in Brown Alison(ed) *Rebel streets and the informal economy: Street trade and the law* Routledge (2017).

[933] Ibid

[934] Blomley N *Unsettling the city: Urban land and the politics of property* (2004) Routledge.

De Soto, who has brought attention to the need for land for informal economic activities,[935] makes a different argument. According to him, the assets of the urban poor are the land on which they live and conduct business activities,[936] however, this asset is a 'dead asset' since they do not have secured or legal title to these lands.[937] For De Soto, formal recognition of property rights, that is title to property is crucial for the urban poor to benefit from the market economy. However, there were many critiques to De Soto's approach, and that his argument is overstated.[938] Similarly, the one-size fit all solution of this approach has been argued to be inappropriate because not all titles to land are illegal in the sense of being stolen.[939] In many cases, vulnerability depends on factors such as 'identity of the original owner, location of the land, the alternative uses of the land, the nature of the government and the date of the next election' increase the vulnerability of informal workers.[940] Furthermore, although De Soto presented his plan as helping the poor, it is the urban elite that are likely to benefit from his approach.[941] Nonetheless, De Soto's work triggered debates on the need for property rights as a poverty alleviation strategy.[942] One of such is the discussions of the Commission for Legal Empowerment of the Poor (CLEP), co-chaired by De Soto.

The Commission for Legal Empowerment of the Poor was the first international initiative to focus specifically on the link between exclusion, poverty and law.[943] This report argued that billions of people around the world suffered from poverty because they were excluded from the

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[935] De Soto H *The Mystery of Capital: Why Capitalism Triumphs in the West and fails Everywhere Else* (2001) Black Swan.
[936] Ibid at 18-35, 75-84.
[937] Ibid.
[938] Gilbert A "On the mystery of capital and the myths of Hernando de Soto: what difference does legal title make?" (2002) 24(1) *International Development Planning Review* at 5-6.
[939] Ibid: rather these lands are against planning laws.
[940] Ibid at 7.
[941] Otto JM "Rule of law promotion, land tenure and poverty alleviation: Questioning the assumptions of Hernando de Soto" (2009) 1(1) *Hague Journal on the Rule of Law (UK)* 173-194: Benda-Beckmann von F "Mysteries of capital or mystification of legal property" (2003) *Focaal-European Journal of Anthropology* no.41. at 189.
[942] Ibid.
[943] *Making the law work for everyone* (2008) Working Group Report Volume II Commission on Legal Empowerment of the Poor and United Nations Development Programme. Available at http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone---vol-ii---english-only/making_the_law_work_II.pdf accessed on the 29th of June, 2016 at III: The CLEP report was published with the support of United Nations Development Programme (UNDP): At the regional level, Stephen Golub had previously explored legal empowerment of the poor in 2003 within the context of his work for the Asian Development Bank. According to him, the legal empowerment of the poor means a process of extending the control of disadvantaged people over their lives with the aim of alleviating poverty: Golub S "Beyond rule of law orthodoxy: the legal empowerment alternative" (2003) *Rule of Law Series*.

rule of law and legal processes.[944] In a bid to alleviate poverty, four pillars of legal empowerment were identified. These pillars are access to justice and rule of law, labour rights, business and property rights.[945]

Furthermore, the CLEP report highlighted four dimensions of property rights.[946] These are rules that define the bundle of rights and obligations between citizens and assets; a system of governance; a functioning market that allows land to be transformed into assets and, social policy framework.[947] However, a major challenge to these dimensions is the misalignment of social policies and legal provisions. This is because the relevance of property rights is much more than their role as economic assets.[948] These rights provide a sense of identity, dignity and belonging particularly for workers such as street vendors.[949] Consequently in accordance with the CLEP report, basic rights for street vendors would include the right to work and a work space which requires the state to attend to appropriate zoning and urban planning regulations that ensure access to public spaces in business districts and right to related infrastructure.

Article 17(1) of the UDHR provides 'everyone has the right to own property alone as well as in association with others'.[950] The reference 'in association with others' was inserted to include collective forms of property.[951] Public spaces can be argued to be a collective form of property.[952] As earlier mentioned, decent work is a human right and one of its elements with respect to street trading is property right in public spaces. It has however, been argued that collective forms of property undermines the individualistic approach to human rights.[953] From this perspective human rights are essentially the rights of the individual rather than a group of people. However, the property right of street vendors in public spaces is situated in the notion of collective property as

[944] Ibid.
[945] Ibid at IV.
[946] Ibid CLEP Report at 66-67.
[947] Ibid CLEP Report at 66-67.
[948] Ibid CLEP Report at 114.
[949] Ibid CLEP Report at 114.
[950] Article 17 UDHR: during the drafting of the UDHR there was no consensus on the status of property right within the human rights framework. Moreover, the property right provision is located along the provisions on political and civil rights: Maran R "The Universal Declaration of Human Rights at 40" (1989) 16(1) *Social Justice* 146-49: In addition to the provisions in article 17 of the UDHR, property is on the list of impermissible grounds of discrimination in the ICCPR and ICESCR. However, the ICESCR has no free standing provision on the right to property; although reference is made to the right to housing: Article 12 of ICESCR.
[951] Van Banning TRG *The human right to property* (2002) Antwerp, Intersentia.
[952] Op cit note 41 at 240: Op cit note 912.
[953] Xu T & Gong W "Communal property rights in international human rights instruments: implications for de factor expropriation" (2015) Xu T and Allain J (eds) *Property and human rights in a global context* Hart Publishing at 231.

street vending is a sector in the economy consisting of many workers using a common resource (public space) as their workplace. Although street vendors would be vested with property rights providing them with access to trade, legal title in the property would still vest in the State.[954] Nonetheless, the individual right of street vendors to public spaces can be argued to be 'private property' rights. However, they differ from traditional private property right in that they are not legal title nor is it transferable.

In situating property rights for street vendors within the human rights paradigm, the focus is on having access to public spaces; not having legal title. It means the legalisation of their use of public spaces leading to the legitimization of street trading.[955] Furthermore, it is legal recognition of the *de facto* right of street vendors by reason of their long and general use of public spaces for their activities.[956] The challenge therefore is how public spaces can be managed to avoid conflicts such as congestion, unclean environment among others. This is discussed in the next chapter.

5.4.3 The justiciability of socio-economic rights

Generally, the legal enforceability of socio-economic rights has been a major challenge since their introduction in the UDHR.[957] Yet, without legal enforceability, socio-economic rights will remain ineffectual. One of the arguments against the justiciability of these rights is that core socio-economic issues such as food, education, health, housing among others, are already covered by welfare state provision.[958] While this may be true in developed countries, the reverse is the case in many developing countries including Nigeria. Nonetheless, it is widely acknowledged that socio-economic rights should be enforceable as a safeguard against violations.[959]

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[954] Section 1 of the Nigerian Land Use Act of 1978 vests all land in the government.

[955] Labour has been argued to be inseparable from land use. Consequently, the legalising of the right of the poor to property is relevant to full citizenship: Holston J *Insurgent citizenship: Disjunctions of democracy and modernity in Brazil* (2008) Princeton University Press.

[956] See chapter four of thesis.

[957] Wiles E "Aspirational principles or enforceable right- the future for socio-economic rights in National Law" (2006) 22 *American University International Law Review* at 36.

[958] Ibid at 40: James A "The forgotten rights-the case for the legal enforcement of socio-economic rights in the UK national law" (2007) 2 *Opticon1826* at 10: Sadurski W "Constitutional courts in the process of articulating constitutional rights in the Post-communist States of Central and Eastern Europe Part 1: Social and Economic Rights" (2002) *EUI Working Paper LAW No. 2002/14*.

[959] Op cit note 957 at 41.

The justification for the justicability of socio-economic rights is the principle of equal importance.[960] As stated previously, it is universally accepted that all classes of rights are interrelated, inter-connected and interdependent. Approaching decent work with a holistic human right perspective that stresses the interdependence, indivisibility and equality of all rights, recognises that all rights are essential to human dignity. However within the Nigerian context, the rights associated with decent work are non-justiciable. Given the absence of explicit guarantees, there is need to adopt creative approaches to enforce socioeconomic rights as human rights in Nigeria.

As stated previously, Nigerian courts are precluded from adjudicating cases founded on socio-economic rights by virtue of the provision of section 6(6 (c) of the Constitution, making socio-economic rights non-justiciable. In addressing this issue of justiciability, 'the legitimacy of judicial intervention and the competence of courts to adjudicate issues in the sphere of the enforcement of ESCR' comes into play.[961] The legitimacy of judicial intervention is based on whether courts have the inherent capacity to adjudicate on socio-economic claims. While the competence of court considers whether the court has the capacity to make well-informed decisions on socio-economic claims and enforce such decisions especially since ESC rights are cast as Directive Principles of State Policy (DPSP).

There are two conflicting arguments with respect to the justiciability of socio-economic rights.[962] Whereas, Lester argues that 'for reasons of democratic legitimacy, crucial resource allocation decisions are better left in the hands of the legislature and the executive rather than being determined by the unelected judiciary'.[963] Lester based his argument on the fact that the judiciary has limited expertise with respect to socio-economic policies. On the other hand, An-Na'im believes that 'if human rights are to be universal in a genuinely inclusive sense, they must include ESC rights and that cannot be without judicial supervision of the performance of normal political

[960] Bilchitz D "Taking socioeconomic rights seriously: The substantive and procedural implications" (2010) in Van Bueren G(ed) *Freedom from poverty as a human right: Law's duty to the poor* UNESCO Publishing, France at 32.
[961] Muralidhar S "Economic, social &cultural rights: An Indian response to the justiciability debate" (2004) in Cottrell Jim & Ghai Yash (eds) *Economic, social and cultural rights in practice: The role of judges in implementing economic, social & cultural rights* INTERIGHTS, UK at 23.
[962] Byrne I "The role of access to justice in alleviating poverty" in (2010) in Van Bueren G(ed) *Freedom from poverty as a human right: Law's duty to the poor* UNESCO Publishing, France.
[963] Lester of Herne Hill & O'Cinneide C "The effective protection of socio-economic rights" (2004) in Cottrell Jim & Ghai Yash (eds) *Economic, social and cultural rights in practice: The role of judges in implementing economic, social & cultural rights* INTERIGHTS, UK at 17-22.

and administrative process in this regard'.[964] According to him, the restriction of judicial power in adjudication of socio-economic claims will encourage state actors to simply do nothing with respect to socio-economic rights. This is the situation in Nigeria. However, it has been argued that the issue of the non-justiciability of socio-economic right can be addressed through judicial creativity/activism.[965]

This creativity will be manifested through the establishment of clear linkages between socio-economic rights and civil/political rights which are constitutionally guaranteed, and which are justiciable, in many countries including Nigeria. This has been used in India where socio-economic rights are part of the DPSP and therefore unenforceable.[966] In deference to the provisions of article 37 of the Constitution, Indian courts saw socio-economic rights as unenforceable until the second half of the 1970s when the stance of the courts changed.[967] These changes began with the judicial decision in *Maneka Gandhi v. Union of India*.[968] Through this case, the Supreme Court expanded the definition of the right to life provided in article 21 to include socio-economic rights.[969] This decision guided the subsequent decisions of the judiciary with respect to adjudication on socio-economic rights under the DPSPs.[970] Furthermore, this new method of interpreting rights under the DPSPs came with increased public interest litigations and judicial activism.[971] Therefore, India's success in enforcing socio-economic rights can be attributed to the declaration that all the classes of rights were indivisible, expansion of the scope of fundamental human rights and the use of public interest litigation as a tool to promote socio-economic development.[972]

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[964] An-Na'im AA "To affirm the full human rights standing of economic, social & cultural rights" (2004) in Cottrell Jim & Ghai Yash (eds) *Economic, social and cultural rights in practice: The role of judges in implementing economic, social & cultural rights* INTERIGHTS, UK at 7-16.
[965] Op cit note 961 at 26.
[966] Part III of the Indian Constitution contains fundamental rights which are mainly civil and political rights. Similar to Nigeria, these rights are enforceable in the courts of law. This constitution also contains a chapter on DPSPs which is found in part IV of the Constitution. This DPSPs chapter embodies the provision of socio-economic rights which are not enforceable such as rights to an adequate means of livelihood, work, education etc. Again, this is similar to the Nigerian Constitution: *The Constitution of India* 1950.
[967] Op cit note 961 at 25.
[968] (1978) 2 SCC 621.
[969] Available at https://indiankanoon.org/doc/1766147/ accessed on the 24th of July, 2017.
[970] Op cit note 961 at 25.
[971] Op cit note 799 at 234.
[972] Muralidhar S "Justiciability of ESC Rights-the Indian Experience" (2000) in International Human Rights Internship Program/Forum-Asia *Circle of Rights, Economic Social and Cultural Rights Activism: A training resource* available at *http://hrlibrary.umn.edu/edumat/IHRIP/circle/justiciability.htm* accessed on the 24 of July, 2017 IHRIP-Forum-Asia.

An example of judicial creativity in Nigeria is evident in the case of *Jonah Gbemre & ors v. Shell Petroleum Development Company of Nigeria Ltd & ors*.[973] In this case before a Federal high court, the claimants had sought declaration on their constitutional guaranteed rights to life and dignity of persons under sections 33(1) and 34 (1) of the Nigerian Constitution and articles 4, 16 and 24 of the African Charter to include the right to a healthy environment.[974] Although, the respondent had argued that the above articles of the African Charter were not enforceable under the Nigerian Constitution, the court disregarded this argument and held that the right to life and dignity of person includes the right to a clean, poison-free and healthy environment.[975] This is significant because it was the first time in Nigeria that the right to life and dignity of person was extended to include the right to a healthy environment.[976]

Another way socio-economic rights can be enforced is through the passing of legislation by the National House of Assembly. According to the court in *Attorney General of Ondo state v. Attorney General of the Federation*, the objectives and principles in chapter II of the Constitution can be enforced through legislation.[977] The court further held that section 13 of the Constitution imposes a legal obligation on all organs of government to conform to and apply the fundamental objectives and principles of state policy.[978] However, as examined in chapter 8 this is dependent on the political will of those in power.

Similarly, section 254 of the Nigerian Constitution provides for the application/ enforcement of international labour standards Nigeria is a party to by the National Industrial Court (NIC).[979] By virtue of this provision it can be argued that the need for the domestication of international labour standards by legislature is redundant, at least in so far as the state is concerned.[980] While socio-economic rights might not be enforceable by virtue of section 6 (6) (c)

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[973] Suit FHC/CS/B/153/2005, Federal High Court, Benin City, judgment of 14th November 2005 (unreported) cited in Nnamuchi Obiajulu "Kleptocracy and its many faces: the challenges of justiciability of the right to health care in Nigeria" (2008) 52 (1) *Journal of African Law* at 22.
[974] Ibid.
[975] Ibid at 23.
[976] Other examples can be found in *Adewole v. Jakande* where the right to free expression was linked the directive principle under the 1979 Constitution obligating the government to eradicate illiteracy: *Okogie v. AG of Lagos State* the right to education was linked to the freedom of expression.
[977] (2002) 9 NWLR Pt. 772 22.
[978] Ibid.
[979] The NIC has jurisdiction in any industrial or labour disputes in Nigeria: Section 7 National Industrial Court Act, 2006.
[980] The requirement of domestication is what has hindered the enforcement of ICESCR in Nigeria. However, the NIC can now apply international labour conventions Nigeria ia party to without the need for domestication: Section 254 of the Constitution was given assent by the National Industrial Court in *Aero Contractor Company of Nigeria Ltd. V.*

of the Constitution; arguably the enforcement of rights at work may be achieved through the application of international labour standards within the context of Nigeria by the NIC.

5.5 Conclusion

The aim of this chapter was to situate the pursuit for decent work for informal workers within the human rights framework; a key finding of the chapter being that the framing of the current legal system was inimical to the achievement of decent work.

The chapter began by broadly identifying decent work deficits in the Nigerian informal economy. The remainder of the chapter considered a rights-based approach to decent work, highlighting the interrelatedness of human rights and the non-justifiability of socio-economic rights in Nigeria. Creative approaches that may be adopted to argue for the justiciability of socio-economic rights in Nigeria were outlined. Importantly, the chapter identified property rights as fundamental for decent work in the context of street trading. In this regard, the importance of public spaces to street vendors, is elaborated further in chapter six which explores the land use law and urban planning in Nigeria.

National Association of Aircrafts Pilots and Engineers (NAAPE) & Ors (unreported) NICN/LA/120/2013 where the court determined the concept of essential services which was not determined by our labour laws by applying international labour standards: See also *Nestoil Ltd. V. National Union of Petroleum and Natural Gas Workers* (unreported 2012) NIC/LA/08/2010: *Ejieke Maduka v. Microsoft* (unreported 2013) NICN/LA/492/2012.

CHAPTER SIX: LAND USE LAW AND URBAN PLANNING

> 'What defines a character of a city is its public space, not its private space. What defines the value of the private assets of the space are not the assets by themselves but the common assets. The value of the public good affects the value of the private good. We need to show every day that public spaces are an asset to a city'- Joan Clos, executive director, UN Human Settlements Program[981]

6.1 Introduction

In many countries, including Nigeria, urban public spaces are 'livelihood assets' for many informal workers, including street vendors, whose activities occur in these spaces.[982] Street vendors are a part of the socio-economic life of a city because of the accessible and affordable goods and services they provide to citizens.[983] Yet, urban public spaces are not widely recognized as workplaces for sustaining street vending activities.[984] Many state actors formulate policies that restrict or restrain the access of street vendors to public spaces.[985] Land use and urban planning laws in Nigeria are an example of this.

Urban planning in Nigeria does not take into account access to public spaces as a necessary tool for street vending activities. As examined in chapter four, street vendors are constantly harassed and evicted from public spaces: making this a violation of the employment/ enterprise creation component of the DWA. Thus, in seeking to address this decent work deficit, it is necessary to explore the regulatory framework for land use and urban planning, and its related social and political economy arrangements. An important question to ask is: how can the regulatory framework be reframed to an inclusive urban planning in Nigeria to promote

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[981] "UN-Habitat's Global Program on Public Space" (2013) Urban Planning and Design Branch, City Planning, Extensions and Design Unit UN Humans Settlements Program. Available at http://mirror.unhabitat.org/downloads/docs/Public%20Spaces,%20Nayoka%20Martinez-Backstrom.pdf accessed on the 5th of July, 2017 at 10.

[982] Donovan MG " Informal cities and the contestation of public space: The case of Bogota's street vendors, 1988-2003" (2008) 45(1) *Urban Studies* 29-51: Mahadevia D *et al* "Street vendors in Ahmedabad: Status, contribution and challenges" (March 2013) *CUE Working Paper 21*: Solomon-Ayeh EB *et al* "Street vending and the use of urban public space in Kumasi, Ghana" (2011) 13(4) *The Ghana Surveyor* at 20.

[983] Op cit note 580 at 2.

[984] Asiedu AB & Agyei-Mensah S "Traders on the run: Activities of street vendors in the Accra Metropolitan Area, Ghana" (2008) 62(3) *Norsk Geografisk Tidsskrift- Norwegian Journal of Geography* 191-202.

[985] "Street vendors and the law" WIEGO available at http://www.wiego.org/informal_economy_law/street-vendors-and-law accessed on the 12th December, 2017: Weng CY and Kim AM "The critical role of street vendor organization in relocating street vendors into public markets: The case of Hsinchu City, Taiwan" (2016) 18(1) *Cityscape: A Journal of Policy Development and Research* at 47-48.

employment/enterprise creation? This chapter explores land use and access to urban public spaces for street vendors within the context of Lagos state, Nigeria.

The chapter is structured as follows: the first part outlines the regulation of land use in Nigeria, providing an overview of historical and contemporary developments. Thereafter, the chapter considers the elements of an equitable approach to the management of urban public spaces which could inform the reframing of the regulatory framework. This approach focuses on claiming the streets through inclusive urban planning, thus challenging inappropriate legislation that criminalises the activities of street vendors. The final part of the chapter provides a case study from an urban city, in South Africa, where public space is being reframed to include informal workers like street vendors.

