Working Paper: Developing National Street Vendor Legislation in India: A Comparative Study of Street Vending Regulation

Laurel E. Fletcher
Muneer Ahmed
Transnational Development Clinic, Jerome N. Frank Legal Services Organization, Yale Law School, Transnational Development Clinic, Jerome N. Frank Legal Services Organization, Yale Law School

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WORKING PAPER

DEVELOPING NATIONAL STREET VENDOR LEGISLATION IN INDIA:
A COMPARATIVE STUDY OF STREET VENDING REGULATION

TRANSNATIONAL DEVELOPMENT CLINIC
JEROME N. FRANK LEGAL SERVICES ORGANIZATION
YALE LAW SCHOOL

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EXECUTIVE SUMMARY

In October 2010, the Indian Supreme Court decided the case of *Gainda Ram v. MCD*, affirming that street hawking is a fundamental right under the Indian Constitution and mandating that Parliament enact national legislation to ensure this right no later than June 30, 2011. This working paper analyzes national and sub-national laws from over twenty countries regulating street vendors to identify key features and design choices for legislation in the Indian context.

As in many developing countries, Indian street vendors constitute a substantial proportion of the informal sector, providing affordable goods to the urban poor and filling a valuable economic and social role in the urban cityscape. There are an estimated 10 million street vendors in India and 350,000 in New Delhi alone. These workers are disproportionately women. Contrary to previously held assumptions, the number of informal sector workers in India has been growing rather than shrinking. Yet street vendors struggle at the margins of the economy, facing police harassment, arbitrary restrictions on their work, and local officials hostile to informal markets.

India is party to a number of international human rights and labor treaties relevant to the regulation of street vendors. While these international instruments are not directly enforceable in Indian courts without implementing legislation, Indian courts have held that judges should interpret domestic legislation, where ambiguous, in the manner most consistent with treaties to which India is party. Indian courts have used international treaties to read laws expansively to avoid ruling such laws unconstitutional. Thus drafting street vendor legislation offers the opportunity to directly incorporate international human rights norms and best practices into national law.

The *Gainda Ram* decision marks a significant shift in the way in which India has regulated street vendors. Previously, national regulation was pursued through the non-binding National Policy on Urban Street Vendors (“National Policy”). The National Policy aims to formalize and legalize street vendors, to provide protection from harassment and exploitation through a licensing system, and to create a system of local management and self-government that provides opportunities for street vendors to redress violations of their rights (primarily harassment and unjust expulsions from their vending sites). Civil society groups have been dissatisfied with the lack of implementation of the National Policy.

In 2009, the Ministry of Housing and Urban Poverty Alleviation prepared the Model Street Vendors Bill, but this bill has not yet been adopted. The bill contemplates that the government entity with jurisdiction over land on which street vending takes place is responsible for promulgating a comprehensive regime to regulate this activity. The model legislation allocates responsibilities between key governmental bodies—the government controlling the land in

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question, the town vending committees, the local authority, and the planning authority—but does not provide detailed guidance regarding the design or implementation of a regulatory scheme. Civil society groups have argued that the bill is weak in a number of important areas including its lack of transparency in the administrative and oversight mechanisms, and lack of provisions to ensure that current vendors will be legalized under any new system.

Against this backdrop, this Working Paper identifies five aspects of street vendor legislation that emerged from a multi-country review of regulatory schemes:

1) relationships between the licensing regimes of national and municipal regulatory systems;
2) licensing structures;
3) identification of vending sites;
4) environmental, sanitation, and safety regulations; and
5) enforcement and accountability mechanisms.

**Methodology.** This study draws on regulations of street vending enacted by governmental bodies in twenty-three countries at the national and local levels. The number of publicly-available regulations limited the body of laws reviewed. Nevertheless, the sample includes a wide variety of policies that demonstrate the range of approaches that policymakers from around the world have employed to regulate street vending. In addition to examining primary documents containing laws, rules, policies, and regulations governing street vendors, this analysis is informed by relevant secondary literature including works by scholars, policymakers, non-governmental organizations and other stakeholders. Researchers also conducted interviews with a number of street vendor scholars, practitioners, and advocates who had direct experience with the design and implementation of street vending legislation. This analysis is limited, in part, by the language capabilities of the researchers. As a result, the study may be somewhat biased towards jurisdictions in which English, Spanish, and Portuguese are official or at least primary languages.

**CONSIDERATIONS FOR STAKEHOLDERS**

There are four dimensions of decisions that policy makers must confront in designing a new regulatory scheme for street vending. First, lawmakers must balance the need for bright-line rules with a desire for some local flexibility and discretion. Second, whether rules are written as bright-line rules or general guidelines, lawmakers must establish the level of government at which each should be promulgated. Third, lawmakers must identify points at which participatory mechanisms for vendors are necessary or appropriate, and how such mechanisms should operate. And fourth, to ensure that rules are effective in practice as well as on paper, and are not undermined by either lassitude or corruption, lawmakers must provide mechanisms for administration, enforcement, and dispute resolution.

The following chart depicts the four dimensions of decisions as applied to categories of regulatory provisions that recur in street vendor regulation globally. While each dimension is

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4 See Appendix for a complete list of the jurisdictions covered by this study.
present to some degree in each aspect of regulation, this chart captures the application of the most relevant dimensions to each category:

<table>
<thead>
<tr>
<th>Conditions for receiving licenses</th>
<th>Rules vs. Standards</th>
<th>Level of Government Promulgating Regulations</th>
<th>Participation &amp; Transparency</th>
<th>Administration &amp; Enforcement</th>
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<tr>
<td>Rights and duties associated with licenses</td>
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<td>Number of licenses issued</td>
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<td>Regulations governing public safety, right-of-way</td>
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<td>Health and sanitation regulations</td>
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<td>Burden of proof for demonstrating violations</td>
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<td>Fines and sanctions</td>
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<tr>
<td>Appeals process for decisions regarding licensing, sanctions, etc.</td>
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<tr>
<td>Other dispute resolution mechanisms (between vendors, vendors vs. other stakeholders, etc.)</td>
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A. **Bright-Line Rules Versus Discretion**

Bright-line rules offer a number of advantages, including predictability and consistency for street vendors and arguably fewer opportunities for local authorities to abuse discretionary authority. However, they may also limit the ability of local governments or town vending committees to respond to changing or localized needs, and they may encourage rule-makers to apply the most conservative and restrictive standards in order to ensure that bright-line rules are sufficiently strict.

Considerations about bright-line rules versus discretionary authority are particularly important when deciding:

- What conditions might be required of those receiving licenses;
- How officials should determine how many licenses to issue;
- What rules should govern the size and location of individual vending sites;
- What rules should govern restrictions on vending locations and times;
- What health, safety, and sanitation regulations should govern vendors;
- What burdens of proof should be set, and on whom, for demonstrating violations by street vendors.

B. **Level of Government Making Rules**

The question of how to allocate rule-making between national and sub-national bodies presents a challenge similar to that presented by bright-line versus discretionary rules. Rules made and codified at higher levels of government are likely to be more consistent and present fewer opportunities for abuse of local authority. However, they may be less responsive to local needs, and they may not capture the needs of local stakeholders the way that town vending committees can.

The level of decision-making presents an additional challenge: if certain local governments or institutions are likely to be dominated by interests unfriendly to street vendors (such as local retailers hostile to vendors), vendors may gain certain advantages by national or state/Union Territory legislation. However, without national enforcement mechanisms, it may remain difficult to enforce such legislation locally.

Based on the comparative survey of street vending laws, the level of government responsible for making rules appears to be particularly important when deciding:

- Who can receive a license, and under what conditions;
- Which level of government is responsible for providing services and support to vendors;
- Which level of government is responsible for general urban zoning, for specific zoning of vending sites, and for restrictions on where vending can take place;
- Which level of government promulgates regulations governing the activities of vendors at their sites;
- Which level of government is responsible for enforcement, dispute resolution, and appeals; and
- Which level of government is authorized to sanction vendors who violate regulations.
C. Participatory Mechanisms

As required by the 2009 National Policy, town vending committees include representatives of street vendor associations, as well as other local stakeholders. Lawmakers must consider mechanisms by which street vendors are able effectively to represent their interests without being dominated by more politically powerful interests, such as local law enforcement agencies, neighborhood associations, or retailers.

The presence and nature of participatory mechanisms are particularly significant considerations when deciding:

- Who should receive licenses;
- The rights that should be associated with such licenses;
- How many licenses should be issued;
- Where sites should be located, how they should be restricted, and how various stakeholders’ needs should be expressed and balanced;
- Who should be represented generally (individual street vendors, associations, civil society generally, etc.) in comment and notice processes; and
- Whether street vendors should participate in creation, enforcement, or review of sanctions against other street vendors.