6.2 Historical overview of the governance of land use in Nigeria

Land use in a society is determined by the regulatory framework that establishes and maintains legal rights and obligations in relation to land. Although formal (state) regulation in Nigeria began with the Land Proclamation of 1900, prior to this the use of land was governed by customary law and by received English law. The Proclamation of 1900 increased the colonial government's access to native lands.[986] Subsequently upon independence, a plethora of statutes empowered government to expropriate and control the use of land and landed properties through judicial, executive and administrative powers.[987] An overview of the history of land use and urban planning laws, as well as the current legal framework in Nigeria, and its impact, on street trading are considered below, beginning with an overview of the plural system of land that regulated land use in Nigeria before the introduction of a uniform right of occupancy system under the Land Use Act of 1978,[988] which is still in force today. This plural system of land tenure included tenure under customary law, tenure under received English law and under subsequent statutory law.

[986] Yakubu MG *Land law in Nigeria* (1985) Macmillan Publishers Ltd at 170
[987] Ibid.
[988] Oshio EP "The indigenous land tenure and nationalization of land in Nigeria" (1990) 10(1) *Boston College Third World Law Journal* at 46.

6.2.1 Land control and ownership in pre-colonial Nigeria under customary law

Customary land tenure was the dominant system in pre-colonial Nigeria (pre-1860).[989] This system was a combination of the various native laws of individual communities. The indigenous customs of communities make up customary law.[990] Customary law is described as a 'body of customs and traditions which regulate the various kinds of relationship between members of the community'.[991] These customs and traditions are recognised as obligatory by members of the community.[992] In *Oyewunmi v. Ogunsesan*, customary law was defined as 'the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it'.[993] The customary land tenure system is defined as 'the system of landholding indigenous to Nigeria'.[994]

Land was deemed to be owned by families, communities, villages and towns.[995] The legal estate of land was vested in the family or community unit who held it in trust for individual members to ensure fair and equitable distribution.[996] Also, absolute ownership vested in the community.[997] According to the Privy Council in *Amodu Tijani v. Secretary of Southern Nigeria*, 'the notion of individual ownership of land is quite foreign to native ideas…land belongs to the community, the village or the family never to the individual'.[998] Furthermore, the Supreme Court

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[989] Thontteh EO and Omirin MM "Land registration within the framework of land administration reform in Lagos state" (2015) 21(2) *Pacific Rim Property Research Journal* at 167.

[990] Burabari AN "The validity of customary law as a source of Nigerian Law" (2014) Accessed from https//:nigerianlawclass.wordpress.com on the 13th of June, 2016.

[991] Okany MC *The role of Customary Courts in Nigeria* (1984) Fourth Dimension Publishers at 39.

[992] Elias TO *The nature of African customary law* (1956) Manchester University Press at 55.

[993] (1990) 3NWLR (Pt 137) 182, 207 Available at www.nigeria-law.org accessed on the 13th of June, 2016.

[994] Smith IO *Practical approach to law of real property in Nigeria* (2007) (2nd ed) Ecowatch Publications, Lagos at 63.

[995] Udoekanem NB *et al* "Land ownership in Nigeria: Historical development, current issues and future expectations" (2014) 4(21) *Journal of Environment and Earth Science* at 182

[996] Ibid: Amokaye OG "The impact of the Land Use Act upon land rights in Nigeria" (2011) in Robert Home(ed) *Local case studies in African Land Law* Pretoria University Law Press at 61. Op cit note 970.

[997] Olong MA and Ogwo B *Land Law in Nigeria* (2013) (3rd Edition) Faith Printers International at 49.

[998] (1921) 2 AC 399 Available at www.nigeria-law.org/amodu%20Tijani accessed on the 13th of June, 2016: however, it is important to note that this assertion by the court has been criticised. According to Niki Tobi 'the statement is too much of a generalisation and therefore not true of certain indigenous systems of land tenure and particularly in Lagos where the case arose. The question of individual ownership of land was known to customary law in the country before the arrival of the British…'. Nonetheless, it is generally agreed that family/communal land ownership was the predominant form of ownership: Tobi N *Cases and materials on Nigerian land law* (1992) Mabrochi Books at 46-7.

of Nigeria affirmed in *D.W. Lewis v. Bankole* that 'it is perfectly well known that by strict native law all property was family property…'.[999]

Broadly, the customary land tenure system varied in the Northern and Southern parts of Nigeria. Lagos, the specific context of this thesis is situated in the Southern part of Nigeria.

6.2.1.1 The customary land tenure system in Northern Nigeria

This system was primarily influenced by the Islamic religion which remains predominant in the region.[1000] The Fulani Jihadists led by Utman Dan Fodio from 1804-10 introduced a feudal tenure system that claimed Islamic over-lordship of land after invasion.[1001] Under Islamic law, land is regarded as public property and free to be used by every person as long as its use does not cause prejudice to the public.[1002] In addition, the land is considered God's gift and everyone has 'usufructuary' right to it.[1003] The communal leaders exercised administrative control over vacant land in the interest of the Muslim community.[1004]

6.2.1.2 The customary land tenure system in Southern Nigeria

Similarly, the ownership and occupation of land was regulated by customary law in the southern region.[1005] Land was seen as a sacred institution given by God (Olodumare) for the sustenance of all the members of the community.[1006] Land was therefore seen as belonging to the dead, living and unborn members of the community.[1007] The living members were believed to hold the land in trust for the unborn members of the community.[1008] Consequently, all members of the community or family had equal rights to this land, although there was usually a chief or a headman who controlled this land. Such persons were loosely called the owner. However, elders of the family or community had to be consulted before any disposal of land.

Broadly, under customary land tenure systems, rights to land were inalienable. The intrusion of the English law into the Islamic and customary system gave rise to difficulties,

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[999] (1990) 1N.L.R. 82 Available at www.nigeria-law.org/LawReporting/1909 accessed on the 13th of June, 2016.
[1000] Shaka OF "The colonial legacy" (2005) 19(3) *Third Text* 297-305.
[1001] Op cit note 966 at 47: Aremu J Olaosebikan "The Fulani Jihad and its implication for national integration and development in Nigeria" (2011) 5(5) *African Research Review* 1-12 at 1.
[1002] Op cit note 986 at 8.
[1003] Op cit note 986 at 8.
[1004] Op cit note 986 at 8.
[1005] Olong AMD *Land law in Nigeria* (2011) Malthouse Press Limited at 41-89.
[1006] Ibid
[1007] Op cit note 996 at 61: Op cit note 992.
[1008] Ibid: *Amodu Tijani v. Secretary of Southern Nigeria*.

however, as this concept of communal land was alien to the English.[1009] Gradually, due to political and socio-economic factors, heads of communities/families soon saw land as a means of enrichment rather than a trust for the benefit of members.[1010]

6.2.2 Received English law[1011] and statutory developments in colonial Nigeria

Generally, African colonial powers patterned land administration after the system in their home countries.[1012] Although the recognition given to indigenous land tenure systems varied from colony to colony, it was believed that only a European-based model of land tenure system could provide a framework for urban development and protect the rights of urban land owners who were Europeans.[1013] Variations of these land administration systems remain in force in many African countries.[1014]

Nigeria came under colonial administration between the second and first half of the eighteenth and nineteenth centuries.[1015] During this period, the structure of land ownership was

[1009] Onoawarie E "Ownership of Pre-Colonial Nigeria" (2007) in Peter P. Ekeh *History of the Urhobo People of Niger Delta* Urhobo Historical Society (www.waado.org) at 234-236: Aderemi B "Consequences of cession as a mode of acquiring territories in international law" (2011) 15 *Nigerian Law Journal* 78- 112 at 94: Land at this time were held by the aristocract from the Crown in exchange for military service and tax: Ikechukwu Umejesi "Collective memory, coloniality and resource ownership questions: the conflict of identities in postcolonial Nigeria" (2015) 7(1) *Africa Review* 42-54.

[1010] Op cit note 998 at 49.

[1011] Received English law comprise of common doctrine, doctrines of equity and case law that establishes these doctrines: Elias TO *Groundwork of Nigerian Law* (1954) Routledge London at 254: Nwauche ES "The constitutional challenge of the integration and interaction of customary and the received English common law in Nigeria and Ghana" (2010) 25 *Tulane European & Civil Law Forum* at 58.

[1012] Rakodi C and Leduka CK *Informal land delivery processes and access to land for the poor: A comparative study of six African cities* (2003) International Development Department (IDD) University of Birmingham Informal Land Delivery Processes in African Cities Available at https://www.researchgate.net/publication/266883827_Informal_Land_Delivery_Processes_and_Access_to_Land_for_the_Poor_A_Comparative_Study_of_Six_African_Cities accessed on the 18th of July, 2016 at 3.

[1013] Ibid.

[1014] Ibid at 4: "Land policy in Africa: Southern Africa regional assessment" (2010) AUC-ECA-AFDB Consortium available at https://www.uneca.org/sites/default/files/PublicationFiles/regionalassesment_southernafrica.pdf accessed on the 26th of March 2017: "Land policy in Africa: West Africa regional assessment" (2011) AUC-ECA-AFDB Consortium available at https://www.uneca.org/sites/default/files/PublicationFiles/regionalassesment_westafrica.pdf accessed on the 26th of March 2017: contrary to pre-colonial Africa where land was vested in families or communities, land is now vested solely in the government. In many cases, the government administers land in a way that excludes the poor and any form of informality: Cobbinah BP & Darkwah MR "Toward a more desirable form of sustainable urban development in Africa" (2017) 36(3) *African Geograpcal Review* at 272.

[1015] Inyang AA & Bassey ME "Imperial treaties and the origins of British colonial rule in Southern Nigeria, 1860-1890" (2014) 5(20) *Mediterranean Journal of Social Sciences* at 1946.

designed to satisfy the motives of British imperialists.[1016] It has been argued that these motives were originally economic and later governance.[1017] According to Oyebola and Oyelanmi,

> 'The British occupation of Nigeria began on a very small scale. It first began along the coast and subsequently went from strength to strength until it had spread all over the country. The occupation was progressive rather than sudden. Traders led the way and their motive was purely economic. They came neither to acquire territories nor to administer the country. But there is no doubt that while they were trading, they were spreading the influence of their country at the same time, thereby paving way for the subsequent occupation of the country with which they traded'.[1018]

Invariably, the colonial authorities needed land for their social, economic and political activities.

The physical boundaries of modern day Nigeria was created by the British in the late nineteenth and early twentieth centuries.[1019] This was determined on drafting tables in Europe without regard to the heterogeneity of the people now known as Nigerians.[1020] Prior to this consolidation, this 'region' comprised of various independent, centralised and decentralised nations with distinct ways of life.[1021] The Igbos were basically decentralised while the Hausas/Fulanis, Yorubas and Benin societies were highly centralised states.[1022] Furthermore, these states were politically and economically independent. Between the sixteenth and eighteenth centuries, these states had a strong agrarian base which led to the generation of products that allowed for economic diversification and engagement in both regional and international trade.[1023]

Initially, trade was basically agrarian products in exchange for guns and luxury goods from the Dutch, Portuguese and the English.[1024] However, economic diversification led to the growth of an international trade in slaves facilitated by the establishment of plantations in the newly discovered Americas. During this period, forms of slavery became important aspects of the social and political structure.[1025] By the nineteenth century, the slave trade had become an integral aspect of many states with the exception of the Benin kingdom.[1026]

[1016] Op cit note 995 at 183.
[1017] Op cit note 995 at 183.
[1018] Oyebola A & Oyelami A (1967) *A textbook of government for West Africa* Educational Research Institute Ibadan.
[1019] Falola T & Heaton MA *History of Nigeria* (2008) Cambridge University Press at 17.
[1020] Ibid.
[1021] Ibid.
[1022] Ibid.
[1023] Ibid at 85-135.
[1024] Portuguese were the first Europeans to arrive on the West African coast. By 1480, they established a trading post with the Benin Kingdom at Gwarto (Ughoton). The luxury goods were textiles, pepper and gold:
[1025] Fage JD "Slavery and the Slave Trade in the Context of West African History" (1969) 10(3) *The Journal of African History* 393-404 at 397.
[1026] Ibid at 401.

The nineteenth century brought about many political and economic changes. These include the Islamic Jihad in the North, the Yoruba wars in the South and the banning of the slave trade.[1027] These changes led to a strategic shift in the relationship between the British and indigenous communities (now Nigerians) which became perceived through the lens of commerce, Christianity, civilisation and conquest.[1028] Nigeria, like other parts of Africa was seen as 'a lottery and a winning ticket-that-might earn glittering prizes'.[1029]

Between November 1884 and February 1885, the principles for the partitioning of Africa were laid down at the Berlin Conference and Nigeria came under British rule.[1030] In 1900, the northern and southern parts of Nigeria were declared to be protectorates of the British government. By 1914, these two protectorates became known as the modern day Nigeria and were subject to English laws.[1031] However, different land tenure systems were administered in the northern and southern parts of the country.

6.2.2.1 The southern region and Lagos

Prior to the Berlin conference, Lagos was captured in 1851 and it became a British colony in 1861.[1032] Through this, proprietary rights of land were transferred to the British.[1033] The land tenure system in Lagos was then modelled after the English freehold system.[1034] Whereas, in contrast to the northern part of Nigeria and Lagos, customary land tenure was retained in other parts of the southern protectorate,[1035] although certain pieces of land were reserved for public purposes and were called crown land.[1036]

[1027] Yadudu HA "Colonialism and the transformation of the substance and form of Islamic law in the northern states of Nigeria" (1991) 9(1) *Journal of Law and Religion* at 24.
[1028] Thomas Pakenham *The scramble for Africa* (2015) Hachette UK.
[1029] Ibid: See Jeffery Herbst "The creation and maintenance of national boundaries in Africa" (Autumn 1989) 43(4) *International Organisation* for details on the scramble for Africa.
[1030] Michalopoulos S & Papaioannou E "The long-run effects of the Scramble for Africa" (2011) *NBER Working Paper Series* Working Paper 17620 National Bureau of Economic Research Available at poseidon01.ssrn.com accessed on the 14th of June, 2016 at 6.
[1031] Afigbo AE *Nigerian history, politics and affairs: the collected essays of Adiele Afigbo* (2005) Africa World Press at 213-36.
[1032] Geary MNW *Nigeria under British Rule* (2013) Routledge Taylor Francis Group at 24.
[1033] Hopkins GA "Property rights and empire building: Britain's annexation of Lagos, 1861" (1980) 40(4) *The Journal of Economic History* 777-98: Op cit note 1009 (Aderemi).
[1034] Mabogunje AL "Land reform in Nigeria: Progress, problems & prospects" (2010) *Annual Conference on Land Policy and Administration* at 2.
[1035] Von Hellermann P & Usuanlele U "The owner of the land: The Benin obas and colonial forest reservation in the Benin Division, Southern Nigeria" (2009) 50 Journal of African History 223-46 at 227.
[1036] Meek CK "A note on crown lands in the colony" (1946) 28(3/4) *Journal of Comparative Legislation and International Law* 87-91: Ibid.

In 1906, the Crown Lands Management Proclamation was enacted to provide for the management, control and disposition of crown lands in the Southern protectorate.[1037] Crown lands were defined as lands held in trust or belonging to her majesty, her heirs or successors. Basically, these are lands which the Royal Niger Company acquired through various treatises entered into with natives.[1038]

A number of ordinances were also passed with the aim of acquiring land for the colonial authorities and private developments.[1039] These include:[1040] Native Lands Acquisition Proclamation 1900; Native Lands Acquisition Proclamation 1903; Native Lands Acquisition Proclamation 1917;[1041] the Niger Lands Transfer Ordinance 1916; the Crown Ordinance1918, and the Registration of Title Act 1935. In summary during the colonial period, customary law and English law controlled land use in the southern parts of Nigeria and Lagos respectively.[1042]

6.2.2.2 The northern region

The Northern protectorate was established in 1903 after the defeat of the Sokoto caliphate by the British forces.[1043] All the lands within this region became subject to the British crown through the governor, although this power was purportedly held on behalf of the community.[1044] The basis for this tenure system was the Maliki Law which was operated by the Fulanis jihadists before their defeat by the British.[1045]

The protectorate government's intention with respect to land was made known through Proclamation 8 of 1900 which was later amended through Proclamation 13 of 1902. These proclamations provided that natives could still acquire lands while non-natives needed the consent

[1037] Op cit note 986 at 14.
[1038] Op cit note 986 at 14.
[1039] Ajayi O & Ishola KO "Overview of Cadastral system in the dispensation of national sustainable development in Nigeria" (2015) 2 (10 *International Journal of Innovative Research and Advanced Studies* at 24.
[1040] Ibid.
[1041] The Crown Lands Management Proclamation of 1906 was amended to this.
[1042] Mwalimu C *The Nigerian Legal System* (2009) Peter Lang New York at 139.
[1043] Dudley BJ *Parties and politics in northern Nigeria* (2013) Routledge 1-355 at 12: Op cit note 964 at 15.
[1044] Ibid at 12-13.
[1045] Op cit note 1013 at 2: Umejesi I "Coal sector revitalization, community memory, and the land question in Nigeria: A paradox of economic diversification?" (2011) 12(3) *African Studies Quarterly* 1-21 at 5: *Colonial Reports-Annual No. 409 Northern Nigeria* Report for 1902 (1902) Available at http://libsysdigi.library.illinois.edu/ilharvest/Africana/Books2011-05/3064634/3064634_1902_northern_nigeria/3064634_1902_northern_nigeria_opt.pdfon accessed on the 15th of June, 2016 at 106.

of the government to hold any interest in land.[1046] Furthermore, lands were divided into two categories: crown and public lands.[1047] In 1910, public and crown lands were merged in the Land and Native Rights Proclamation No. 9. This proclamation was revised by the Land and Native Rights Ordinance No 1 of 1916.

6.2.2.3 The unified Colony of Nigeria

This new Ordinance provided that all native lands and related rights be held by the government and exercised for the enjoyment of the people.[1048] This was the first law to grant government this power of control over land in Nigeria. With this Ordinance, no use, occupation or transfer of land was valid without the consent of the Governor. The ulterior aim of this ordinance was to facilitate the easy expropriation of land from the natives by the colonial administration.[1049] Nonetheless, plural systems of land tenured continued to operate in the Southern and Northern regions of Nigeria. After Nigeria's independence, the Northern House of Assembly enacted the Land Tenure Law of 1962 to replace the ordinance.[1050] However, this substantially retained the provisions of the repealed ordinance.

6.2.3 Land control and ownership at independence

By independence, there was no uniform land tenure system in Nigeria. Different tenure systems continued to apply in the southern and northern parts, and this was blamed for the difficulty in acquiring land for development purposes faced by the government particularly in urban areas in southern Nigeria.[1051] Consequently, the military government in 1975 extended the northern land

[1046] Section 2 of Land Proclamation 13 of 1902: Op cit note 735 (Mwalimu) at 351.
[1047] Land obtained by the Royal Niger Company (RNC) for commercial purposes through treatises with the natives was called crown lands. These were transferred to the British crown upon the declaration of the Northern protectorate; while public lands were lands retained by the natives and RNC. These occupiers or owners needed the authority of the High Commissioner to assign the land to non-natives: *Annual Report of the colonies, Nigeria, 1938* available at *http://libsysdigi.library.illinois.edu/ilharvest/Africana/Books2011-05/3064634/3064634_1937/3064634_1937_opt.pdf* accessed on the 15th of June, 2016.
[1048] Section 3 of the Land and Native Rights Ordinance No. 1 of 1916.
[1049] Op cit note 995 at 183.at 183: Akubor EO ''Amalgamation, land/mineral ordinances and socio-economic developments in Nigeria since c. 1914A.D.: A reflection'' (2016) 2 *Prague Papers on the History of International Relations* at 108-110.
[1050] Francis P "For the use and common benefit of all Nigerians: Consequences of the 1978 land nationalization" (1984) 54(3) *Africa* 5-28 at 6.
[1051] Chubado M "Land reform as a development strategy: Consequences of the 1978 Land Nationalisation" (2014) 4(6) *International Journal of Science and Technology* at 113: Banire M "Towards effective control and management of land in Nigeria: A re-evaluation of the Land Use Act" (1978) 5(2) *Oxford University Commonwealth Law Journal*.

tenure system to the whole country through the promulgation of the Land Use Decree of 1978 (LUA). The decree became an Act when it was annexed to the Constitution in 1979.[1052]

6.3 The current position: the Land Use Act

The LUA brought the land tenure system in Nigeria under one uniform policy.[1053] Presently, this law is Nigeria's apex land administration instrument.[1054] The general principle of the law is stated in its preamble, which sets up the law as:

> 'An Act to vest all land *comprised* in the territory of each state (except land vested in the federal government or its agencies) solely in the Governor of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the state and to organisations for residential, agriculture, commercial and other purposes while similar powers will with respect to non-urban areas are conferred on Local governments'.[1055]

A notable theme in the preamble is the use of the term 'trust'. There have been controversies as to whether 'trust' is used in the English sense. Generally, under the English law there are three essential requirements of a valid trust. These are certainty of: intention; subject matter; and objects (beneficiaries).[1056] However, it has been suggested that the term 'trust' in the LUA is used in a different sense from the English law because of various 'enabling' sections in the LUA.[1057] According to James RW 'the trust concept, (under the Act however), is not by nature the technical institutions of the received laws, but implies principles necessary to ensure that the land is administered for the benefit of all Nigerians'.[1058] Therefore, it can be argued that the state Governor has the duty to administer land in a way that benefits Nigerians including informal workers such as street vendors.