D. Administration, Enforcement, Dispute Resolution

Finally, as India’s own experience and the review of comparative laws demonstrate, even the best laws are meaningless if they cannot be adequately enforced, if they are frustrated by corruption, if they are impracticable, or if there is not a forum for dispute resolution. For each legislative provision, lawmakers must consider what governmental bodies will enforce it, how it will be monitored or overseen, and how disputes will be handled.

Considerations about administration, enforcement, and dispute resolution permeate nearly every decision point, but they are particularly important when deciding:

- How licensing will be conducted, and how the efficacy and fairness of licensing will be reviewed;
- How vending sites will be identified and monitored;
- Who will be responsible for monitoring street vendors for health, safety, and other vending violations, and how such power will be delegated in a way that minimizes the potential for abuse;
- What appeals process will be available to street vendors; and
- What dispute resolution mechanisms will be available between street vendors themselves, between street vendors and other local stakeholders (home owners, retailers, etc.), and between street vendors and local authorities.
I. INTRODUCTION

Rapid economic growth in India has fueled urbanization on a massive scale and increased pressure on public spaces. Heavily congested streets and thoroughfares are sites of competition between autos, pedestrians, and street vendors. As in many developing countries, Indian street vendors constitute a substantial portion of the informal sector that provides affordable goods to the urban poor and fills a valuable economic and social role in the urban cityscape. Yet the livelihoods of hawkers have become increasingly precarious, as they struggle at the margins of the economy. Hawkers often face police harassment, arbitrary restrictions on where they may sell their goods, and local officials hostile to informal markets. There are an estimated 10 million street vendors in India. Moreover, contrary to previously held assumptions, the number of informal sector workers in India has been growing rather than shrinking.

Against this background, in October 2010, the Indian Supreme Court affirmed in Gainda Ram v. MCD that hawking is a fundamental right under the Indian Constitution. For the first time, the Court mandated that no later than June 30, 2011, Parliament enact new legislation on street vending that respects that right. The Gainda Ram decision marks a significant shift for the regulation of street vendors in India. In the past, national regulation has been pursued through the non-binding National Policy for Street Vendors—first adopted in 2004 by the Department of Urban Employment and Poverty Alleviation and later revised in 2009. In 2009, the Ministry of Housing and Urban Poverty Alleviation also prepared the Model Street Vendors (Protection of livelihood and regulation of street vendors) Bill, but this bill has not yet been adopted.

5 The terms “street vendors,” “hawkers,” and “street traders” are used interchangeably throughout this paper—in part to reflect the fact that different terms are used in different jurisdictions.
10 National Policy, supra note 2.
11 Model Bill, supra note 3. Although less protective of street vendors’ rights than the National Policy, the Model Bill is drafted in the form of regulation. It specifies a number of process-based protections for street vendors but it
This working paper addresses the opportunity created by the Indian Supreme Court to shape the next generation of Indian street vending laws and regulations through the construction of a comprehensive national framework. Based upon an international comparison of street vending regulatory approaches, it examines possible frameworks and provisions that Indian policymakers may consider during the legislative drafting process and suggests approaches that street vendor advocates may want to propose.

**Overview.** In order to put the comparative study in its proper legal and economic context, Part II of this paper discusses the economic and social contribution of street vendors in India. Part III analyzes international human rights norms and standards relevant to the protection of the rights of street vendors. Part IV summarizes the National Policy and the Model Bill’s provisions.

Part V of the paper provides a comparative study of street vendor policies adopted by jurisdictions throughout the world. This comparison is organized into five categories: (1) relationships between the licensing regimes of national and municipal governments; (2) licensing structures; (3) identification of vending sites; (4) environmental, sanitation, and safety regulations; and (5) enforcement and accountability mechanisms. The policy description in each category lists points of similarity and difference between jurisdictions in order to offer a range of options for drafters of Indian street vendor law, and, where information on the effects of various laws is available, analyzes those effects.

The discussion of the relationship between national and local regulatory systems focuses on how the balance of power and authority varies across different jurisdictions. Regardless of the level of government in which authority vests, jurisdictions have adopted different processes by which individuals may acquire licenses in order to vend and the consequent rights and obligations. Regulatory schemes may also include required spatial dimensions for individual vending sites and mandate adherence to minimum food safety and environmental standards. Some regulatory regimes identify in which geographic areas vendors may (or may not) operate and allot sites within these areas to vendors. Finally, a significant number of jurisdictions include enforcement and accountability mechanisms as part of a larger system of regulation. As a result, this study analyzes the adjudicative processes employed in different jurisdictions in which vendors are alleged to have violated relevant rules and regulations, the punishments that may be imposed on violators, and the procedures that are used by administrative agencies to provide notice to and engage in consultation with vendors during the policymaking process.