[1052] Ako TR "Nigeria's Land Use Act: An anti-thesis to environmental justice" (2009) 53(2) *Journal of African Law* at 293: This act was conceived a means of ensuring easier access to land for the government and supposedly, individual citizens: Paul Francis "For the use and common benefit of all Nigerians: Consequences of the 1978 Land Nationalization" (1984) 54(3) *Africa* 5-28.
[1053] Op cit note 986 at 199.
[1054] Babatunde A *et al* "Analysis of the activities of land administration machineries in Abuja and Minna, Nigeria" (2014) 8(1) *IOSR Journal of Environmental Science, Toxicology and Food Technology* at 31.
[1055] Preamble of the LUA
[1056] Law J (ed) *A dictionary of law* (2015) 8th edition Oxford University Press: Gardner S *An introduction to the law of trusts* (2011) Oxford University Press.
[1057] Banire M "Trusteeship concept under the Land Use Act: Mirage or Reality" (2003) in IO Smith (ed) *The Land Use Act: Twenty-five years after* Folar Prints: the enabling sections in the LUA are the preamble and section 1.
[1058] James RW *Nigerian Land Use Act: Policy and Principles* (1987) University of Ife Press Ltd at 85.

A second important theme in the preamble is 'commercial'. Although not defined in the Act, 'commercial', broadly, means engagement in commerce or related to buying and selling for profit.[1059] Street vending, as previously defined, is an informal economic activity,[1060] and, ideally, in terms of the preamble of the LUA, land ought to be allocated for street vending. However, street trading is not considered a commercial activity by state actors particularly with respect to the use of urban public spaces.[1061]

6.3.1 Prominent features of the Land Use Act

The following are some of the important provisions of the law:

1. The land within a state's territory is vested in the Governor of that state.[1062]
2. The control, management and allocation of lands in designated urban areas are under the authority of the state Governor while rural lands are the responsibility of the local government authorities.[1063]
3. Land in urban areas is administered by the Land Use and Allocation Committee.[1064] This committee has the responsibility of advising the governor on the management of land within urban areas.[1065] Similarly, the local government is advised by the Land Allocation Advisory Committee.[1066]
4. Pieces of land developed before the LUA came into effect remain in the possession of the person in whom it was vested.[1067]
5. The Governor has the power to grant a certificate of occupancy to any person for all purposes and the right of access to the land under his control.[1068]

[1059] *Merriam-Webster.com* accessed on 26th March, 2018.
[1060] Op cit note 435 at 3.
[1061] This can be argued by virtue of the framing of urban planning laws and other laws such as the STMIL which do not recognise street trading as an economic activity.
[1062] Section 1 of the LUA.
[1063] Section 2(1) (a)(b) of the LUA.
[1064] Section 2(2) (a)(b) of the LUA.
[1065] Ibid.
[1066] Section 2(5) of the LUA.
[1067] Section 34 of the LUA.
[1068] Section 5 of the LUA.

6. The maximum area an individual may hold in an urban area is one half of a hectare and must not exceed 500 hectares in rural areas.[1069] However, the Governor has the discretionary power to permit an individual holding more than the maximum area.[1070]
7. The consent of the Governor is mandatory in the transfer of a statutory right of occupancy either through mortgage or assignment.[1071] Also, in transfer of customary right of occupancy, the consent of the Governor is compulsory.[1072]

Importantly, the Act differentiates between urban and rural areas. The effect of this as stated above, is that control and management lies in two distinct authorities, depending on where the land is located.[1073] The Act does not define an urban area; however, the Governor has the power to designate any area within the state as an urban area.[1074] In addition, the Governor can revoke a right of occupancy for overriding public interest.[1075] One of the grounds for exercising this power is for 'public purposes'.[1076] However, it has been argued that 'public purposes' becomes significant only during compulsory land acquisition.[1077] Nonetheless, it can be argued that activities in the informal economy fall under 'public purposes' given its contribution to economic development and provision of employment for citizens.

In a bid to ensure that this Act is not easily amended by subsequent governments, the Act was incorporated into the 1979 Constitution and later the 1999 Constitution.[1078] The entrenchment of this law into the Constitution was because the Act was unpopular at its inception and politicians

[1069] Section 6(2) of the LUA.
[1070] Ibid.
[1071] Section 15 of the LUA.
[1072] Section 21 of the LUA.
[1073] Section 2(1) (a)(b) of the LUA.
[1074] Section 3 of the LUA: it has been argued that many states Governors exercise this power arbitrarily by declaring an area urban in order to access land. Nonetheless the Lagos state government exercises this power through her Designation of Urban Areas Order of 1981 Cap 160 Laws of Lagos State 2003.
[1075] Right of occupancy means the title to use and occupy land: Section 28 of the LUA.
[1076] Section 28 (2(b) and (3(a) of the LUA: section 51 defines public purposes to include:
- for exclusive Government use or for general public use;
- Use by any corporate body in which the government owns shares, stocks or debentures;
- Sanitary improvement of any kind;
- To gain control over any land to be used for urban/rural development. economic, industrial or agricultural development; among others.

[1077] It has been alleged that some governors use section 28 of the Act to victimise perceived political opponents: Akingbehin AM *et al* "The process of land acquisition in Nigeria: A case study of Oyo State" (2016) 5(1) *International Journal of Innovative Research & Studies* 37-48.
[1078] Section 315(5) the 1999 Constitution of Nigeria.

had threatened to repeal the law.[1079] The LUA, while its purpose was to fulfil the perceived need to foster economic development through secure access to land for all Nigerians, has failed to specifically address access to land for informal economic activities such as street trading.

6.3.2 Impact of the Land Use Act on property rights of street vendors

Section 43 of the 1999 Constitution provides that every Nigerian has the right to acquire and own land in Nigeria. Although subject to the provisions of the Constitution, this right is a fundamental human right.[1080] Thus, it has been argued that the Constitution recognises the importance of land to an individual's personal economic growth.[1081] Moreover, the LUA, which specifically regulates land use in Nigeria, empowers State governments to administer the use of land for the benefits of citizens.[1082] Arguably therefore, application of the provisions of the Constitution, require the reframing of land use and urban planning laws to provide street vendors with a right of access to urban spaces. However, the provisions of the Constitution do not extend nor anticipate this right to include a right to public spaces.[1083] Although, the Constitution recognises the right of every citizen to engage in any economic activities in Chapter II; this provision is unenforceable by virtue of section 6(6)(c) of the Constitution.

[1079] Ibid: The LUA was first promulgated as a decree during the military regime of 1976 – 1979. Generally, during military regimes two of the three arms of government, the executive and the legislature, are suspended while the judiciary continues to function with its powers curtailed. In addition, the military arbitrarily suspended laws considered inimical to their regimes. The Supreme Military Council (SMC) which was the legislative arm of the military government made laws for the whole country. Laws were made without consideration for due democratic processes and interests of the citizens. The LUA was birthed through this process. Consequently, because of the general unpopularity of this law with citizens mainly in the southern part of Nigeria where customary land ownership prevailed; the LUA was entrenched into the Nigerian Constitution to make the process of its subsequent amendment tedious. The entrenchment of this law into the Constitution means any amendment to this Act must go through the same process as stipulated for amendment to the Constitution itself. Thus any amendment to the LUA must be passed by not less than two-thirds majority of the National Assembly members and two-third of all states House of Assembly. Section 9(2) and section 315(5) of the Nigerian Constitution: Elaigwu I "Nigerian federalism under civilian and military regimes" (1988) 18(1) *Publius* 173-88:Akanbi MM "Rule of Law in Nigeria" (2012) 3 *Journal of Law, Policy and Globalisation*s 1-8: Land had gained recognition as an economic asset, as distinct from ancestral heritage. Given, that the LUA would confer ownership in the government, it was perceived as inimical to wealth. Therefore making it an unpopular law.

[1080] Section 44 goes further to provide that an interest in land may be compulsorily acquired by the government upon the payment of adequate compensation.

[1081] Otubu T "Land reforms and the future of Land Use Act in Nigeria" (2010) in Azinge Epiphany, Owasanoye Bolajis & Nlerum E Francisca *Nigeria Current Law Review 2007-2010* Nigerian Institute of Advanced Legal Studies Press Lagosat 128

[1082] Section 1 LUA.

[1083] Nwauche E "Indirect constitutional protection of economic, social and cultural rights in Nigeria" (2016) in Danwood MC & Chenwi L (eds) *The protection of economic, social and cultural rights in Africa* Cambridge University Press at 505.

Importantly, it has been argued that land and other related laws should be determined by the ways in which citizens use and exchange property rights in land.[1084] In Nigeria, a country with a huge informal economy, the land use laws ought to be determined or influenced by the informal economic livelihood. The lack of focus on land as assets for street vendors particularly in urban areas by the LUA is surprising given the prevalence of the informal economy in Nigeria. As with many developing countries, land laws are more focused on housing.[1085] Although, this Act has not been amended since it was enacted in 1978, the issue of informal work is not a new 'phenomenon'.[1086] This phenomenon was already in existence during the formulation of the law. Furthermore, the onerous process of amending the LUA makes it difficult to amend this law to expressly include property right for informal workers. For these workers, property rights ought to have been considered within the context of property as a bundle of rights that includes access to property to realise basic work rights including the right to a work space and to related infrastructure.[1087] Doing so would promote decent work in the context of street vending which remains an important occupation for the urban poor in many developing countries including Nigeria.[1088]

As demonstrated, achieving decent work for street vendors is interwoven with the right to access urban public space and in this regard planning the use of public space falls within the domain of urban planning and development.[1089] Hence the urban planning system is explored in more detail next.

6.4 Development of the urban planning system in Nigeria

The activities of vendors are a major feature of urban spaces, particularly in developing countries, and have transformed public spaces into contested spaces.[1090] The expansion of informal economic

[1084] Buitelaar E *et al* "Property rights and private initiatives: An introduction" (2007) 78(1) *The Town Planning Review* at 3: Adigun O "Legal theories of property-The Land Use Act in Perspectives" (1991) in Adigun O (ed) *The Land Use Act: Administration and policy implication* Proceedings of the Third National workshop on the Act at 10.
[1085] Op cit note 41 at 239.
[1086] See chapter three- development phases of the Nigerian informal economy.
[1087] Op cit note 41 at 239.
[1088] Op cit note 435 at 8.
[1089] Although the title of the 'Land Use Act' suggests this law is a planning statute, this is misleading. The Act focuses primarily on land ownership: Op cit note 983.
[1090] Ibid.

activities such as street trading has increased the demand for urban public land,[1091] and available urban land spaces have been converted to use for informal economic activities without government approval.[1092] Nevertheless, though street vendors occupy public spaces, they do not have the lawful rights to use these spaces. Given the role of street vending as a tool for poverty reduction, it is therefore important to evaluate urban development and planning laws to assess whether informal work such as street trading is integrated into formal urban planning schemes.

6.4.1 From informal to formal urban planning

Nigeria has been going through the process of urbanisation since the pre-colonial era.[1093] Nigeria's complex urban systems developed over hundreds of years.[1094] These systems were planned along the dictates of local customs and practices.[1095] In some cases, planning was influenced by the agrarian nature of the economy and the prevailing modes of transportation.[1096] Furthermore, particularly in the northern and western part of the country, planning was influenced by considerations of defence, religion or trade.[1097] For example, many historical cities like Zaria and Kano were surrounded by walls with gates in strategic locations to enhance trade.[1098] Although these cities which are now modern retain their identity; their land use patterns vary.[1099]

Formal urban planning started during the colonial administration, particularly in Lagos in the late nineteenth century.[1100] This included the construction of a railway, new dock facilities, the passage of the Town Improvement Ordinance of 1863 and the Public Health Ordinance of 1904.[1101]

[1091] Adeyinka SA *et al* "An evaluation of informal sector activities and urban land use management in South-Western Nigeria" (2006) *TS 35-Informal Settlements: Policy, Land Use and Tenure* Shaping the Change XXIII Germany Available at http://fig.net/resources/proceedings/fig_proceedings/fig2006/papers/ts35/ts35_02_adeyinka_etal_0641.pdf accessed on the 21st of June, 2016 at 2.
[1092] Ibid.
[1093] *Oil to cities: Nigeria's next transformation* (2016) Directions in Development, World Bank Washington DC 1-208 at 60.
[1094] Ibid.
[1095] Op cit note 668 at 158: For example, in Pre-colonial Ile-Ife land use was determined by politics, defence and economic activities: Ikhuoria I.A. "SPOT satellite detection and analysis of urban spatial growth regimes in a pre-colonial African city" (1999) 14(1) *Geocarto International* at 50.
[1096] Ibid.
[1097] Omole FK"Land development and planning laws in Nigeria: the historical account" (2012) 8 *Journal of Law, Policy and Globalization* at 25.
[1098] Ibid.
[1099] Ibid.
[1100] Lamond J *et al* "Urban land, planning and governance in Nigeria" (2015) Urbanisation Research Nigeria (URN) Research Report. London: ICF International at 5.
[1101] Op cit note 591.

After the amalgamation of Nigeria, the Township Ordinance of 1917 was promulgated for the classification of Nigerian Cities; with Lagos being the only 'Class A Township'.[1102] Subsequently, the Lagos Executive Board was established by virtue of the 1928 Planning Ordinance.[1103] This board was responsible for swamp reclamation, slum clearance, market planning and the suburb estates for African employees.[1104] However, this urban planning promoted spatial segregation in terms of race and class.[1105] The areas that were designated for Europeans were planned in accordance with British urban development standards with the requisite infrastructure.[1106]

In 1940, the Colonial Development and Welfare Act was promulgated to promote the reconstruction of colonies.[1107] The purpose of this Act was to facilitate external investment in Nigeria.[1108] Prior to the promulgation of this Act, the world had experienced economic recession in the 1930s.[1109] Increasingly, colonial powers begun to view their relationship with their colonies as a business arrangement and urban planning schemes were geared towards making the colony a good business environment.[1110] Similarly, the Town and Country Planning Ordinance was introduced in 1946.[1111] This law which was adopted throughout the country was purportedly promulgated to provide for the re-planning, improvement and development of different parts of Nigeria.[1112] However, this scheme was implemented only in areas termed 'valuable' by the British.[1113] These planning schemes appeared incompatible with the cultural, socioeconomic and

[1102] Coleman JS *Nigeria: Background to Nationalism* (1971) University of California Press, Berkeley and Los Angeles at 46: Op cite note 594 at 68: Bigon Liora "Sanitation and street layout in early colonial Lagos: British and indigenous conceptions, 1851-1900" (2005) 20(3) *Planning Perspectives* 247-269 at 248: olayiwola LM & Adeleye OA "Rural infrastructural development in Nigeria: between 1960 and 1990-problems and challenges" (2005) 11(2) *Journal of Social Sciences*.
[1103] Op cit note 1100 at 6: Ogundele FO *et al* "Challenges and prospects of physical development control: A case study of Festac Town, Lagos, Nigeria" (2011) 5(4) *African Journal of Political Science and International Relations*: Similar urban planning activities were also implemented in other parts of the country like Zaria and Enugu.
[1104] Ibid.
[1105] Ibid.
[1106] Ibid.
[1107] *British Aid- 5 Colonial Development* (A factual survey of the origins and history of British aid to developing countries) (1964) Overseas Development Institute Limited Available at https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8077.pdf accessed on the 21st of June, 2016 P. 23-27: Op cit note 1080.
[1108] Mabogunje AL "Urban planning and the post-colonial state in Africa: A research overview" (1990) 33 (2) *African Studies Review* at 138-139
[1109]Ibid.
[1110] Ibid.
[1111] Oyesiku K *Historical Development of Urban and Regional Planning in Nigeria State* of planning Report The Nigerian Institute of Town Planners at 6.
[1112] Ibid.
[1113]Op cit note 1108 at 140.

political setting of Nigeria.[1114] This was because urban planning and development was basically associated with the provision of a physically attractive layout with well-designed housing units.[1115]

After independence, successive Nigerian governments retained the colonial urban legal framework despite their discriminatory provisions.[1116] Segregation which was the result of urban planning activities in colonial Nigeria continued to be evident. Despite the prevalence of informal economic activities in the country, urban planning policies were used as tools to restrict the activities of informal workers such as street vendors.[1117] Indeed, at the time of independence, the focus of the government was basically on economic planning rather than the resolution of the evolving urbanisation challenges facing the country.[1118]

In 1992, the first post-colonial law on urban planning in Nigeria was promulgated. This law was called the Nigerian Urban and Regional Planning Decree of 1992 (NURPD).[1119] It was designed to ease the allocation, transfer and development of land, and, renovate the rigid urban planning system of the country.[1120] This law empowered the three tiers of government to establish bodies responsible for formulating and implementing urban development plans. This law which was subsequently amended in 1999 was expected to overhaul planning activities to be more attuned with the socio-economic realities of Nigeria.[1121] However, in practice, this law did not depart from the colonial planning system.[1122]

NURPD consists of six main parts and 92 sections. Part one deals with plan preparation and administration.[1123] Under this part, states are empowered to enact specific State urban laws.

[1114] Arimah BC et al "Compliance with urban development and planning regulations in Ibadan, Nigeria" (2000) *Habitat International* 24 P.283: Nigeria was basically seen as a source for raw materials, cheap labour and a market for finished products. In addition, majority of the natives worked informally in the agricultural and trading sectors. As a result, the planning schemes were not relevant to the socio-economic context of the average Nigerian: Osita-njoku A "The political economy of development in Nigeria: From the colonial to post-colonial eras" (2016) 21(9) *Journal of Humanities and Social Sciences* 9-15.

[1115] Op cit note 1097 at 27.

[1116] Op cit note 1091 at 8: Op cit note 661 at 160.

[1117] Op cit note 610 at 173-4: see STIML as discussed in chapter four.

[1118] Op cit note 1111 at 8.

[1119] No 88 Laws of the Federation.

[1120] Op cit note 1093 at 134.

[1121] The law was amended to the Nigerian Urban and Regional Planning (Amendment) Act No 18: Umezuruike Obilo Sunday "Physical planning administration in Nigeria: Abia State experience" (2015) 8(3) *Journal of Geography and Regional Planning* 47-55 at 48.

[1122] Akanni AA "Town planning laws and location of mosques in Nigeria: Imperatives for integration" (2013) 3(6) *International Journal of Humanities and Social Science (Special Issue)* 123-39.

[1123] The second part provides for development control while part three deals with additional control in special cases. The process of acquisition of land and compensation is provided for part four. Part five deals with the rehabilitation,

Consequently, by virtue of section 1 of the LUA and section 3 of the NURPD, the Lagos State government passed into law the Lagos State Urban and Regional and Development law (LSURDL) 2010. This law basically provides for the administration of physical planning, urban development, urban renewal and building control within Lagos state. Indeed, just like its enabling law, the LSURDL is not particularly inclusive.[1124] The integration of the informal economy into urban planning is not provided for nor addressed in this law.

6.4.2 Deficits of the urban land and administrative system in Nigeria

The urban land and administrative legal system in Nigeria is confronted with a number of challenges.[1125] First, it addresses physical planning with little regard to its implications for the majority of urban residents who work in the informal economy. Secondly, unfettered discretionary powers in the application of the provisions of urban laws. For example sections 2 and 3 of the LSURDL grants the ministry of physical planning and urban development the powers to initiate, formulate and implement urban palnning policies and makes no provision for public participation in the planning process. In addition, planning laws do not necessarily ease planning concerns since all land use related issues must still be in accordance to the provisions of the LUA. Furthermore, this legal system does not deal with the question of access to urban lands for informal work such as street vending.[1126] Even though the majority of the working poor in urban areas in developing countries depend on the informal land delivery system to access land for the purpose of conducting their economic activities, their right to such lands are at best insecure and subject to the whims of

renewal and upgrading of designated improvement areas. Lastly, chapter six deals with appeals. Specifically, part one is focused on the built environment and its implementation was assigned to the three tiers of government.

[1124] Agunbiade ME *et al* "A review of the Lagos State Urban and Regional Planning and Development Law 2010: An international perspective" (2014) in Smith IO (ed) *Essays on Lagos State Urban and Regional Planning & Development law 2010 at 9.*

[1125] Other challenges include; ambiguities in the use of language and structure of the law (s); and, inconsistency between the federal and the state urban laws. With respect to this inconsistency, the Supreme Court of Nigeria in *Attorney-General of Lagos State v. The Attorney-General of the Federation & ors* held that the 1992 Urban and Regional Decree should no longer be implemented as a national legislation. According to the court, the power to legislate on planning issues has been given to states under the 1999 Constitution. Nonetheless, this conflicting mandate has made the general implementation of urban laws in Nigeria quite tedious: Op cit *oil to city* at 134: *Attorney-General of Lagos State v. The Attorney-General of the Federation & ors* SC 353/2001: Ibid Agunbiade.

[1126] Akintayo AE "Planning law versus the right of the poor to adequate housing: A progressive assessment of the Lagos state of Nigeria's Urban and Regional Planning and Development Law of 2010" (2014) 14 *African Human Rights Law Journal* at 555.

the government. [1127] The implication of this is that informal workers lack property rights in public spaces.

The built environment of a country is interwoven with the national development process and is steered by the government.[1128] Yet, the current Nigerian law on urban planning primarily addresses physical development (structures).[1129] The NURPD and the LSURDL make no provisions for the interaction between the economic activities of citizens and the environment. In many developed countries, this interaction is dealt with by means of zoning policies which actively consider economic activities.[1130] The only consideration for economic activities in Nigeria was in the definition section where 'commercial development' was defined in the federal law. Within the context of the state and federal urban laws, the use of 'commercial development' is restricted to the purposes stated in section 91 of the NURPD. Although one of the stated purposes is way side stalls, givethis can be argued to apply only to formal settings. As stated in chapter chapter four, informal way side stalls are demolished by the government.

According to Maboogunje, most African States simply consider the provision and management of infrastructure when making urban planning policies.[1131] This approach is limiting given that informal workers comprise more than half of the urban population and the majority conduct their economic activities on the streets.[1132] Since such activities are in many cases unstructured, they are often perceived as inimical to formal planning policies.[1133] Consequently, informal economic activities need to be taken into consideration in formulating urban planning policies.

Indeed, the urban planning system of Nigeria is primarily aesthetic, leaving out the socio-economic aspect which deals with the source of income of people. Given that street vending

[1127] Rakodi C "Order and disorder in African cities: the social roots and contemporary outcomes of approaches to governance and land management" (2008) Paper presented to the UNU-WIDER Project Workshop *Beyond the tipping point: Development in an Urban World* Cape Town at 8.
[1128] Collier T "Individual and collective responsibilities" (2005) in Tom Collier (ed) *Design, technology and the development process in the built environment* Taylor &Francis at 180.
[1129] Op cit note 668 at 169.
[1130] Op cit note 668 at 157.
[1131] Op cit note 591: Ronald McGill "Urban management in developing countries" (1998) 15(6) *Cities* 463-71
[1132] See chapter four.
[1133] See chapter four.

activities may be unpleasant in unplanned environments, it has been advocated that this can be addressed through inclusive urban planning.[1134]

6.5. Reframing the urban space: an inclusive approach to urban planning

Generally, urbanisation coincides with development and poverty reduction.[1135] This is because the establishment of new industries in urban areas means the creation of new job opportunities.[1136] However, this has not necessarily held true in Nigeria.[1137] The urban population growth outpaces the rate of the creation of formal jobs.[1138] As a result, the country's urban economic growth of the last few years has not translated into meaningful improvement in the living conditions of the majority of urban residents.[1139] This lack of sufficient formal jobs has contributed to the expansion of the informal economy and its attendant deficits.[1140] Consequently, different forms of informal economic activities including street vending are constant features of the urban public space in Nigerian cities including Lagos State. As a result, an emerging school of thought has called for a pro-poor and inclusive approach to urban planning.[1141] This informs the discussion below which considers the reframing of urban spaces to promote decent work in the informal economy.

Urban space refers to 'formal spaces of planned' cities.[1142] It is used in the physical sense to mean all the space between buildings in a built environment.[1143] The terms 'urban space' and 'public space' can be used for the most part interchangeably. Examples of such spaces include parks, malls, and squares designed to either enhance the aesthetic outlook of the city, or for leisure

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[1134] Watson V "Inclusive urban planning for the working poor: Planning education trends and potential shifts" (2011) 21 WIEGO *Working Paper (Urban Policies)* 1-27.

[1135] Op cit note 1073 at 87: *World Urbanisation Prospects: The 2014 Revision (ST/ESA/SER.A/366)* (2015) Department of Economic and Social Affairs, Population Division, UN Available at https://esa.un.org/unpd/wup/publications/files/wup2014-report.pdf accessed on the 21st of June, 2017 at 1-2: Panwar AM & Vikas G "Issues and challenges faced by vendors on urban streets: A case of Sonipat city, India" (2015) 3(2) *International Journal of Engineering Technology, Management and Applied Sciences* at 71.

[1136] Elgin C & Oyvat C "Lurking in the cities: Urbanisation and the informal economy" (2013) 27 *Structural Change and Economic Dynamics* at 36.

[1137] Op cit note 1093 at 87.

[1138] Op cit note 1093 at 87-91.

[1139] Op cit note 1093 at 87.

[1140] This was discussed in chapter three as being one of the reasons for the expansion of the informal economy.

[1141] Op cit note 123(Brown & McGranahan): Turok I "Getting urbanization to work in Africa: The role of the urban-land infrastructure-finance nexus" (2016) 1(1) *Area Development and Policy* 30-47: "Urban informality: toward an epistemology of planning" (2005) 71(2) *Journal of the American Planning Association*147-158.

[1142] Brown A"Claiming rights to the street: the role of public space and diversity in governance of the street economy" (2004) Available at http://n-aerus.net/web/sat/workshops/2004/papers/Brown.pdf accessed on the 12th of July, 2016 at 1.

[1143] Leon K "The city within the city" (1984) 54(7-8) *Architectural Design* Vol.9 (July- August) 70-105.

or to promote urban vitality.[1144] Generally the socio-economic roles of urban space are largely ignored in many countries.[1145] However, few urban designers recognise the socio-economic and political significance of urban space which includes not just the physical spaces but also its intersectionality with the people, events and livelihoods that occupy them.[1146] These designers recognise urban spaces as being dynamic and the centre of social integration where a wide access is allowed.[1147] An early example of a popular public space whose spatial-political significance was recognised is the ancient Greek agora which was both a market and a meeting place for members of the town.[1148] Such spaces 'were the core of the urban society, integrating the political, economic, social and cultural activities' of the urban population.[1149]

In modern times, however, the heterogeneity of the expanding urban population in developing countries has made the use and nature of public spaces complex.[1150] Consequently, the management of public space through urban planning has political significance and is the symbol of the power of the government.[1151] This has led international interests to call for a new approach to urban planning in developing countries;[1152] which is centred on urban planning being more than just the technical planning of physical space to being integrated, inclusive and participatory.[1153] In engaging this approach, urban planning will take place with an understanding of the demographic, environmental, economic and socio-spatial issues shaping growing cities in developing countries.[1154]

[1144] Goodsell C "The concept of public space and its democratic manifestations" (2003) 33(4) *American Review of Public Administartion* at 367

[1145] Roy A "Transnational trespassings: The geopolitics of urban informaility" (2004) in Roy A & AlSayyad N (eds) *Urban informality: Transnational perspectives from the Middle East, South Asia and Latin America* Lanham, MD: Lexington Books 289-317.

[1146] Madanipour A. *Design of urban space: An inquiry into a socio-spatial process* (1996) John Wiley & sons.

[1147] Madanipour A "Why are the design and development of public spaces significant for cities" (1999) 26 *Environment and Planning B: Planning and Design* at 880: Lehtovuori Panu *Experience and conflict: The production of urban space* (2016) Routledge.

[1148] Ibid at 905: Kurniawati W "Public space for marginal people" (2012) 36 *Procedia-Social and Behavioural Sciences* at 477-478.

[1149] Madanipour A "Introduction" in Madanipour Ali(ed) *Whose public space? International cases studies in urban design and development* (2010) Routledge at 5.

[1150] Ibid at 7.

[1151] Op cit note 1142 at 2.

[1152] Kulabkar P "The politics of implementing urban plans in India" (2002) 24 (1) *International Development Planning Review* at 77.

[1153] Todes A *et al* "Beyond master planning? New approaches to spatial planning in Ekurhuleni, South Africa" (2010) 34*Habitat International* at 414.

[1154] *Planning sustainable cities: Global report on human settlements* (2009) UN Human Settlements Programme earthscan from Routledge at XXVI-VII.

Prior to this campaign, the predominant approach to urban planning was 'master planning' which became popular after World War II.[1155] Master plans were spatial or physical plans which were captured in abstract maps called blueprints.[1156] This plan basically showed the ideal end state of a built city and was seen as a technical activity to be implemented by the government.[1157] An example of master planning was the UK's Town and Country Planning Act of 1932 which was also the model for planning laws in colonies.[1158] However, by the late 1970s, many critiques of the master plan had developed.[1159] Many argued that this form of planning was a largely technocratic process with no attention paid to social diversity and public participation.[1160] According to Njoh,

> 'master or comprehensive planning makes a number of assumptions of which the following are noteworthy. The first is that there is a 'one best way' for addressing any given planning problem and that trained planners-the experts- are capable of finding this 'best way'. The second is that the planning context can be controlled with modern scientific knowledge and technology. The third is that there is a common identifiable public interest. Finally, there is the belief that planning of the top-down variety- that is, centralised planning-is capable of effectuating socio-economic change'.[1161]

However, this form of planning neglects to consider the socio-economic interests of the majority of the inhabitants and the political dynamics of urban growth and informality which shapes cities in developing countries.[1162]

Apart from the above deficiencies, these plans took a long time to implement and their design would become outdated.[1163] Also, provisions of infrastructure according to this plan were usually limited to certain areas of the city.[1164] Consequently, these plans propagated inequality and social exclusion in urban areas in developing countries, and was used as a tool to justify the

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[1155] Op cit note 1134 at 416.
[1156] "Key findings and messages" (2009) in *Planning Sustainable Cities: Global report on Human settlements 2009* UN Habitat at 11: Tiwary NA "Master plan appraoch in urban development: A case study of Mirzapur city, Uttar Pradesh, India" (2014) 4(6) *Research Journal of Social Science & Management* 224-31.
[1157] Watson V "'The planned city sweeps the poor away…': Urban planning and 21st century urbanisation" (2009) 72(3) *Progress in Planning* at 166.
[1158] Ibid at 166: The influence of this law is still obvious in the planning law of states in Nigeria. This is because planning remains focused on just physical structures without consideration of how it intersects with the society.
[1159] Taylor N *Urban planning theory since 1945* (1998) Sage Publications at 38-75: Netzband Maik *et al*(eds) *Applied remote sensing for urban planning, governance and sustainability* (2007) Springer-Verlag Berlin
[1160] Op cit note 1153 at 415.
[1161] Njoh A "The emergence and spread of contemporary urban planning" (2008) Draft Chapter for *the Global Report on Human Settlements: Revisiting planning* Report UN-Habitat, Nairobi at 20.
[1162] Op cit Rakodi 1-28: op cit note 1137 at 3: Lasisi M *et al* "City expansion and agricultural land loss within the peri-urban area of Osun State, Nigeria" (2017) 9(3) *Ghana Journal of Geography* at 6-7.
[1163] Todes A "Reinventing planning: Critical reflections" (2011) 22(2) *Urban Forum* at 4.
[1164] Ibid: In Lagos, for example, the infrastructural system covered only 10 % of the state because the city grew beyond its original boundaries: Op cit note 638 at 378.

removal of informal settlements and activities.[1165] Such removals are not just seen in Sub-Saharan Africa, it has been associated with extensive development in cities in China and Latin America.[1166] In summary, the master plan approach fails to accommodate the lifestyle and *livelihood* of the majority of urban residents who are largely poor and work in the informal economy.[1167] This contributes directly to social and spatial exclusion.[1168]

In 2006, the World Planners Congress was held alongside the World Urban Forum in Vancouver.[1169] At these conferences, planners were challenged to approach planning with a pro-poor and inclusive perspective, with the creation and maintenance of livelihood at its centre.[1170] From this perspective, planning is a mechanism through which urban poverty, inequality, discrimination, economic exclusion, rapid growth and environment should be addressed.[1171] Furthermore, as affirmed under the Habitat III Agenda; urban planning of cities must promote equal access to public goods to enhance *livelihoods* as a means of facilitating the formalisation process of the informal economy.[1172] This became imperative after the recent global financial crisis and the consequent growing forms of informality in the labour market particularly in developing countries.[1173] The effect is an increasing polarization of occupational and income structures (which promotes income inequality).[1174]

Presently, urban planning and development in emerging cities like Lagos, seeks to eradicate informal economic activities from urban areas. However, for urban planning to be pro-poor and inclusive, it needs to support informal work.[1175] This means recognising the urban

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[1165] For example, the master plan of Abuja (FCT), Nigeria, was used to justify these removals: Ibid P.57 UN Habitat
[1166] Op cit note 1157 at 166.
[1167] Op cit note 1156 at 58.
[1168] Op cit note 1156 at 58.
[1169] *World Urban Forum Bulletin* (2006) available at http://enb.iisd.org/crs/wuf3/compilatione.pdf accessed on the 30th of June 2016.
[1170] Op cit note 1157 at 166.
[1171] Op cit note 1157 at 166.
[1172]UN-Habitat *Habitat III: The new urban agenda* (2016) available at http://citiscope.org/sites/default/files/h3/Habitat_III_New_Urban_Agenda_10_September_2016.pdf accessed on the 21st of June, 2017.
[1173] Hove M *et al* "The urban crisis in Sub-Saharan Africa: A threat to human security and sustainable development" (2013) 2(1) *International Journal of Security and Development* at 6: Hamnett Chris "Social polarization in global cities: theory and evidence" (1994) 31 (3) *Urban Studies* at 401.
[1174] Ibid Hamnett Chris.
[1175] Tibaijuka A "Statement by Anna Tibaijuka, Under-Secretary UN and Executive Director, UN-Habitat" (2006) *Report of the third session of the world urban forum* Available at http://mirror.unhabitat.org/downloads/docs/3406_98924_WUF3-Report.pdf accessed on the 19th of July, 2016 at 16: Opoko AP & Oluwatayo A "Trends in urbanisation: Implications for planning and low-income housing delivery in Lagos, Nigeria" (2014) 4(1A) *Architecture Research* at 24.

citizenship and the voice of informal workers like street vendors in urban planning.[1176] This also intertwines with the social dialogue pillar of decent work.

Many informal workers in developing countries are denied effective citizenship and voice in urban management.[1177] Recently, in Lagos, the government announced that, as a cosmopolitan city, street traders should not be found within the metropolis of Lagos.[1178] This aptly captures the lack of recognition and 'non-identity' of street vendors by state actors in the urban land scape of cities. Nonetheless, one of the positive effects of globalisation is the shift from government to governance wherein members of the community participate in policy formulation.[1179] Through this, the management of cities becomes participatory. According to development theorists, the rationale behind this shift to governance is that it provides insight into local/grassroots conditions which promotes planning processes that improves development outcomes like poverty alleviation and transition to formalisation.[1180] This shift has created participation opportunities for disadvantaged communities in developed countries like the United Kingdom.[1181] However, the reverse remains the case in many developing countries.[1182]

It is apparent that involving local people in developing countries in governance rarely yields the anticipated development goals unless there is true representation of the most marginalised groups.[1183] Not giving ordinary citizens equal power and control over governance weakens development outcomes;[1184] however, these participatory processes are focused on

[1176]Chen M "Inclusive cities for informal workers" (2016) *Jobs and Devlopment Blog* available at http://blogs.worldbank.org/jobs/inclusive-cities-informal-workers accessed on the 7th of December, 2017: David Westendorff "Sustainable development for urban poor: Applying a human rights approach to the problem" in David Westendorff (ed) *From unsustainable to inclusive cities* UNRISD 191 – 256 at 192: Song Lily A. "Planning with urban informality: A case for inclusion, co-production and reiteration" (2016) 38(4) *International Development Planning Review* 359-381: Voice in this sense refers to individual, collective and representative voice.

[1177] Op cit note 23 at 677.

[1178] Aruna H "Lagos goes tough on street trading, hawking" (July 2016) Available at http://www.lagosstate.gov.ng/2016/07/01/lagos-goes-tough-on-street-trading-hawking/ accessed on the 21st of July, 2016.

[1179] Taylor M "Community participation in the real world: Opportunities and pitfalls in new governance spaces" (2007) 44(2) *Urban Studies* at 297.

[1180] Penderis S "Theorizing participation: From tyranny to emancipation" *The Journal of African & Asian Local Government Studies* Available at http://www.jaalgs.net/journal/index.php/jals/article/viewFile/21/18 accessed on the 1st of August, 2016 at 2: Hickey Sam and Mohan Sam "Relocating participation within a radical politics of development" (2005) 36(2) *Development and Change* at 241.

[1181] Op cit note 1179 at 298.

[1182] Op cit note 1179 at 298.

[1183] Op cit note 1180 at 4: Op cit note 1158(Westendorff).

[1184] Op cit note 1180 at 4: Jiboye AD "Sustainable urbanisation: Issues and challenges for effective urban governance in Nigeria" (2011) 4(6) *Journal of Sustainable Development* at 214.

inhabitants of slums and informal settlements, without effort to engage with workers in the informal economy.[1185] This is particularly true for street vendors who continue to experience widespread hostility and oppression.[1186] Hence the lack of articulation of the role of agency and citizenship has been suggested as one of the limitations of governance.[1187] It is therefore imperative to understand the interplay between citizenship and urban space as a means to make urban spaces inclusive.