Part VI offers conclusions of the comparative study that may guide design of national street vendor legislation as well as recommendations for the Indian law reform effort.

delegates the balance of substantive authority to municipalities (which will adopt by-laws) and zoning committees. The Model Bill preserves the concept of vending committees but permits local authorities to specify their powers. Additionally, by-laws and other rules are to be approved, rejected, or modified by State Legislatures.
Methodology. This study draws on street vending regulations enacted by various governmental bodies in twenty-three countries at the national and local levels. The number of publicly-available regulations limited the body of laws reviewed. Nevertheless, the sample includes a wide variety of policies that demonstrate the range of approaches that policymakers from around the world have employed to regulate street vending. This review highlights legislation from jurisdictions that vary considerably from one another in other important ways including: region, level of economic development, and political structure. Some regulations will be more likely than others to be suitable for the Indian context. Thus, this analysis indicates rules or regulations that appear to be a particularly strong or poor fit for India.

In addition to examining primary documents containing laws, rules, policies, and regulations governing street vendors, this study is informed by relevant secondary literature, including works by scholars, policymakers, non-governmental organizations and other stakeholders. Researchers also conducted interviews with a number of street vendor scholars, practitioners, and advocates who had direct experience with the design and implementation of street vending legislation. Nevertheless, this analysis is limited, in part, by the language capabilities of the researchers. As a result, the study may be somewhat biased towards jurisdictions where English, Spanish, and Portuguese are official or at least primary languages.

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12 See Appendix for a complete list of all jurisdictions covered in the comparative survey in this memo.
II. ECONOMIC AND SOCIAL IMPORTANCE OF STREET VENDORS

Street vendors throughout much of the world are a vulnerable social group in need of legal protection. As a large part of the informal economy, street vendors also play an essential role in the Indian economy. Professor Martha Chen has written that “the informal economy needs to be seen not as a marginal or peripheral sector but as a basic component . . . of the total economy.” Chen’s observation holds true in India where hawkers are a vital component of a diverse, hybrid economy that possesses both formal and informal elements.

Specifically, the practice of street vending plays three crucial roles in the urban economic ecology. First, hawking provides a major source of employment to a significant portion of the Indian population. With an estimated 10 million street vendors in the country, the Indian government estimates that street vendors account for two percent of the population in some cities; and women constitute a large segment of these populations. Hawking also provides employment to workers in other industries, such as manufacturers of the inexpensive goods sold by street vendors, that operate in tandem with street vending. Although precise statistics are lacking, studies have shown that products sold by hawkers are largely manufactured in small-scale or home-based industries. Because workers in these industries lack the resources to market their own products, they rely on hawkers to do so. Thus, it is not just street vendors themselves who depend on hawking to make a living; the livelihood of those who make the products that vendors sell is also at stake.

Second, as economic development and the forces of globalization continue to advance in India, street vending provides a vital counterweight to fluctuations in the formal economy by providing alternate employment for those who are laid off in the formal sector. For example, roughly 30 percent of vendors in Ahmedabad and 50 percent of those in Kolkata were once employees of the formal sector.

Third, by providing affordable products to local populations, street vendors fill crucial needs in consumer demand that the formal sector cannot adequately serve. India’s Ministry of Housing and Urban Poverty Alleviation (MHUPA), in keeping with the Supreme Court’s ruling in Sodan Singh & Others v. New Delhi Municipal Council (1989), has recognized that “[s]treet vending is not only a source of self-employment . . . but also a means to provide ‘affordable’ as well as ‘convenient’ services to a majority of the urban population.”