Citizenship was defined by Aristotle as the right to participate in judicial or political office.[1188] He also defined a citizen as one 'who shares in governing and being governed…with a view to the life of virtue'.[1189] This definition has been held to be robust but problematic and restrictive.[1190] However, it can be expanded to include urban citizenship and not just national or regional citizenship. The degree and extent of an individual's participation in a city's public life defines citizenship.[1191] Participating in the central activities of a city makes for a full citizen while participation in lesser city activities makes an individual a lesser citizen.[1192] Consequently, the definition of citizenship has progressed from civil and political perspectives to its relation to a social entity or space.[1193] This new dimension of citizenship is called urban citizenship.[1194]

[1185] Lyons M & Brown A "Seen but not heard: Extending urban citizenship to informal street traders" (2007) Informalising Economies and New Organising Strategies in Africa, Nordic Africa Institute Conference, Uppsala, Sweden Available at http://www.streetnet.org.za/docs/research/2007/en/lyonsandbrown.pdf accessed on the 20th of June, 2016 at 5.
[1186] Op cit note 24.
[1187] Op cit note 1180 at 8.
[1188] Morrison D "Aristotle's definition of citizenship: A problem and some solutions" (1999) 1 (2) *History of Philosophy Quarterly* at 143.
[1189] Cunningham F "The virtues of urban citizenship" (2011) 2(1) *City, Culture and Society* 35-44 at 35.
[1190] Aristotle's definition was restricted to just men and excluded slaves. Op cit note 1170 at 146: Op cit Cunningham at 35.
[1191] Op cit note 1188 at 161.
[1192] Op cit note 1188 at 161: central activities are participation in city functions that affects a larger part of the population for example judicial function. While lesser activities have limited impact on a city's population.
[1193] Tilly C "Citizenship, identity and social history" (1995) 40 (3) *International Review of Social History* at 3: Janowitz M "Observations on the sociology of citizenship: Obligations and rights" (1980) 59 (1)*Social Forces*: Robert Beauregard & Anna Bounds "Urban citizenship" (2000) in Engin F Isin (ed) *Democracy, citizenship and the global city* Routledge.
[1194] Blokland T *et al* "Urban citizenship and right to the city: The fragmentation of claims" (2015) 39(4) *International Journal of Urban and Regional Research* 655-65 at 659-63.

6.5.1 Urban citizenship

Urban citizenship is not necessarily based on residency and has been suggested to be the flexible association which informal workers have with the city.[1195] Citizenship based on residency excludes immigrants (non-nationals), those that reside outside the city boundaries in informal settlements and informal workers, hence the advent of urban citizenship.[1196] According to Frug, this type of citizenship is based on attachments or forms of connection which people have with the metropolitan areas where they shop or work.[1197] Consequently, such citizens have the right to participate in governance including urban planning in their area of connection. Furthermore, urban citizenship is particularly relevant to vulnerable population groups like immigrants, undocumented migrants and informal workers.[1198] This is because in practice, these vulnerable groups particularly informal workers, are seen as outsiders and are susceptible to violent expulsions by the government and the elites.[1199] Urban citizenship would imply a right to the city.

The concept of the right to the city was introduced by Lefebvre in his publication *Le Droit a la ville* and was affirmed in the World Charter on the Right to the City.[1200] Right to the city means a right to change a city according to individual desires.[1201] This right also means the construction of a socially just city.[1202] By implication this right consists of the following: the right to freedom, to inhabit, to participate in decisions that affect the access, occupation and democratic use of urban space and also to create new spaces to meet the needs of people.[1203] As an urban

[1195] Op cit note 23 at 668: Frug J "Decentering decentralization" (1993) 60(1) *University of Chicago Law Review* at 328-33: Nielsen GM "Answerability with cosmopolitan intent: An ethics-based politics for acts of urban citizenship" (2008) in Engin F Isin & Greg M Neilsen *Acts of Citizenship* Zen Books at 266-86.
[1196] Brown Alison "The right to the city: Road to Rio 2010" (2013) 37(3) *International Journal of Urban and Regional Research* at 960.
[1197] Ibid: Baubock R "Reinventing urban citizenship" (2003) 7(2) *Citizenship Studies* at 154-55: William Walters "Acts of demonstration: mapping the territory of (non-) citizenship" (2008) in Engin F Isin & Greg M Neilsen *Acts of Citizenship* Zen Books at 192-94.
[1198] Gebhardt D "Re-thinking urban citizenship for immigrants from a policy perspective: the case of Barcelona" (2016) 20 (6-7) *Citizenship Studies* at 850.
[1199] Anjaria JS "Street hawkers and public space in Mumbai" (2006) *Economic and Political Weekly* at 2142-2146: city elites are private individuals or organisations whose interest lies in transforming a city in the quest for profits.
[1200] "Right to the City" *Global Charter-Agenda for Human Rights in the City* available at https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta-Agenda_ENG_0.pdf accessed on the 7th of December, 2017.
[1201] Harvey D "Debates and developments: The right to the city" (2003) 27 (4) *International Journal of Urban and Regional Research* at 939.
[1202] Ibid at 940.
[1203] Op cit note 1196 at 958: Op cit note 1182 at article 1: Don Mitchell *The right to the city: Social justice and the fight for public space* (2003) The Guilford Press New York at 19.

theory, this right challenges capitalism and the expropriation of public spaces by government and elites.[1204] Invariably, this right calls for the reframing of citizenship to include informal workers as urban citizens in urban design. In summary, the right to the city means an inclusive city in all aspects of life.[1205]

This right has been argued for those who are excluded from the benefits of urban life.[1206] In terms of this exclusion, such workers though a part of the system, lack legal protection.[1207] For workers in the informal economy, the right to the city which is related to urban citizenship is the right to social justice which includes *inter alia* access to public space.[1208] The recognition of street vendors as urban citizens for example, would be the basis for participation in urban governance.[1209]

The structure and process of governance in a city influences the extent to which the urban poor work in the informal economy have a voice and participate in urban management.[1210] It also influences urban design and planning to reflect the existing patterns of work in a city. However, for street vendors a major challenge is: what is the means through which their voices can be heard? Or in what ways can they participate in decisions that directly affect them. Furthermore, do they have the right and the ability to organise as a collective? These questions are broadly located within the decent work concept of social dialogue. In Nigeria, street vendors are not members of formal market associations and trade unions. Although, they have the constitutional right to organise and associate, it is the formal market associations and trade unions that are recognised as legal entities with right of access to government authorities.[1211] As a result, there is no institutional arrangement through which their voices can be heard.

[1204] Op cit note 1078 at 959.

[1205] Ortiz E "Towards a world charter for the right to the city" Available at http://hic-gs.org/articles.php?pid=2296 accessed on the 25th of July, 2016: Davis DE "Conclusion: Theoretical and empirical reflections on cities, sovereignty, identity and conflict" (2011) in Diane E Davis and Nora Libertun de Duren (eds) *Cities and sovereignty: Identity politics in urban spaces* Indiana University Press at 230-32: see Strauss Margot *A right to the city for South Africa's urban poor* (2017) Unpublished PhD Thesis Stellenbosch University, for a more detailed examination of 'right to the city'.

[1206] Marcuse P "Whose right(s) to what city?" (2012) in Brenner Neil, Marcuse Peter & Mayer Margit (eds) *Cities for people not for profit: Critical urban theory and the right to the city* Routledge at 38.

[1207] Ibid.

[1208] Ibid at 35.

[1209] Plyushteva A "The right to the city and struggle over urban citizenship" (2009) 1(3) *Amsterdam Social Science* at 94.

[1210] Devas N "Metropolitan governance and urban poverty" (2005) 25 *Public Administration and Development* at 357: Devas N *et al Urban governance, voice and poverty in the developing world* (2004) Earthscan Publications Limited.

[1211] Section 40 of the Nigerian Constitution LFN 2004: Op cit note 21 at 20.

Debates on social capital inform the foundation for the concept of urban voice.[1212] Social capital has been defined as 'the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalised relationships of mutual acquaintance and recognition- or in other words, to membership in a group…'.[1213] In other words, social capital means the benefit an individual acquires by virtue of being a member of a group.[1214] These benefits are acquired through the interplay of norms, reciprocity and trust among group/association members.[1215] For street vendors, urban voice as social capital serves as a mechanism through which their property rights can be promoted and adopted in the urban space. Having a voice for street vendors must be considered within the socio-political context they find themselves and the need for government to engage with their representatives if the urban space will be inclusive. Furthermore, having an organisation whether informal or otherwise is particularly necessary to promote the interests of street vendors.

According to Lund and Skinner, an organisation of street traders will have the following functions:[1216]

- Establishing and defending the legal rights of street vendors;
- Representing the interests of street vendors by creating an avenue for sustainable consultation to ensure the voices of street traders are heard;
- Protecting the interests of members through influencing urban and economic policies;
- Building leadership through the empowerment of street vendors in social institutions;
- Providing members with benefits which includes access to material resources or services; and
- Creating strategic alliances externally with recognised trade unions/associations and trade union movement.

[1212] Op cit note 23 at 669.
[1213] Bourdieu P "The forms of capital" (1986) in Richardson J(ed) *Handbook of Theory and Research for Sociology of Education* New York, Greenwood at 248.
[1214] Portes A "Social capital: Its origins and applications in modern sociology" (1998) 24 *Annual Review of Sociology* 1-24.
[1215] Pickvance C "From urban social movements to urban movements: A review and introduction to a symposium on urban movements" (2003) 27(1) *International Journal of Urban and Regional Research* at 106.
[1216] Lund F and Skinner C "Promoting the interests of women in the informal economy: An analysis of street trader organisations in South Africa" (1999) *CSDS Research Report No19* School of Development Studies, University of Natal, Durban at 8-11: King RS *et al* "Formalising the informal sector through association: The case of Kumasi informal bakers' Association" (2015) 8 (2) *Journal of Sustainable Development* at 48.

Such organisations which are primarily found in the informal economy are called member-based organisations. The positive impacts of such organisations are seen in countries like India and South Africa.[1217]

Globally, there are existing cases where the urban space has been reframed and street vendors integrated into urban plans.[1218] However, the general trend according to Hansen and Vaa is that,

> 'violent confrontations between urban authorities and street vendors over commercial use of public space are recurrent events in many African cities. Urban authorities frequently seek to remove street vendors, dismissing them as untidy, disruptive of established business, and allege that they are illegal immigrants if not criminals'.[1219]

Nevertheless, urban public space is dynamic and its management should be adapted to suit the needs of the citizens. An example of a city in a developing country going through the process of reframing the urban space is Durban, South Africa.

6.5.2 Reframing public spaces: Case study of Warwick Junction, Durban, South Africa

Warwick Junction is the largest transportation and trading hub in South Africa.[1220] Importantly, this junction is considered as a good example of a progressive approach to integrating street traders in urban planning and development,[1221] although it is not without challenges. About 38,000 vehicles and 460,000 people pass through this junction daily which is located on the outskirts of Durban's inner city in the eThekwini Municipality and is a combination of different markets.[1222] As a result of the confluence of rail, taxi and bus transport system, this area has always attracted

[1217] In India it is called Self-Employed Women Association (SEWA) while the South African organisation is known as Self-Employed Women Union (SEWU).
[1218] Skinner C "Challenging city imaginaries: street traders struggle in Warwick Junction" (2009) 81 *Agenda's Special Issue on Gender and Poverty Reduction* at 1.
[1219] Hansen KT and Vaa M "Introduction" (2004) in Hansen KT and Vaa M (eds) *Reconsidering Informality Perspectives from Urban Africa* Nordiska Afrikainstitutet at 13: For example, recent rampage of street vendors in Lagos in protest against the government's enforcement of the STML. This violet protest led to the destruction of government properties: Oji C "Mayhem in Lagos: One killed, 14 BRT buses destroyed as hawkers, KAI officials clash" (30th June, 2016) *The Sun* Available at http://sunnewsonline.com/lagos-one-killed-14-brt-buses-destroyed-as-hawkers-kai-officials-clash/ accessed on the 2nd of August, 2016.
[1220]"Warwick Junction, Durban, South Africa" *Project for Public Spaces* Available at http://www.pps.org/places/public-markets/warwick-junction/ accessed on the 28th of July, 2016.
[1221] Van Schilfgaarde KS "The trajectory of Warwick Junction as a site of inclusivity in post-apartheid South Africa" (2013) *Independent Study Project (ISP) Collection* Paper 1672 at 23.
[1222]Op cit note 1220: Available at http://www.marketsofwarwick.co.za/home/index.html accessed on the 12th December, 2017.

street traders who use it as a market.[1223] Recent evidence suggests that there were roughly 24,000 street traders in the eThekwini Municipality.[1224] Indeed immediately after apartheid, the informal economy expanded considerably, and at a faster rate than the formal economy.[1225] However, there are conflicting figures as to the population of informal traders in this Junction.[1226]

6.5.2.1 Moving beyond historical exclusion

Historically, the legal framework during the apartheid period in Durban and by extension South Africa was hostile towards the street vending sector.[1227] Specifically, the history of the Warwick Junction is steeped in racial discrimination, social exclusion and infrastructural neglect by the white local authority.[1228]

A quick survey of the history of Durban shows that between early and mid-1900s, street trading was not harshly regulated.[1229] However, in 1962, the Durban City Street Trading by-laws outlawed street vending.[1230] Subsequently, the Town Planning Amendment Ordinance, 1973, which became known as the *move on* law, allowed limited trading.[1231] By this law, street traders were to occupy a particular space for only 15 minutes after which they had to move at least 25 metres away.[1232] Nonetheless, the harassment of traders did not reduce significantly.[1233] However, just like other oppressed black South Africans at that time, street traders were organised and

[1223]"Warwick Junction iTrump: inner Thekwini Regeneration & Urban Management Programme" eThekwini Municipality, Durban, South Africa Available at http://aet.org.za.www12.flk1.host-h.net/wp-content/uploads/2014/02/Warwick-Junction-iTrump-Poster.pdf accessed on the 28th of July, 2016: According to estimates, about one third of economical active adults worked in the informal economy in the late 1990s: Conley P *et al* "Empowering market traders in Warwick Junction, Durban, South Africa" (2015) Inclusive Cities Project Women in Informal Employment: Globalising and Organising (WIEGO) at 3.
[1224] Ibid.
[1225] Ibid.
[1226]"CBD Durban with special emphasis on Warwick Junction" (2003) Available at http://www.sarpn.org/documents/d0000875/docs/CBD%20DurbanWithSpecialEmphasisOnWarwickJunction.pdf accessed on the 28th of July, 2016 at 6.
[1227] Mkhize S *et al Informal Economy Monitoring Study: Street vendors in Durban, South Africa* (2013) Women in Informal Employment: Globalising and Organising (WIEGO) at 8.
[1228] Dobson R *et al Working in Warwick: Including street traders in urban plans* (2009) School of Development Studies, University of KwaZulu-Natal at 43.
[1229] Op cit note 25 at 231: This is similar to how street trading was initially perceived in Lagos.
[1230] Op cit note 25 at 231
[1231] Lund F & Skinner C "Creating a positive business environment for the informal economy: Reflections from South Africa" (2005) *Reforming the Business Environment* International Donor Conference, Cairo 29th November to 1st December, 2005 at 7.
[1232] Ibid.
[1233] Ibid.

defiant.[1234] In the 1980s, the approach of government became more liberal.[1235] By early 1990s, freedom from apartheid led to a more progressive legislative framework to street vending activities.[1236]

A visible effect of this freedom was the drastic increase of street vendors in Durban. Although street vendors have been a long feature of Durban, they were generally confined to particular locations. [1237]However with the demise of formal segregation, street trading became a visible feature of the city.[1238] This hastened the decline of urban infrastructures. At this time, many residents began to complain about the negative effect of street vending activities on the urban plan and development of Durban.[1239] Increasingly, street trading was seen as representing a breakdown of order within the city. In a bid to address these urban management challenges, the City Council established an urban renewal initiative (iTRUMP Project) in 1995. This initiative sought to integrate informal traders into urban management discussions and institutionalise the city's reformed policy towards them.[1240] Similarly, in 1994 and 1995 respectively Self Employed Women's Union (SEWU) and Informal Traders Management Board (ITMB) were formed.[1241]

SEWU is open to all adult women in the informal economy.[1242] This organisation was established to confront the patriarchal society and the gendered nature of work.[1243] The ITMB was an outcome of a meeting of a number of smaller traders' organisation who agreed that street traders

[1234] Ibid.
[1235] Ibid: at this time urban apartheid began to collapse and control was abandoned leading to local authorities establishing a sub-committee to come up with practical ways to address street trading: see for details Tsoeu SR *Street traders, regulation and development in the eThekwini Unicity: An assessment of the new informal economy policy* (2003) Unpublished Masters Thesis Universityof KwaZulu Natal, Durban: Skinner C "Law and litigation in street trader livelihoods Durban South Africa" (2017) in Brown Alison (ed) *Rebel streets and the informal economy: street trade and the law* Routledge at 128.
[1236] Op cit note 1228.
[1237] Popke JE and Ballard R "Dislocating modernity: Identity, space and representations of street trade in Durban, South Africa" (2004) 35(1) *Geoforum* at 103: Parnell S and Mabin A "Rethinking urban South Africa" (1995) 21(1) *Journal of Southern African Studies* at 39-61.
[1238] Ibid Popke at 103.
[1239] Ibid Popke at 99-110.
[1240]Op cit note 1221 at 26.
[1241] These organisations were formed to represent the interests of informal workers:SEWU was modeled after the Self Employed Women's Association in India. This association is one of the foremost association of informal workers in the world.
[1242] Devenish A and Skinner C "Organising workers in the informal economy: The experience of the Self Employed Women's Union, 1994-2004 (2004) Available at http://www.streetnet.org.za/docs/research/2004/en/devenishandskinner.pdf accessed on the 4th of August, 2016 at 14.
[1243] Ibid.

needed one voice.[1244] The major objective of the ITMB was to create a united voice that would speak on behalf of street traders with the government on issues dealing with their working conditions.[1245] Many informal workers were active in both organisations. Council officials with the support of these two organisations redesigned the Durban urban space such that the environment was dramatically improved for commuters and infrastructure was provided for different sectors of the informal economy.[1246]

By the late 1990s, the Warwick Junction Project and other municipal initiatives made Durban to be an inclusive city in its approach to street vendors in South Africa.[1247] Volunteerism on the part of street traders was used as a major approach to dealing with urban management problems.[1248] This was particularly in respect of cleaning and crime.[1249] Many of the street traders volunteered their time to clean the streets. This participation of informal workers in urban management has been described as collaborative planning.[1250]

In 2001, the municipal's informal economy policy (IEP) was passed and came into effect in 2000. This document dealt generally with issues affecting the informal economy and the street vending sector.[1251] This policy was a result of the Durban's local government's recognition of the important contribution of the informal economy to the economic and social life of the city.[1252] By 2003, the Warwick Junction Project had been extended to the whole inner city. However, the inconsistency of the government in dealing with the informal economy became obvious when plans to build a shopping mall in the centre of Warwick were announced in 2009.[1253]

[1244] Motala S "Organising in the informal economy: A case study of street trading in South Africa" (2002) International Labour Organisation Available at http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@ifp_seed/documents/publication/wcms_117700.pdf accessed on the 8th of August, 2016 P.17
[1245] Ibid.
[1246] Op cit note 1228 at 65-82.
[1247] Op cit note 1228 at 65-82.
[1248] Op cit note 1218 at 6.
[1249] Op cit note 1218 at 6.
[1250] Brand R and Gaffikin F "Collaborative planning in an uncollaborative world" (2007)6(3) *Planning Theory* 282-313.
[1251] *Durban's Informal Economy Policy* (2001) EThekwini Unicity Municipality Accessed at on the 28th of July, 2016 at 1-5.
[1252] Ibid.
[1253] Op cit note 1218 at 7.

6.5.2.2 A collective voice and the right to a livelihood

In 2004, the Council had through the Metro Police stopped 'illegal, unlicensed street trading'. According to the Deputy Major, this move was as a result of various complaints from formal businesses. This new conservative approach to street trading was seen as the effect of pressure from formal businesses on the government. Urban practitioners and street traders objected vehemently to what they termed a shift from the special combination of 'social solidarity and creativity' which the city had previously displayed.

This shift was linked to the need to portray a modern city for tourists who were coming for the 2010 World Cup in South Africa. Reflecting on international policies in his review of street trading Bromley opines that street trading is seen as a 'manifestation of both poverty and under-development'.[1254] Therefore its disappearance is seen as a sign of progress and a modern city. There was tremendous opposition to this plan of the government, which came in the form of a major civil society campaign that included organisations of street vendors, Congress of South African Trade Unions (COSATU), academics, urban planning experts and an NGO called Asiye eTafuleni.[1255] Importantly, civil cases were initiated against the City Council on the basis of a wrongful award of contract to the private developers, the right to livelihood of street vendors and challenging the building of a mall where a historic market stands.[1256] Although, in 2011, the city eventually agreed to leave the early morning market as it is, tensions stemming from the inconsistency of the government policy to street trading still remains.[1257]

In 2014, the local authorities promulgated the informal trading by-law.[1258] This law recognises and protects the right to engage in informal trading in prescribed areas, however, some of its provisions are inimical to the right of street vendors. Section 35 grants an authorised official

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[1254] Op cit note 425 at 12.