14 See Bhowmik, supra note 6.
17 (1989) 3 SCR 1038.
18 See National Policy, supra note 2, at 1.
III. INTERNATIONAL HUMAN RIGHTS NORMS RELEVANT TO PROTECTION OF STREET VENDORS

India is party to a number of international agreements relevant to the regulation of street vendors, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (ratified by India on Aug. 8, 1993), the Convention on the Rights of the Child (CRC) (ratified by India on Dec. 11, 1992), the International Covenant on Civil and Political Rights (ICCPR) (ratified by India on Apr. 10, 1979), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (ratified by India on Apr. 10, 1970).\(^{19}\) India is also a state party to forty-two International Labour Organization (ILO) Conventions.\(^{20}\)

Street vendors are most directly protected by Articles 6 and 7 of the ICESCR, which guarantee “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” and “the right of everyone to the enjoyment of just and favorable conditions,” respectively.\(^{21}\) The Committee on Economic, Social and Cultural Rights (CESCR) General Comment on the relevant Articles confirms that these rights extend to workers in the informal sector and that any legislation governing the informal sector “must reflect the fact that people living in an informal economy do so for the most part because of the need to survive, rather than as a matter of choice.”\(^{22}\) Furthermore, the General Comment identifies ensuring “the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity” as a core state obligation.\(^{23}\) Finally, in addition to the obligation to ensure access, state parties must also “take positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment.”\(^{24}\)

Street vendors are further protected by the right to freedom of association (ICCPR, Art. 22), the right to self-determination (ICCPR, Art. 1); the right to form trade unions and to engage in concerted activities (ICESCR, Art. 8; ILO C122); and the right to the highest attainable standard of living (ICESCR, Art. 11).\(^{25}\) In addition, street vendors are protected under the ILO’s framework of the rights of decent work, which identifies four components necessary for full realization of workers’ rights in the informal economy: employment, social protection, organization, and representation.\(^{26}\) The Food and Agriculture Organization has also recognized that stronger rights for street vendors are important for promoting access to food,\(^{27}\) and the CESCR General

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20 Govt. of India Ministry of Labour & Employment, List of International Labour Organisation Conventions Ratified by India, [http://labour.nic.in/ilas/convention.htm](http://labour.nic.in/ilas/convention.htm). India has signed 43 ILO conventions but since renounced one, No. 2 Unemployment Convention (1919), due to what the government perceived to be onerous reporting requirements.


23 Id. at ¶ 33(a).

24 Id. at ¶ 27.


26 Role of international organizations in the implementation of the rights related to food and nutrition, presented at the Second Expert Consultation on the Right to Adequate Food as a Human Right (OHCHR/FAO), Rome, Italy, 18-19 Nov. 1998, at 13. The report also identifies the right to adequate food as “a fundamental human right firmly
Comment on the right to social security (ICESCR, Art. 9) recognizes that street vendors and other vulnerable workers must be considered with special care in the enactment of a social security regime.\textsuperscript{27}

Young street vendors must be protected from “economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education or . . . development” (CCR, Art. 32). The ILO identifies age 18 (or 16, under strict conditions) as the age at which a child may begin “any work which is likely to jeopardize children’s physical, mental or moral health, safety or morals”; 15 as the minimum age at which a child should be allowed to begin regular work; and 13 as the minimum age at which a child should be allowed to begin light work, and only in conjunction with regular schooling (ILO C138).

Finally, the rights of women street vendors must be protected as vigorously as those of men. Article II of CEDAW guarantees women “the same rights [as men] . . . in the field of employment,” including rights to equal pay for equal work, social security, safe working conditions, and equal access to employment and job security. Article 7 of the ICESCR likewise guarantees women equal pay for equal work.

International agreements to which India is party are not enforceable in domestic court without implementing legislation. However, because there is a prima facie assumption that the Indian Parliament intends to act in a manner consistent with India’s treaty obligations, Indian case law has held that courts should interpret domestic legislation, where ambiguous, in the way most consistent with treaties to which India is party.\textsuperscript{28} Indian courts have also used international treaties to create more expansive readings of laws than might otherwise be ruled unconstitutional.\textsuperscript{29} Despite such progressive interpretations by Indian courts, however, Parliament has been slow to promulgate implementing legislation.\textsuperscript{30} The creation of new street vendor legislation is one opportunity to directly incorporate international human rights norms and best practices into national law.\textsuperscript{31}

\begin{flushright}
\textsuperscript{28} People’s Union for Civil Liberties v. Union of India (2005) 2 S.C.C. 436; reaff’d in Manuel Theodore D’Souza’s case, (2000) 2 B.C.R. 244.
\textsuperscript{29} Ms. Githa Hariharan v. Reserve Bank of India (1999) 2 S.C.C. 228. The Supreme Court used CEDAW to reinterpret the Hindu Minority and Guardianship Act of 1956 in a way that was consistent with contemporary understandings of women’s rights; without such a reinterpretation, the Act would have been invalidated as unconstitutional.
\textsuperscript{31} Although international norms may not be effective litigation tools unless accompanied by domestic legislation, they have been successful in advocacy campaigns outside of the courtroom. For example, a grassroots workers’ group in the state of Rajasthan, India, used emerging international norms regarding the rights to participation and government transparency to drive a successful anti-corruption campaign that ultimately resulted in new legislation enshrining those same rights. \textsc{Article 19 & Asociación por los Derechos Civiles, Access to Information: An Instrumental Right for Empowerment} 26 (Jul. 2007).
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IV. OVERVIEW OF INDIA’S NATIONAL POLICY AND PROPOSED BILL ON URBAN STREET VENDORS

A. National Policy

1. Background

The National Policy on Urban Street Vendors (“National Policy”) was introduced in 2004 and revised in 2006 and 2009. It aims to formalize and legalize street vendors, to protect them from harassment and exploitation through a licensing system, and to create a system of local management and self-government that provides opportunities for street vendors to redress violations of their rights (primarily harassment and unjust expulsions from their vending sites).

According to the text of the National Policy, Articles 14, 19(1)(g), 38(2), 39(a), 39(b), and 41 of the Indian Constitution form the legal basis for the National Policy. Together, these provisions establish the right to equal protection before the law (subject to reasonable restrictions), the right to practice any business, the State’s duty to minimize income inequalities, and the right to a livelihood.32

The National Policy aims to recognize the “positive role of street vendors in providing essential commodities” while also organizing public space through the use of zones for “restriction-free vending”, “restricted vending”, and “no vending.” The zones are created through Town Vending Committees (TVCs), that are established at the city/town level and which may delegate authority by collaborating with Ward Vending Committees (WVCs).33

2. Objectives

The Policy’s “overarching objective” is “[t]o provide for and promote a supportive environment for the urban street vendors to carry out their vocation while at the same time ensuring that vending activities do not lead to overcrowding and unsanitary conditions in public spaces and streets.”34 It aims to achieve this goal through a series of measures to:

- Create legal status for street vendors, laying the groundwork for the creation and enforcement of a zoning scheme;
- Provide civic facilities for spaces identified as vending zones in accordance with city master plans;
- Use nominal fee-based regulation to control access, basing occupancy limits on previous occupancy and eschewing numerical limits created by discretionary licenses;
- Promote organizations of street vendors;
- Create a participatory planning service that incorporates civil society, local authorities, and street vendors;
- Encourage street vendors to self-regulate and self-organize, particularly with respect to issues of hygiene and waste disposal;

32 National Policy, supra note 2, at 2.
33 Id.
34 Id. at 5.
• Promote access to skill development programs for street vendors.\textsuperscript{35}

### 3. Key Elements of the Policy

The National Policy establishes a framework for regulating street vendors at the municipal level. TVCs, in cooperation with sub-municipal WVCs where appropriate, are responsible for, among other tasks: undertaking surveys; disseminating information about professional development opportunities, such as micro-finance projects; and addressing grievances. TVCs (with WVCs, where appropriate) should also issue identity cards for street vendors. TVCs (with WVCs, where appropriate) should zone areas for “restriction-free vending”, “restricted vending”, and “no vending.” There should be no arbitrary limit on the number of street vendors, but instead localities should adopt license-based limitations based on locally-identified needs.

The National Policy states that street vendors must be notified prior to eviction or relocation. In instances in which vendors are operating in “no vending zones”, the policy recommends that vendors be given at least a few hours to relocate their goods. Confiscated goods should be reclaimed through TVCs within a reasonable time or upon payment of a prescribed fee.

To ensure vendors broad access to markets, the National Policy recommends that time-sharing and rotational systems be created. Accommodations should be made for physically challenged and disabled vendors, who should also have priority access to certain accessible spots. The policy addresses other aspects of regulation including a recommendation that fees be collected only through TVCs to prevent extortion; that the Credit Guarantee Fund Scheme for Small Industries, a national micro-finance program, be extended to street vendors; encouraging extensive, regular mapping of market spaces, with GIS mapping; and prescribing that minors engaged in street vending be integrated into the school system.\textsuperscript{36}

### 4. Government Responsibilities

According to the National Policy, the national government is responsible for:

• Taking steps to ensure street vending regulation is consistent with the National Policy;
• Initiating laws as necessary;
• If appropriate, developing a model law to regulate urban street vending.