[1255] This NGO had provided technical support to street vendors at the Warwick Junction for many years: Mahendra C and Skinner C "Legal cases for street and market vendors in Durban, South Africa" (2013) in Chen Martha *et al* (eds) *Urban informal workers: Representative voice & economic rights* World Development Report at 49-55.

[1256] Op cit note 1218 at 10: the historic part of the civil case is based on the *Historic Conservation Principles*. The basic aim of these principles is "preserve, retain or recover the cultural interest of a place and must include provision for its maintenance and its future": "Conservation Principles" available at http://www.sahra.org.za/download-attachment/1397/ accessed on the 24th of August, 2017:Xulu P "Vending in public spaces and the law: A case study" (2015) *Inclusive Cities Project* WIEGO .

[1257] Op cit note 1221 at 37.

[1258] eThekwini Municpality: Informal trading by-Law, 2014 amended in 2017.

the power to impound the goods of an informal trader on suspicion of any contravention of the By-law. This power is contrary to the rule of law and contravenes section 22 of the South African Constitution. This was affirmed by the court in Makwicana v. eThekwini Muncipality.[1259]

Nonetheless, the example of the street traders' victory at Warwick Junction highlights some issues. One is the importance of informal traders having access to quality legal assistance. The assistance in this case was provided by the Legal Resources Centre. This centre was able to challenge the decision of the government from different angles including the socio-economic rights of the vendors and wrongful award of the contract to private developers. According to the court, 'the limitation of these rights (rights to trade and property) compounds the prejudice upon a race and socio-economic group already adversely impacted by poverty'.[1260]

Second, the power of organising by informal workers as an important way to transform the urban space to ensure more inclusiveness. This facilitated relationships between urban practitioners, academics and COSATU which had more effect on the government. This issue of organising through member-based organisations is examined in the next chapter as a pathway to the formalisation of street vendors in Nigeria.

6.6 Conclusion

This chapter described land use and urban planning in Nigeria and highlighted an alternative perspective of urban planning theory that supports the inclusion of informal *livelihoods* in the planning of urban areas in developing countries. In this way, the potential for decent work in the informal economy is likely to improve, in contrast to the on-going repression of the activities of street vendors in many Nigerian states. This suggests an urgent need for the redesigning of the land use and urban planning laws in the country.

In redesigning urban spaces, the socio-economic roles of these spaces particularly in respect to the informal economy need to be considered. In addition, the urban citizenship and the voice of street vendors need to be recognised. This provides an avenue for these workers to participate in urban management. The Warwick Junction, Durban was given as an example of an

[1259] 2015 (3) SA 165 KZD:the plaintiff's was a legal trader and his goods were confiscated while at a street traders' meeting leaving his assistant in charge. City official confiscated his good despite Makwicana's neighbour showing the official his permits. The court held that the by-laws which gave the city official unfettered power to impound and confiscate property unconstitutional. The court also held that the by-laws violated the right to property and trade.
[1260] Ibid *Makwicana* at para. 122.

urban space in the process of reframing to include street vendors. Furthermore, partnerships between street vendors and other non-vendor experts such as legal and urban planning practitioners were highlighted as being important in the transition process for these workers to gain recognition from the government. The next chapter identifies other possible pathways for transition of the informal to the formal economy.

CHAPTER SEVEN: RECOMMENDATION 204 – PATHWAYS TO FORMALISATION AND DECENT WORK

7.1 Introduction

After decades of debate and consultation with representatives of government, employers and employees, a framework to facilitate the formalization process of the informal economy was introduced by the ILO in 2015, in the form of a recommendation.[1261] This recommendation was developed in response to feedback from the ILO's tripartite constituents via a questionnaire in the *Transitioning from the Informal to the Formal Economy Report*.[1262] The framework is set out in *Recommendation 204 concerning the Transition from the Informal to the Formal Economy (R204)*, adopted at the 104th ILC in Geneva, 2015.

Recommendations form part of the standard setting power of the ILO and are 'as their name implies, guides for national action'.[1263] Recommendations elaborate on state obligations, which themselves are given effect by national legislation or executive orders.[1264] However, recommendations do not create binding international obligations; they are guidelines to national governments.[1265] R204 is the first international instrument devoted exclusively to provide guidelines for state and non-state actors on the regulation of the activities and workers in the informal economy. This chapter explores alternative ways R204 can be adapted within the Nigerian informal economy and specifically in her street vending sector. This is done through the lens of the broad pillars of the decent work agenda discussed in the chapter five. The chapter is divided into two major parts. The

[1261] *Transitioning from the Informal to the Formal Economy Report V (2)* (2014) ILO Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_241897.pdf accessed on the 27th of January, 2017.
[1262] Ibid at 81.
[1263] Phelan E "The contribution of the ILO to peace" (1949) *The International Labour Review* Available at http://www.heinonline.org/HOL/Page?handle=hein.journals/intlr59&div=60&start_page=607&collection=journals&set_as_cursor=0&men_tab=srchresults accessed on the 19th of December, 2016 at 613: Vonk G "The Social Protection Floors Recommendation 2012(No 202)" (2013) in Marius Oliver et al (eds) *The role of standards in Labour & Social Security Law: International, regional & national perspectives* Juta Claremont 29-42.
[1264] Ibid Phelan at 614.
[1265] Ibid Phelan at 613.

first part outlines the preamble and the objectives of R204. The second part explores an integrated policy approach to formalisation using the pillars of decent work.

7.2 Preamble and Objectives of Recommendation 204

The preamble of R204 recognise that the high rate of informality was a major challenge to the rights of workers. These rights include the fundamental principles and rights at work, decent work conditions, inclusive development, rule of law and general sustainability. It was also acknowledged that lack of better opportunities forced most people into the informal economy and this needed to be addressed urgently. Consequently, the deficits in the informal economy were recalled and the relevance of international standards to informal work was affirmed. The recalled standards are the 1944 Declaration of Philadelphia, the 1948 UDHR, 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up and, 2008 ILO Declaration on Social

Justice for a Fair Globalisation.[1266] Similarly, the relevance of ILO's fundamental Conventions to the informal economy was reaffirmed.[1267] Two of these conventions are outlined:[1268]

- Forced Labour Convention, 1930 (No. 29); which defines forced labour as 'all work or service which is exacted from any person'.[1269] If a work is not done voluntarily it is forced labour.[1270] In many developing economies, the informal economy has become a medium for trafficking persons for sexual labour; since it operates outside the cover of the law and such activities can remain undetected. Also, legal frameworks which restrict the economic activities of women, particularly migrants, who need to supplement their income, create environments in which women are open to abuse or forced labour most often in the domestic work sector.[1271]

[1266] The Declaration of Philadelphia was adopted in 1944 at the 26th ILC held in Philadelphia. It is a statement of the declaration of the ILO's aims and purposes. Furthermore, this Declaration was incorporated into the ILO's Constitution. The Declaration embodies the principles of socio-economic justice. Some of the contents of the Declaration include: "Labour is not a commodity; Lasting peace cannot be achieved unless it is based on social justice, grounded in freedom, dignity, economic security and equal opportunity; Freedom of expression and of association are essential to sustained progress; Poverty anywhere constitutes a danger to prosperity everywhere, and All human beings, irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security, and of equal opportunity.": "International Labour Organisation" Available at http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@webdev/documents/publication/wcms_082361.pdf accessed on the 19th of December, 2016 at 6: Lee Eddy "The Declaration of Philadelphia: Retrospect and prospect" (1994) 133(4) *International Labour Review* at 467-84: ILO's Declaration on Social Justice for a Fair Globalisation was adopted in 2008 at the 97th ILC. This Declaration is a build-up on the Philadelphia Declaration and the Fundamental Principles and Rights at Work. It sets out ILO's mandate in this era of unprecedented globalization. It emphasised the role of ILO's tripartite constituents to achieve progress and social justice in the context of globalization. It also reaffirmed the universality of decent work for all workers irrespective of where they work: *ILO Declaration on Social Justice for a Fair Globalisation* (2008) adopted by the International Labour Conference at its Ninety-seventh Session, Geneva, 10th June 2008: ILO's Declaration on fundamental Principles and Rights at Work and its follow-up process declares that all members are obliged to promote the following fundamental rights namely; freedom of association, elimination of all forms of compulsory labour, abolition of child labour and elimation of discrimination in respect of employment and occupation. The follow-up to this declaration provides ways to help countries achieve its objectives: "ILO's Declaration on fundamental Principles and Rights at Work" available at https://www.ilo.org/declaration/lang--en/index.htm accessed on the 3rd of March, 2019.

[1267] The eight fundamental Conventions are Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), Right to Organise and Collective Bargaining Convention, 1949 (No 98), Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (no. 105), Minimum Age Convention, 1973 (No. 138), Worst Forms of Child Labour Convention, 1999 (No. 182), Equal Remuneration Convention, 1951 (No . 100) and, Discrimination (Employment and Occupation) Convention, 1958 (No. 111): "Conventions and recommendation" Available at http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm accessed on the 15th of August, 2017

[1268] The conventions recalled in R204 are important to the informal economy; however, the below conventions were highlighted however because of the prevalence of forced and child labour in the informal economy.

[1269] Article 2(1) Available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_346435.pdf accessed on the 31st of January, 2017.

[1270] Ibid.

[1271] Mahdavi P "Gender, labour and the law: the nexus of domestic work, human trafficking and the informal economy in the United Arab Emirates" (2013) 13(4) *Global Networks* 425-440.

- The Minimum Age Convention, 1973 (No. 138); which was established with a view to abolishing child labour.[1272] According to this instrument, the minimum age for child employment in developing economies is 14 years.[1273] However, when it comes to the worst forms of work, the minimum age is 18 years.[1274] Work in the informal economy can be classified as an example of a worst form of work particularly for children.[1275] Although Nigeria has laws regulating the rights of children, the monitoring and implementation of such laws are poor.[1276]

Furthermore, the preamble recognised the tripartite characteristic of the ILO with state actors, employers and workers' associations having crucial roles in the transition to formalisation process.

The idea that legislative instruments should be accompanied by a preamble dates back to Plato's *The Laws*.[1277] According to Plato, preambles are used to persuade and act as a warm-up to the core provisions of the law.[1278] Furthermore, there are two political uses of preambles, one of which is for narrative purposes.[1279] Narrative preambles provide an account on the reason for a statute, and the context and the deliberative process that preceded its enactment.[1280] The preamble of R204 has a narrative purpose in that it provides an account of the deliberative process that led to its adoption. Regarding the binding force and interpretation of the preamble; as is the norm,

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[1272]Preamble *The Minimum Age Convention, 1973 (No. 138)* Available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312283 accessed on the 31st of January, 2017.

[1273] Ibid at article 2.

[1274] Ibid at article 3.

[1275] *Global estimates of child labour: Results and trends, 2012-2016* (2017) International Labour Office, Geneva: Worst Forms of Child Labour Convention, 1999 (No. 182).

[1276] Nigeria signed the Convention on the Rights of the Child (CRC), 1989 and the African Union Charter on the Rights and Welfare of the Child (CRCW), 1990 in 1991 and 2000 respectively. However, these international instruments were only domesticated through the Nigeria's Child Rights Act in 2003. This Act is a federal law. For it to have effect at the state level, states Houses of Assembly need to pass the Act into state law. And, of the 36 states in Nigeria, only 26 states have passed the Child Rights Act into law. With respect to street trading, section 30 of the Act makes it an offence for a child to be used to hawk goods or services on the street. However, in many parts of the country children are still being used to sell goods and services on the street. This has exposed such children to kidnapping, hit and run accidents and sexual harassment: Child's Right Act, No 26 of 2003: "Information sheet: The child's Right Act" (August 2007) UNICEF Nigeria available at https://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf accessed on the 22nd of August, 2017: Nzarga D Felix "Impediments to the domestication of Nigeria Child Rights Act by the states" (2016) 19 *Journal of Culture, Society and Development* at 48-55.

[1277] Roach K "The uses and audiences of preambles in Legislation" (2001) 47 *McGill Law Journal* at 139.

[1278] Plato *Laws* (360 B.C.E) Book IV translated by Benjamin Jowett available at http://classics.mit.edu/Plato/laws.4.iv.html accessed on the 15th of August, 2017 at 720d – 722d.

[1279] The other political use of preamble is aspirational use. A popular example of this is the preamble of the UDHR.

[1280] Op cit note 1278 at 144.

preambles in ILO instruments are non-binding and primarily set out the context of the instrument.[1281] However, preambles have interpretative value. According to article 31 (2) of the *Vienna Convention on the Law of Treaties*, for the purpose of interpreting a treaty, the context of the treaty including its preamble must be taken into consideration.[1282] Nonetheless, the ILO rarely uses the preambles of her instruments for the purpose of interpreting given provisions.[1283]

Recommendation 204 has three objectives. First, as mentioned in chapter one, to facilitate the changeover of informal workers and economic units to the formal economy while respecting the rights of workers and entrepreneurship.[1284] This process is to be pursued gradually to ensure the preservation of work rights, opportunities for livelihood and entrepreneurship.[1285] One of the ways to achieve this is through the removal of barriers.[1286] These barriers could be in terms of regulatory policies, legislation or the business environment. In Nigeria, the business environment has been described as precarious particularly for small enterprises.[1287] However, there are numerous comparative examples where removing barriers have increased the rate of formalisation, including the SIMPLES program in Brazil.[1288] This program simplified the process of business registration by combining different aspects of registration in one location.[1289] This has resulted in the formalisation of more informal enterprises.[1290]

The second objective aims to promote the creation and sustainability of enterprises and decent jobs in the formal economy.[1291] This can be achieved through the removal of bureaucratic bottlenecks and other barriers that foster informalisation.[1292] The last objective seeks to prevent

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[1281] "Manual for drafting ILO instruments" Office of the Legal Adviser International Labour Organisation available at http://learning.itcilo.org/ilo/jur/en/2_1_2_1.htm accessed on the 15th of August, 2017: *Manual for drafting ILO instruments* (2006) International Labour Office, Geneva at 2.

[1282] Article 31 *Vienna Convention on the Law Of Treaties, 1969* available at https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf accessed on the 15th of August, 2017

[1283] Op cit note 1281.

[1284] Op cit note 14 at article 1(a).

[1285] Ibid.

[1286] Op cit note 14 at article 23.

[1287] As stated in chapter three, unpredictability of government policies, multiple tax systems and inadequate empowerment of small scale enterprises are some of her challenges which makes it more convenient for enterprises to operate in the informal economy: Ogunro VO "Nigeria's business environment: Issues, challenges and prospects" (2014) 4(4) *International Journal of Academic Research in Business and Social Sciences* at 134

[1288] Fajnzylber P *et al* "Does formality improve micro-firm performance? Evidence from the Brazilian SIMPLES program" (2011) 94(2) *Journal of Development Economics* 262-276.

[1289] Ibid.

[1290] Van Elk K *et al Enterprise formalization: Fact of fiction?* (2014) Metzgerdruck GmbH at 52-8.

[1291] Op cit note 14 at article 1(b).

[1292] Op cit note 1288.

the informalisation of formal jobs. In practice, many formal firms choose the extent to which they comply with regulations and therefore may be partly informal in terms of the rights of workers.[1293] It has been suggested that increased enforcement through labour inspection affects the extent to which firms comply with labour regulations.[1294] Article 27 of R204 provides that extensive labour inspection coverage can be used to protect the rights of workers.[1295] Although this may lead to reduced formal wages, social security reform can be used to minimise the negative effect of enforcement.[1296]

To give effect to these objectives, articles 7 and 10 provides that the regulatory framework on the informal economy be integrative in its approach. Foremost, in the context of street vendors, is the recognition of property rights as means to promote enmployment/enterprise creation, which is explored in detailed in the previous chapter. Additional components of an integrative regulatory framework are explored next.

7.3 Measures to transition from the informal to the formal economy

The achievement of decent work is the core of any framework to transition the informal to the formal economy. In this regard Parts III, V and VII advance the pillars of DWA as essential for this framework;[1297] the key elements of which are set out below.

7.3.1 Effective enforcement of rights at work

Article 16 of Part V provides that:

[1293] See Bruhn M & Mckenzie D "Entry regulation and the formalisation of microenterprises in developing countries" (2014) *The World Bank Research Observer* Available at https://openknowledge.worldbank.org/bitstream/handle/10986/24188/wbro_29_2_186.pdf?sequence=1 accessed on the 1st of February, 2017 at 194: this means formal firms may be partly informal in terms of their compliance to labour regulations. For example, they can pay the minimum wage and refuse to pay for other benefits such as health insurance.
[1294] Ibid.
[1295] The Labour Inspection Convention, 1947 (No. 81) is one of the recalled international labour standards.
[1296] Op cit note 1293 at 195: reduced formal wages may occur as a result of tax deductions for example. However, enforcement of benefits such as comprehensive health insurance could potentially increase the attractiveness of the formal sector: see Almeida R & Carneiro P "Enforcement of labour regulation and informality" (2012) 4(3) *American Economic Journal: Applied Economics* 64-89: Kumler T *et al* "Enlisting employees in improving payroll-tax compliance: Evidence from Mexico" (2013) *No. w19385* National Bureau of Economic Research: see discussion in heading 5.2.3 and 7.3.2 more details.
[1297] Part III- Legal and policy frameworks: Part V-Rights and social protection: Part VII-Freedom of association, social dialogue and role of employers' and workers' organisations.

'[m]embers should take measures to achieve decent work and to respect, promote and realise the fundamental principles and rights at work for those in the informal economy, namely:

a. Freedom of association and the effective recognition of the right to collective bargaining;
b. The elimination of all forms of forced or compulsory labour;
c. The effective abolition of child labour; and
d. The elimination of discrimination in respect to employment and occupation'.[1298]

The above constitute the fundamental principles and rights at work. A brief overview of the import of subsections (b) and (c) is provided in the text above, and the significance of article 16 (a) is considered later in the chapter.[1299]

With regard to article 16(d) the term 'employment' is not defined in the ILO's glossary of statistical terms. However, what it means to be employed is defined; and the *employed* 'comprise all persons above a specific age during a specified brief period' who are in paid employment or self-employment.[1300] In other words, a person who during a brief period performs work for cash or in kind; has a formal attachment to work; performs work for profit or family gain in cash or kind and/or, is with an enterprise is said to be in employment.[1301] On the other hand, occupation refers 'to the kind of work performed in a job'.[1302] In turn, a *job* is defined as 'a set of tasks and duties performed, or meant to be performed, by one person, including for an employer or in self-employment'.[1303] A general term to describe employment and occupation is work. Work while broader than the concept of employment, is often used as a synonym to employment and occupation, for example in article 6 (1) of the ICESCR.[1304] Therefore, it can be argued that that article 16 extends rights to all forms of work including informal work.

Work in a general or broader sense, is 'simply productive activity requiring effort'.[1305] This means doing something useful or good for someone or self can be called work.[1306] A family that

[1298] Op cit note 14 at article 16.
[1299] See heading 7.3.3.
[1300] Paragraph 9 *Resolution concerning statistics of the economically active population, employment, unemployment and underemployment* (October 1982) adopted by the Thirteenth International Conference of Labour Statisticians Available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087481.pdf accessed on the 16th of August, 2017.
[1301] "Glossary of Statistical terms" Employment-ILO available at https://stats.oecd.org/glossary/detail.asp?ID=778 accessed on the 16th August, 2017.
[1302] *International Standard Classification of Occupations: ISCO-08* (2012) International Labour Office, Geneva at 11.
[1303] Ibid
[1304] This article which has been discussed previously- see heading 5.4.1.4- includes "the right of everyone to the opportunity to gain his living by work which he freely chooses" as a part of the right to work: Article 6 of ICESCR.
[1305] Nickel WJ "Giving up on the human right to work" (2015) in Mantouvalous Virginia (ed) *The right to work: Legal and philosophical perspectives* Hart Publishing at 138.
[1306] Ibid.

has spent the day cooking, even if not for profit or income generating purposes, can correctly say they have worked all day. Hence, humans generally engage daily in this form of work as social beings.[1307] In the narrow sense, work is 'some organised form of production (as in farms, *public spaces*, factories and offices) and oriented towards generating income and making a living'.[1308] Article 16 (d) addresses work in this narrow sense. For street vendors (and other workers in the informal economy), informal economic activities are forms of work and sources of income, and such workers should not be be discriminated against.[1309]

The effective enforcement of rights at work involues the right to work which has been suggested to have three basic components.[1310] The first is the freedom component which implies the freedom of occupation or work without any interference from the government.[1311] The other side of this component is the guarantee against forced labour e.g. slavery.[1312] The second component reiterates the duty of the State to provide work for citizens.[1313] The third component is strongly tied to dignified work.[1314] Within this component lie the general fair conditions of work like right against discrimination, right to join a trade union among others. Some of these general elements of decent work as pathways to the formalisation process are examined subsequently.

Decent work is 'at the intersection of social and economic rights and of civil liberties…'.[1315] For example, it is through the fulfilment of decent work that the basic necessities of life like food and shelter which are also ESC rights can be satisfied.[1316] However, this is seldom

[1307] Ibid.
[1308] Ibid.
[1309] ILO's Discrimination (Employment and Occupation) Convention, 1958 (No 111) defines discrimination as "any distinction, exclusion or preference on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (among other characteristics) which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation. As discussed in previous chapters, street trading is criminalized in Lagos and this is discrimination in respect of employment/occupation: "The regulatory framework and the informal economy-international labour standards" ILO Available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_210446.pdf accessed on the 3rd of March, 2019.
[1310] Mundlak G "The right to work: Linking human rights and employment policy" (2007) 146(3/4) *International Labour Review* at 192
[1311] Ibid at 193.
[1312] At the international level, this is guaranteed under the ILO's Forced Labour Convention of 1930 (No. 29)
[1313] However, in many jurisdictions this has been held to be impractical because it is more or less an aspiration despite the obligations it creates on the State. In this thesis, this component is considered in the sense of states providing the right environment/opportunities/access for work. This in the case of Nigeria means the enforceability of the right to work and the recognition of informal economic activities such as street trading as a legal form of work: Op cit note 1290 at 193.
[1314] Op cit note 1310 at 193.
[1315] Collins H "Is there a human right to work?" (2015) in Mantouvalous Virginia (ed) *The right to work: Legal and philosophical perspectives* Hart Publishing at 18.
[1316] Ibid.

recognised in policy discourse addressing work rights. Furthermore, discourses on respect for human dignity and the right to life do not adequately consider the value of decent work to these civil rights.[1317] By recognising the intersectionality between the right to human dignity and the right to work, the CESCR opines that 'the right to work is essential for realising other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity'.[1318] It can therefore be argued that the repression of the activities of street vendors in Lagos, discussed in chapter four, violates the right to work and live in dignity. Also, if street vendors cannot trade they may resort to begging and this undermines their dignity. However, for informal workers like street vendors, this form of work has the ability to enhance self-respect and dignity as vendors provide goods and services which other citizens value.[1319]

The denial of work rights manifest through structural, economic and legal prohibition.[1320] In many cases, legal prohibition forms the basis for structural and economic prohibitions. As discussed in chapters four and five, the legal framework – the Nigerian Constitution and the STMIL- does not guarantee the right to work: and street vending is criminalised.

In terms of the elimination of discrimination in respect to work as a means of transition to formalisation of the informal economy, the annexe to R204 mentions the ICESCR as being relevant to this formalisation process. In this regard, article 6 of the ICESCR is relevant to article 16 of the R204. In discussing how the right to work can be violated, the CESCR singles out the 'failure to adopt or implement a national employment policy designed to ensure the right to work for everyone'.[1321] A national employment policy (NEP) has been defined as

> '[a] vision and a practical plan for achieving a country's employment goals,…it is not just a job creation programme. It takes into account a whole range of social and economic issues. It affects many areas of government—not just the areas in charge of labour and employment— and every part of the economy. It brings together various measures, programmes and institutions that influence the demand and supply of labour and the functioning of labour markets'.[1322]

[1317] Ibid.
[1318] Op cit note 902.
[1319] See chapter four of this thesis.
[1320] Bhattacharjee S "situating the right to work in international human rights law: An agenda for the protection of refugees and asylum-seekers" (2013) 6(41) *NUJS Law Review* at 43.
[1321] Op cit note 902 at para. 36.
[1322] "National employment policies: A guide for workers' organisation" (2015) International Labour Office, Geneva at 1.

A NEP should therefore influence the regulatory framework for work in a country. This is done within the socio-economic context of the country and promoted in line with international labour standards.[1323]

Nigeria has had only one NEP since her independence.[1324] This policy document recognised the importance of the informal economy and promises were made to accelerate its growth as a strategy for the achievement of decent work.[1325] Also, informal economic activities were acknowledged as being major sources of employment for many women.[1326] However, for political reasons the government has not implemented this policy.[1327] Having and implementing a NEP which reflects, and considers the interests of the high rate of informality in the country would play a fundamental role in changing the perception of work and the formulation of a regulatory framework committed to the elimination of discrimination in respect of work. Hence a NEP, as used in the ICESCR, may constitute a 'measure' to achieve decent work as contemplated in article 16 of R204.

7.3.2 The provision of social protection

As stated in chapters 2 to 4, the expansion and characteristics of the informal economy implies increased income insecurity and vulnerabilities for many workers.[1328] Social protection is generally recognised as a means of addressing these adverse effects of informality,[1329] and in this regard Article 18 to 21 of R204 provide for social protection as a means of formalisation of the informal economy.[1330] Article 18 provides that

> 'through the transition to the formal economy, members should progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that takes into account the needs of workers and

[1323] Ibid.
[1324] Evoh CJ & Agu UO "The National Employment Policy (NEP) of Nigeria: A review" (2016) *Draft Copy* available at http://www.nelexnigeria.com/sites/default/files/Draft%20NEP accessed on the 18th of August, 2017.
[1325] *National Employment Policy: Objectives, measures, strategies and institutional framework to meet the challenges of rising unemployment and underemployment* (1998) Federal Ministry of Employment, Labour and Productivity, Nigeria.
[1326] Ibid.
[1327] Ibid.
[1328] Op cit note 183 at 128.
[1329] Ghai D "Social security priorities and patterns: A global perspective" (2002) *DP/141/2002* International Institute for Labour Studies.
[1330] Op cit note 14.

considers relevant factors, including but not limited to the cost of living and the general level of wages in their country'.

Furthermore, articles 19 and 20 provide solutions to the challenge of providing social protection for workers in developing countries such as Nigeria. Article 19 states that 'in building and maintaining national social protection floors within their social security system and facilitating the transition to the formal economy, members should pay particular attention to the needs and circumstances of those in the informal economy and their families'. Likewise, article 20 stipulates that 'through the transition to the formal economy, members should progressively extend the coverage of social insurance to those in the informal economy and, if necessary, adapt administrative procedures, benefits and contributions, taking into account their contributory capacity'. These articles were phrased with consideration for the heterogeneity of the informal economy although specific forms of social protection like maternity protection and income security are mentioned. Broadly, the principles determining the scope and implementation of social protection are considered next.

7.3.2.1 The scope and implementation of social protection

Social protection is broadly defined as 'entitlement to benefits that society provides to individuals and household - through public and collective measures - to protect against low or declining living standards arising out of a number of basic risks and needs'.[1331] This definition stemmed from the ILO's need for a broader concept of social protection which would include informal workers.[1332] In other words, the provision of social protection should protect against the different manifestations of poverty within the informal economy.[1333] Consequently an instrument to facilitate the implementation of this broadened idea of social protection was adopted in 2012.

[1331] van Ginnekan W "The extension of social protection-ILO's aim for the years to come" (2000) in T Conway *et al Social Protection: New directions of donor agencies*. Available at https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2233.pdf accessed on the 31st of May, 2017 at 36: Wouter van Ginnekan "Extending social security: Policies for developing countries" (2003) *ESS Paper No.* 13 Social Security Policy and Development Branch, International Labour Office at 4-5.

[1332] Ibid at 35: This was because the concept of social protection in early ILO standards were limiting. At this time, social protection standards were provided in ILO instruments like the Medical Care Recommendation, 1944; Income Security Recommendation 1944 and the Social Security (Minimum Standards) Convention of 1952. In these instruments, health care, unemployment, workplace injury, family, maternity, old age, invalidity and survivor's' benefits were addressed.

[1333] This definition corresponds with article 18 of R204 in terms of the expected output of social protection as a pathway to formalisation.

The *Social Protection Floors Recommendation, 2012 (Recommendation 202)*, adopted by the ILC in 2012, is mentioned in R204 as one of the relevant ILO instruments in the formalization process of the informal economy. Articles 18-20 of R204 are summaries of the provisions in the *Social Protection Floors Recommendation*, which asserts that social protection is a human right.[1334] This affirms the argument of the existence of a symbiotic relationship between social protection and human rights conventions.[1335] In this regard, there are similar provisions of social protection as a right in other international human rights instruments like the UDHR and ICESCR.[1336] The affirmation of this right in Recommendation 202 stemmed from the need to guide countries towards the provision of social protection for the most vulnerable in society including informal workers.[1337]

Article 1 of Recommendation 202 provides for social protection floors and basic social security guarantees which should be implemented at the national level to facilitate the extension of social protection to all informal workers.[1338] This is similar to art 19 of R204. These national social protection floors should include at the minimum:

- Access to essential health care, including maternity care. The criteria for this being availability, accessibility, acceptability and quality;[1339]
- Income security for children which should, at the minimum, provide access to nutrition, education, care and other necessary goods and services;[1340]
- Basic income security for working people who are unable to earn sufficient income; and,[1341]
- Basic income for older people.[1342]

[1334] Preamble *The social protection floors Recommendation, 2012 (No. 202)*: Beth Goldblatt *Developing the right to social security- A gender perspective* (2016) Routledge.
[1335] van Ginnekan W "Civil society and the social protection floor" (2013) 66(3-4) *International Social Security Review* at 74: "Social protection floors and economic and social rights" available at http://www.ohchr.org/Documents/Issues/SocialSecurity/ReportSocialProtectionFloors.pdf accessed on the 6th of April, 2018 at 3.
[1336] Social protection (social security) as a right is provided in art 22 & 25 of the UDHR and art 9 -11 of the ICESCR.
[1337] Kulke U & Guilbault ES "The social protection floors Recommendation, 2012 (No. 202): Completing the standards to close the coverage gap" (2013) 66(3-4) *International Social Security Review* at 88: Art 3(e) *The social protection floors Recommendation, 2012*.
[1338] *Social Security for all: The ILO social protection floors recommendation* (2012) Social Security for All Briefing Note International Labour Office Geneva at 1.
[1339] Article 5 (a) R202.
[1340] Article 5(b) R202.
[1341] Article 5 (c) R202.
[1342] Article 5 (d) R202.

Establishing the social protection floors which are the minimum obligation expected of member states has the potential to alleviate the vulnerability and poverty experienced by workers in the informal economy. Also, these national social protection floors have gender dimensions. The role of women as actors in the informal economy is relevant for the provision of social protection.[1343] In this regard, Article 21 of R204 provides that 'members should encourage the provision of and access to affordable quality childcare and other care services in order to promote gender equality in entrepreneurship and employment opportunities and to enable the transition to the formal economy'.[1344] The provision of this type of social protection for women in the informal economy is linked with their gender role of child care and other care responsibilities in the household. As discussed in chapter 4, the gender-specific constraints faced by female street traders limits the kinds of goods and services they can provide, which has adverse effects on their earnings. Therefore, social protection measures must be used to promote gender equality and facilitate the formalisation of work for women.

In terms of how these national social protection floors can be implemented, Recommendation 202 and R204 differ in their approach. Recommendation 202 adopts a more directive approach with respect to the obligations of State parties.[1345] As discussed in 5.2.3 and chapter two, Nigeria has no overaching social protection scheme, socio-economic rights are unenforceable and governance is a major challenge in the country. The obligation to implement the recommended approaches to social protection as provided in R 202 lies on the State and can only be effective within the Nigerian context if the above factors are addressed. Therefore, it is imperative to consider alternative ways national social protection floors can be implemented in Nigeria. Recommendation 204 recommends that states progressively (gradually) extend social protection and if necessary adapt measures that take into account the contributory capacity of informal workers.[1346] This approach is similar to art 2 (1) of the ICESCR. Given the socio-

[1343] See Lund F "Social protection for informal women workers in developing countries" (2013) 7(2) *Indian Journal of Human Development* 360-3: Alfers L *et al* "Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches" (2017) 70(4) *International Social Security Review* 67-85: Ulrichs M "Informality, women and social protection: Identifying barriers to provide effective coverage" (2016) *Working Paper 435* ODI.
[1344] Op cit note 14.
[1345] It recommends that states use different approaches to implement social protection benefits and schemes. This could include universal benefits schemes, social insurance schemes, social assistance schemes, negative income tax schems, public employment schemes and employment support schemes: Art 8- 10 *The social protection floors Recommendation, 2012*.
[1346] Op cit note 14 at article 20.

economic context of Nigeria, the latter approach to the provision of social protection for informal workers is more practical.

7.3.2.2 Implementation of social protection in the Nigerian informal economy

Generally, social protection for workers is a challenge that has been faced by developing countries since the emergence of the market economy and the industrial revolution in the 19th century.[1347] Also, in recent years, this has become a concern for developing countries including Nigeria particularly with the rise in globalisation, the global economic crisis and high levels of poverty.[1348] However, in spite of the intersectionality between social protection, informality and poverty, many state actors in developing countries *claim* to lack the capacity to provide adequate social protection for all workers.[1349] These claims have however, been neutralised in many cost analysis studies on the implementation of social protection.[1350] This thesis therefore argues that a sequential (gradual) approach to social protection implementation in line with art 19 of R204 can be applied within the Nigerian context as a pathway to formalisation.

Article 8 of R204 states that to design social protection policies, the specific context of the country must be considered. Currently, the structure of accessing social protection in Nigeria is through a contributory scheme.[1351] In terms of this structure, government/private employers and the employee (an individual) jointly contribute a specified percentage of salary. The percentage is deducted directly from the employee's wage while the employer contributes a percentage higher into the social fund of the employee. This is saved into a separate account which becomes accessible to the employee in the event of termination of or retirement from employment. Informal

[1347] Op cite note 571 at 1.
[1348] Ibid.
[1349] Chitonge H "Social protection challenges in Sub-Saharan Africa: Rethinking regimes and commitments" (2012) 71(3) *African Studies* 323-45.
[1350] *Can low-income countries afford basic social security* (2008) Social security policy briefings Paper 3 International Labour Office- Social Security Department Geneva at 4.
[1351] Nigeria has no overarching realistic social protection policies. Over the years, government with the help of Non-Government Organisations has designed different social protection policies aimed at providing citizens with social assistance in areas of health insurance, education (free education at the primary level for Nigerian children), job creation and social security. However, the impact of these policies have been at best minimal because of low coverage/ reach and inappropriateness of such programmes to the Nigerian context. Currently, Nigeria has two major social programmes. These are the National Health Insurance Scheme (NHIS) and the National Pension Scheme (NPS). The objective of the NHIS is to provide affordable health for Nigerians while NPS is a pension scheme. However, these policies are contributory between the government/private employers and the individual. As a result, many informal work arrangements are excluded: National Health Insurance Scheme Act N42, LFN 2004: Preamble and section 3 of Pension Reform Act 2014:Umukoro N "Poverty and Social Protection" (2013) 29(3) *Journal of Developing Societies* 305-322: Op cit note 277.

workers are generally excluded because they operate outside traditional employment relationships. This could be addressed, for example, by a joint contribution of the government and the informal worker as a means to extend social protection to the informal economy. Alternatively, the use of cooperatives can provide the structure for a contributory social protection scheme with informal workers as participants.

A cooperative has been defined as 'an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise'.[1352] Furthermore, 'cooperatives empower people by enabling even the poorest segments of the population to participate in economic progress; they create job opportunities for those who have skills but little or no capital; and they provide protection by organising mutual help in communities'.[1353] In other words, cooperatives can be used as tools for economic development.

It is generally acknowledged that cooperatives have important roles in the transition process of the informal economy to formalisation.[1354] Through cooperatives, workers are able to achieve solidarity and have a voice, which strengthens their economic activities.[1355] Furthermore, the framework of cooperatives is one of the means through which informal workers can be legally recognised.[1356] For example, the registration of a cooperative makes it a legal entity with rights and duties. In addition, a cooperative is a means through which informal workers can access credit to expand their business. Most importantly, cooperatives provide a vehicle for formalisation and the achievement of decent work for informal workers.[1357] In using cooperatives as a means of extending social protection to informal workers, the government could make use of existing and

[1352] "What is a co-operative?" Available at http://ica.coop/en/what-co-operative accessed on the 17th of August, 2017.
[1353] This was part of the speech given by Juan Somavia ILO Director-General in his address at the 2002 International Labour Conference and was cited in Stirling Smith "Promoting cooperatives: an information guide to ILO Recommendation No.193" (2014) International Labour Office, Geneva at 10.
[1354] Article 9 *Promotion of Cooperatives Recommendation, 2002 (No. 193)*: "Annex: Instruments of the ILO and the UN relevant to facilitating the transition from the informal to the formal economy" *Recommendation concerning the Transition from the Informal to the Formal Economy*.
[1355] Mshiu S "The cooperatives enterprise as a practical option for the formalisation of informal economy" available at http://www.businessenvironment.org/dyn/be/docs/200/2.2.2_Cooperative_Practical_Option_Informal_Econ.pdf accessed on the 13th of May, 2017 at 4.
[1356] Ibid.
[1357] "Cooperatives for informal workers' rights and sustainable livelihoods!" (2012) WIEGO Available at http://www.wiego.org/sites/default/files/resources/files/fact_sheet_cooperative_wiego.pdf accessed on the 17th of August, 2017.

functional informal cooperatives such as esusu cooperatives.[1358] This cooperative would have three main features: it will be based on pre-payment of a token to access social protection benefits. It will be controlled by the community and this is similar to community- based health insurance scheme. Control by the community is important to ensure continuity . Finally, just like esusu, this cooperative will rely on voluntary membership.

Cooperatives in Nigeria are regulated by the Nigerian Co-operative Societies Act, 2004, which was initially promulgated as a military law. The law regulates cooperative activities across the country and provides for the membership, legal status, registration and management of cooperatives.[1359] However, this law is at variance with the international standards on cooperatives because it violates the basic characteristics of a cooperative.[1360] Nonetheless, the use of cooperatives remains a tool for formalisation and an important medium through which social protection can be extended to informal workers.[1361]

[1358] An example of this is the Esusu cooperative scheme. Esusu is an informal organisation with elements which is similar to a credit union, insurance scheme and a savings club. The use of Esusu cooperative is commonplace among Nigerian informal workers like street vendors: Curry MC *Making the Gods in New York: The Yoruba religion in the African American community* (1997) Garland Publishing, Inc. at 183: Bascom WR "The Esusu: A credit institution of the Yoruba" (1952) 82(1) *The Journal of the Royal Anthropological Institute of Great Britain and Ireland* at 1: Osiki A "Esusu cooperative as a means of extending social protection to the Nigerian informal economy" (2017) Paper presented at the 5th Conference of the Regulating for Decent Work Network, International Labour Office, Geneva: esusu cooperatives are similar to community-based health insurance schemes and has be used successfully in Rwanda to provide health insurance for the informal economy.: Chemouni B "The political path to universal health coverage: Power, ideas and community-based health insurance in Rwanda" (2018) 106 *World Development* 87-98.

[1359] Section 1 stated the federal and state government respectively appoints the director in charge of cooperatives at the federal and state level. The director determines the registration of societies: the society will be registered as a limited liability society- section 2: there are three types of cooperative society which is determined by the number of members. Each of these members must be at least 16years old and reside within the area where the cooperative is domiciled. Primary society comprises of at least 10 members; industrial society must consist of at least 6 members and secondary society must consist of at least five registered cooperative society: section 2 & 22 Nigerian Co-operative Societies Act.

[1360] Key characteristics of a cooperative include independence (from government interventions), community-based, voluntary and participatory: Yebisi ET "The Nigerian Co-operative Societies Act, 2004: A bridge still far" (2014) 2(2) *Asian Journal of Humanities and Social Sciences (AJHSS)* at 38-49.

[1361] In many parts of the world, cooperatives have been used as the primary means to gain legal recognition by informal workers like street vendors and waste pickers. Example of such cooperative organisations include SEWA in India, Primary Cooperatives of waste pickers (*recicladores*) in Latin America and StreetNet International which is a global alliance of street vendors.

7.3.3 Promoting social dialogue

The first step out of poverty and transitioning to the formal economy is organisation.[1362] It is widely acknowledged that social dialogue is the means through which the interests of workers can be articulated. However, for street vendors and other informal workers in Nigeria the forum (political/legal environment and heterogeneity of the informal economy) for participating in social dialogue is fettered with various challenges.[1363] Therefore, to facilitate the formalisation process, it is important that creative ways and approaches be considered to promote social dialogue. In doing this, the main strategic issues of informal workers which are economic right and representation to claim their socio-legal rights will be achieved.[1364]

Article 31 of R204 states;

> 'Members should ensure that those in the informal economy enjoy freedom of association and the right to collective bargaining, including the right to establish and, subject to the rules of the organisation concerned, to join organisations, federations and confederations of their own choosing'.[1365]

Furthermore, Articles 32 and 33 of R204 confirm the need for established workers (formal) associations to extend membership to informal workers and for policies designed to promote the right environment for social dialogue to be formulated. As stated in chapter one, the regulatory framework of Nigeria falls short in this regard.

7.3.3.1 The organisation of workers in Nigeria

There is no policy or regulatory framework to facilitate the organisation of informal workers. This is reflected in the non-recognition of informal workers by the umbrella workers' union in Nigeria (the Nigerian Labour Congress);[1366] and the lack of alternative structures in place for the organisation of informal workers. This is a deficit in the Nigerian regulatory framework as the right to social dialogue as stated in articles 31 to 33 of R204 is a pathway to formalisation.

[1362] Bernardo T "Building organisations" available at http://www.inclusivecities.org/organizing/building-organizations/ accessed on the 18th of August, 2017

[1363] Routh S "Informal workers' aggregation and law" (2016) 17(1) *Theoretical Inquiries in Law*.

[1364] Socio-legal rights refers to right to work and its rights at work components like access to social protection, quality work, safe workspaces etc. specifically, for street vendors, this includes participation in urban governance.

[1365] Op cit note 14.

[1366] "Membership" Nigerian Labour Congress available at http://www.nlcng.org/membership/ accessed on the 20th of March 2018: See http://www.nlcng.org for details of the organization: Nwoko KC "Trade unionism and governance in Nigeria: A paradigm shift from labour activism to political opposition" (2009) 2(2) *Information, Society and Justice* 139-52.

Recognising that the informal economy presents challenges to the typical ways for organising workers in formal employment, innovative approaches to the organising of informal workers should be explored too. One such approach is the use of Members-Based Organisations (MBOs) to organise informal workers.

7.3.3.2 Members-Based Organisations (MBOs)

The term Members-Based Organisation (MBO) is 'an organisation where the members are the users of the services of the organisation, the managers, and its owners'.[1367] Similarly, it has been defined as 'those in which the members elect their leaders and which operate on democratic principles that hold the elected officers accountable to the general membership'.[1368] In simple words, MBOs are organisations which are of the people, for the people and by the people. This is similar to the popular definition of a democracy. Furthermore, MBOs are inclusive and manifest through various organisations found in the informal economy, including trade unions, cooperatives, voluntary associations and self-help groups.[1369]

Contextually, for street vendors, MBOs would be called Members Based Organisation for Street vendors (MBOSV). This means an organisation in which the vast majority are street vendors although some non-street vendors may be members.[1370] These non-street vendor members will provide technical and managerial support for this organisation. An example of where such an organisation has operated is in Warwick junction, Durban which is discussed in chapter six. Within the Nigerian context, considering that street vendors fall outside the scope of the relevant laws that regulate workers unions, it might be more appropriate for informal workers organisation to start up as voluntary rather than as a structured union or cooperatives. This is because of the potential difficulty in meeting the requirements to register a formal union. Also, MBOSVs as long as they are democratic, have the potential to have considerable power and represent the interests of street vendors.[1371] Such interests include property rights in public spaces, protection against harassment

[1367] Bonner C & Spooner D (eds) *The only school we have: Learning from organising experiences across the informal economy* (2012) WIEGO at 12.
[1368] Chen M *et al* "Introduction" (2006) in Chen Martha *et al* (eds) *Membership based organisations of the poor: concepts, experience and policy* Routledge at 3.
[1369] Op cit note 1367 at 12.
[1370] Having non street vendors as members is important. Particularly with respect to engaging with state actors for articulation of policies to regulate the street vending activities. Examples of this is seen in organisations like SEWA where the co-founder is a labour lawyer: Chen M *et al* "Urban informal workers: representative voice & economic rights" (2013) *World Development Report* at 8
[1371] Informal organisations such as SEWU and SEWA are MBOs.

from police, access to credit and to social protection and, provisions of facilities for storage and shelter, among others.

The key principles for an organisation to be recognised as MBOSVs are:[1372]

- MBOSVs must be democratically controlled by the workers who are also the members. Each member should have a voice and a vote to determine the organisation's policies, strategies and leadership. The fact that the organisation will be informal is of no consequence.
- MBOSVs must be transparent to their members. This means that all the members must understand how the organisation operates. This includes its constitution, agenda, accounts, process of electing the leadership and every other decision making processes. This is important because the organisation will be run with resources from her members including through the payment of membership dues. This will enhance accountability and act as a check against the excesses of the leaders.
- MBOSVs must promote solidarity and unity. Currently, individual street vendors lack the power to influence state actors to amend or nullify the law that has criminalised their source of livelihood. However, through uniting into a collective organisation, their power to challenge wrong policies of state actors is increased. Being well organised will likely lead to their recognition by state actors and initiate the process of negotiation.
- MBOSVs must be independent. MBOSVs must be free from all eternal interference including political and religious control. The fundamental objective of this organisation is to serve the interests of street vendors with the aim of achieving decent work for these vendors. Therefore, negotiation or relationships forged must be within the purview of the interests of street vendors.

As previously stated MBOSVs can manifest through cooperatives, self-help groups and community associations. In organising around their identity as workers, focus should be on street vendors as major contributors to economic growth.[1373] A policy framework should be articulated to draw attention to the positive contributions of such organisations to the economy as enumerated in chapter four of this thesis.

[1372] Op cit note 1367 at 14.

[1373] Brown A "Claiming the streets: Reframing property rights for the urban informal economy" (2017) in Brown Alison(ed) *Rebel streets and the informal economy: Street trade and the law* Routledge.

7.4 Conclusion

Article 8 of Recommendation 204 states that policies aimed at facilitating transition to the formal economy be informed by the national context, and the aim of this chapter was to explore how Recommendation 204 could inform policy and regulation in the context of the Nigerian informal economy. The decent work pillars were broadly considered as pathways to formalisation and potential ways of implementation were highlighted within the socio-political context of Nigeria. However, these pathways have procedural or resource implications that need to be considered without which policy and regulation would be ineffective. Chapter eight highlights some of these implications.

CHAPTER EIGHT: POLICY IMPLICATIONS AND CONCLUDING REMARKS

> 'Any country will have problems, social, economic and political. If the problems are not quickly tackled, they result in crisis which if not managed properly leads to commotion or even death. Some wonder if a nation can die, I believe so but not necessarily in the sense of physical death of a human being, but in the sense of the failure of the nation to provide opportunities for its citizens and to protect the citizens'.[1374]

8.1 Introduction

The debates have shifted over time from whether the 'informal economy' can survive liberalisation, on the assumption that informal activities would spontaneously be absorbed into the mainstream economy, to how informality can be formalised to promote decent work for all. With reference to these debates, this thesis explored the development, characteristics and nature of the informal economy at a global level and within the specific context of Nigeria. In considering the Nigerian context, street trading was used as a lens to examine the dynamics and conditions of work in the informal economy. The analysis revealed that street vendors like many other informal workers lacked property rights in public spaces and other fundamental rights which make up the pillars of decent work. This has contributed to the high level of poverty and decent work deficits in the Nigerian informal economy. Consequently, chapter seven discussed pathways through which R204 can be implemented in Nigeria to reduce poverty and promote decent work for all informal workers. However, the implementation of these pathways has policy implications. This chapter reflects briefly on the broader policy implications and selected aspects of effective governance that are necessary for the implementation of an appropriate legal framework to regulate the Nigerian informal economy.

This chapter has two main parts. The first part discusses the policy implications and identifies aspects of governance that are important for the successful implementation of processes intended to formalise the informal economy. The discussion is by no means exhaustive of the potential policy implications of implementing R204 in Nigeria. Rather, it is hoped that the discussion serves as a trigger for more extensive research. The second part of the chapter concludes the thesis.

[1374] d'Orville H (ed) *Beyond freedom- letters to Olusegun Obasanjo* (1996) Africa Leadership Foundation, New York.

8.2 Policy implications: effective governance as a precursor to formalisation

The implementation of R204 in the Nigerian informal economy will change the working conditions of informal workers by providing a platform and a legislative springboard upon which to found and build their work rights. In addition to the components of decent work for street vendors discussed in chapters' five to seven; R204 further provides a framework for incentives, compliance and enforcement that will facilitate the transition process of the informal to the formal economy.

Article 23 states 'members should reduce, where appropriate, the barriers to the transition to the formal economy and take measures to promote anti-corruption efforts and good governance'. As mentioned in chapter three, the ease of entry and exit is one of the characteristics of the Nigerian informal economy. In other words, it is easier to by-pass government requirements by conducting business informally. This can be linked, among other things, to the lack of access to credit facilities to do business and the culture of corruption which make bureaucratic processes tedious. Consequently, it is important that barriers to the formal economy be reduced particularly at the entry or start-up point of enterprises.

Similarly, article 24 states the 'members should provide incentives for, and promote the advantages of, effective transition to the formal economy, including improved access to business services finance, infrastructure, markets, technology, education and skills programmes, and property rights'. Examples of incentives to promote transition to the formal economy include tax cuts or waivers and reduced compliance requirement to access credit. The recent credit registry introduced by the Nigerian government which is mentioned in chapter four is a step in this transition process.

Transitioning to formality will require effective governance, and in this regard particular attention should be paid to the following elements, among others, both in the design and the implementation of a framework for formalising the informal economy:

8.2.1 Data collection and monitoring

As highlighted in chapter four, a major challenge within the street vending sector is the lack of accurate official statistics of vendors. Varied reasons were noted for this. Nonetheless, considering the extent and contribution of the street vending sector, detailed statistics on the numbers and characteristics of street vendors are important for a number of reasons.

Firstly, to inform the formulation of effective policies to support the transition of the rights of street vendors to formality. In this regard, Article 36 of R204 affirms that State parties must on a regular basis, where possible and as appropriate, collect, analyse and disseminate statistics disaggregated by sex, age, workplace and informal sectors. According to this provision, statistics would help states monitor and evaluate the transition to formalisation process.[1375]

Secondly, statistics can be an advocacy tool for street vendors. The term *advocacy* in this sense means 'to speak in favour of, or to promote through actions, something on behalf of another'.[1376] In chapter seven, MBOSV are suggested as a means through which street vendors can be organised. Although an organisation for street vendors, non-street vendors are members too and provide managerial and technical support to street vendors. One of the functions of such non-street vendor members is to provide advocacy services. Accurate statistics on the number of street vendors can be used by these technical partner-members to negotiate with state actors on the formulation and implementation of policies which affect these workers.

Finally, statistics can be used to analyse the linkages between policy and informal employment. Article 7 provides that states need to design coherent and integrated policies to facilitate the transition process; and accurate statistics play an important role in assessing these policy interventions. Furthermore, policy is required to serve diverse economic interests in 'common' resources such as public spaces;[1377] and accurate statistics are required to evaluate the extent of their impact on the informal economy.

8.2.2 Labour inspection

Labour inspection is 'an essential part of the labour administrative system exercising the fundamental function of labour law enforcement and effective compliance. It ensures fairness in the workplace and helps promote economic development'.[1378] Labour inspection is the means through which labour legislation is enforced. Without inspection, labour law is an exercise in ethics

[1375] Op cit note 14 at article 36 (b).
[1376] Op cit note 1367 at 112.
[1377] Hillbom E "The right to water: An inquiry into legal empowerment and property rights in Tanzania" (2011) in Banik Dan (ed) *The legal empowerment agenda: Poverty, labour and the informal economy in Africa* at 195.
[1378] *Labour Administration and Labour* (2011) Report V International Labour conference, 100th Session at 59.

and not a binding social discipline.[1379] Consequently, inspection plays a major role both in the formalisation process and thereafter.

Currently in Nigeria, labour inspection is restricted to the formal economy. However, it is important that labour inspection be extended to the informal economy, which is confirmed in Article 10 of R204 that states the need for policy frameworks for formalisation to include labour inspection. This is further affirmed by article 27, which emphasises the need to have an adequate and appropriate labour inspection system that extends to informal workplaces. This is required if decent work for informal workers is to be realised. In addition, labour inspection could potentially be a source of employment in Nigeria. This is however, dependent on good governance.

8.2.3 Political commitment and good governance more generally

The socio-economic environment and the high rate of informality in Nigerian workspaces have serious implications for the implementation of the decent work agenda. Considering the high rate of working poverty, the implementation of the various pathways to formalisation can only be effective with good governance. However, as stated in chapter two, Nigeria is a poorly governed State. Poor governance is a potential impediment to the formalisation process.

Likewise, political commitment is an important requirement for the formalisation pathways to be implemented. However, commitment by political leaders to the welfare of citizens varies at the different levels of government. This is exacerbated by the Fundamental Objectives and Directive Principles of State Policy analysed in chapter five that inhibits citizens from holding state actors accountable for their socio-economic obligations including the enforcement of socio-economic rights. In addition, state actors tend to pay lip-service to policies which promote the welfare of citizens.[1380] However, the pathways to formalisation suggested in chapter seven cannot be achieved without good governance and commitment on the part of political leaders. Therefore the government needs to show commitment to informal workers such as street vendors through adherence to the obligations imposed by the international human rights framework.[1381] For street

[1379] Von Richthofen W *Labour Inspection: A guide to the profession* (2002) International Labour Office, Geneva.
[1380] Emecheta KOO "Power to the people: An inverse role in Nigeria's politics and governance" (2016) 11(2) *International Journal of Area Studies* at 97.
[1381] "Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development" (2006) *Ministerial Declaration* United Nations Economic and Social Council.

vendors, this means non-interference with work rights;[1382] protection of their economic activities through access to public spaces; provision of social protection and the promotion of social dialogue.[1383] In addition, the legislative arm of government must enact laws to give effect to socio-economic rights.[1384]

8.2.4 Allocation of resources

This is important particularly in relation to the provision of social protection schemes for informal workers. Cooperatives were suggested in chapter seven as a means of extending social protection to the informal economy. However, this can only be achieved through the adequate allocation of resources by the government. Currently, Nigeria's expenditure on social protection is less than 0.01 per cent of her GDP.[1385] This is low in comparison with acceptable international standards.[1386] In addition, Nigeria lacks a cost analysis plan with regard to implementing social protection schemes in the country. This apathetic attitude of the ruling class to a potential poverty alleviation tool can be linked to their lack of political will.[1387] Nonetheless, the ILO has released a cost analysis report which demonstrates that developing countries have the capacity to provide basic social protection for all citizens without external grants.[1388] However, providing such protection depends on the political will of the government.

8.3 Concluding remarks

This thesis has analysed the regulatory framework of the informal economy in Nigeria. The street vending sector provided a lens through which decent work deficits in the informal economy were

[1382] See heading 5.1.
[1383] Meneses-Reyes R & Caballero-Juarez J "The right to work on the street: Public space and constitutional rights" (2014) 13(4) *Planning Theory* at 375.
[1384] The right to education is a socio-economic right and non-justicable in Nigeria. However, legislators enacted the Free Universal Basic Education Act, of 2004 which made the right to education enforceable in Nigeria. This was affirmed by the court in *Legal Defence and Assistance Project (LEDAP) v. Federal Ministry of Education and the Attorney General of the Federation* (FHC/ABJ/CS/978/15) 2017 NGHC2C.
[1385] Op cit note 744 at 17.
[1386] See *The ILO Social Budget Model: A technical guide* (1999) ILO: Scholz W *et al Qualitative methods in social protection series: Social budgeting* (2000) ILO: 'Delivering social protection for all' (2016) Issue Brief Series Inter-Agency Task Force on Financing for Development ILO, Geneva.
[1387] Umar HS & Tafida AD "Democracy and social welfare services in Nigeria: A perspective of the fourth republic" (2015) 5(2) *Public Policy and Administrative Research* 59-65.
[1388] Can low-income countries afford basic social security? (2008) *Paper 3 Social Security Policy Briefings*, International Labour Office, Geneva.

examined. Decent work within the context of this thesis was argued to include: basic rights at work; provision of social protection; promotion of social dialogue; and the recognition of property rights in public spaces. In affirming decent work as a fundamental human right, the international and national regulatory frameworks impacting on Nigeria were examined. It was argued that all classes of rights were equal and interdependent. Without this recognition, poverty reduction strategies in many developing countries including Nigeria will be ineffective. Having examined the dynamics, the regulatory challenges and attendant decent work deficits in the Nigerian informal economy; selected pathways for formalisation were recommended based on the guidelines in R204.

Importantly, these pathways are not exhaustive and there are other ways through which the informal economy can transition to the formal economy. Such pathways include: interventions that improve access to education and skills development; access to financial services, which was briefly highlighted in chapter four; access to formal markets; access to business services; establishment of a universal social protection registry;[1389] extension of social protection to self-employed workers[1390] and the promotion of sectoral policies, among others.[1391] The discussion in this thesis however, focused on the recommended pathways to the components that broadly make up the indexes of the decent work agenda. It is asserted that the incorporation of these pathways into policies impacting on the informal economy are the foundational steps toward formalising the rights of informal workers and the achievement of decent work for all.

Furthermore, as previously mentioned, the heterogeneity of the informal economy makes it difficult to address the specific challenges of informal workers broadly. In addition, within specific categories of informal workers such as street vendors, there are varying levels of vulnerability dependent on factors such as gender, marital status, type of informal work (self-employed or waged worker) among others. Consequently, the recommendations in this thesis are

[1389] This was done in Kenya. For details see, *Extending coverage: Social protection and the informal economy experience and ideas from reseqrchers and practitioners* (2017) Research, Network and Support Facility (RNSF) European Commission).
[1390] See Fusheini A "The political-economic challenges of Ghana's national health insurance scheme implementation" (2016) 5(9) *International Journal of Health Policy and Management* 543: Osei-Boateng C "The informal sector in Ghana: A focus on domestic workers, street vendors and head porters (Kayayei)" (July 2011) Background Paper available at http://www.wiego.org/sites/default/files/publications/files/G01.pdf accessed on the 12th of March, 2019: Alfers L "The Ghana National Health Insurance Scheme: Barriers to access for informal workers" (2013) *WIEGO Working Paper (Social Protection)* No. 30.
[1391] Op cit note 14 at Article 10.

limited and primarily address the challenges faced by street vendors while recognising that there is no 'one-size-fits-all' solution to the legal hurdles faced by informal workers.

Finally, as this study has highlighted, in the last two decades, notwithstanding the changing dynamics in Nigeria's labour market system and the expansion of the informal economy; there has been no rigorous engagement by policy makers and academics to re-theorise labour laws to support activities and workers in the informal economy. It is therefore hoped that the recommendations in this thesis, trigger a change in how informal workers are viewed thereby providing an avenue for decent work.

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