State governments and Union Territory administrators are responsible for enacting legislation. Local planning authorities and municipal authorities make on-the-ground decisions about space use, while TVCs implement and monitor the National Policy at the local level and serve as a first arbiter in disputes related to it.\textsuperscript{37}

\textsuperscript{35} \textit{Id.} at 5-7.
\textsuperscript{36} \textit{Id.} at 13-17.
\textsuperscript{37} \textit{Id.} at 17-19.
## 5. Civil Society Criticism of the National Policy

### a. Failure to implement the National Policy

The National Association of Street Vendors of India (NASVI) has been critical of the lack of implementation of the National Policy, in particular the inability of vendors to obtain the identity cards and licenses promised. NASVI has argued that New Delhi, in particular, has made a “mockery” of the National Policy and has used the 2010 Commonwealth Games as a pretext for evictions specifically prohibited by the Policy. During the Commonwealth Games, activists collaborating with the *World Class Cities for All* campaign made a series of demands related to National Policy implementation. Their requests to the authorities are summarized below and provide a useful snapshot of problematic aspects of the Policy identified by civil society:

1. No vendor should be evicted without providing alternative space for vending.
2. Registration for vendors with photo licenses and fixed spaces for vending should be provided.
3. Conduct surveys and provide recognition for markets beyond the 227 currently recognized.
4. Stop illegal raids and unjust fines on street vendors.
5. Ensure delegation of power to Ward and Zonal Vending Committees as required by the Supreme Court.
6. Make collection of fees the responsibility of the vendors’ representative on the Ward Vending Committee.
7. Pay Zonal Vending Committee members as required by the Policy.
8. Stop multinationals from competing with local fruit and vegetable vendors.
9. Provide social security entitlements according to the National Policy.
10. Make low-interest small business loans available.
11. Use Hindi as the means of communication with vendors.

### b. Criticisms of the framework of the National Policy

In addition to the practical concerns about implementation, observers have also raised conceptual concerns about the framework behind the national policy. One researcher, pointing to key differences between the 2004 Draft Policy and the 2009 National Policy, argued that while the 2004 Draft Policy limited restrictions on vending to “reasonable restrictions” (e.g., outside of a hospital or in the middle of a heavily trafficked street), the new National Policy allows for rigid regulation of space into one of three categories: “vending,” “restricted vending,” or “no vending.” While this framework creates the potential for recognition and regularization of some street vendors, it also lays the groundwork for more state control of previously “unrestricted” space. This line of argumentation may be useful in challenging the overall legitimacy of the

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National Policy, but it may be less useful if street vendors prioritize enforcement of specific provisions of the policy rather than wholesale rejection of it.

B. Proposed Model Legislation

1. Background

MHUPA prepared the proposed model legislation, entitled Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009, for adoption by the national government or by state or Union territory governments. The proposed bill would codify many of the objectives of the National Policy.

The bill stipulates that the “appropriate Government” (the national, state or Union territory government that controls the space in question) is responsible for creating “a scheme which may specify,” among other matters, licensing procedures, fees and fines, appeals processes, stall assignment and conditions, norms of spatial planning, principles and processes for determining the numbers of vendors accommodated in each zones, delegation of authority, processes for eviction notice, and rules for seizure or impounding. These topics are not exclusive, and the bill permits the appropriate authority the power to promulgate additional regulations as appropriate. Consistent with the National Policy, the enacting body may also create credit programs, organize capacity-development programs, and undertake research and training programs to benefit street vendors. In consultation with TVCs, local authorities, and other interested parties, the appropriate authority is also responsible for enacting laws necessary to support any vending scheme.

The proposed bill requires that the enacting authority create TVCs at the local level that include representatives of stakeholder interests. Relevant promulgating authorities may delegate many of their regulatory powers to the TVCs. Finally, TVCs are also responsible for street vendor

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42 Model Bill, supra note 3, at § 1.2.
43 Id. § 2.a.
44 Id. § 3.1.
45 Id. §§ 22-23.
46 Id. § 24.2.
47 Id. § 4.1. The proposed bill designates a Municipal Commissioner or Chief Executive Officer to serve as chairperson of the corresponding TVC. Id. § 4.2.a. The “appropriate Government” may also nominate individuals “representing the local authority, the planning authority, traffic police, local police, associations of street vendors, market associations, traders associations, resident welfare associations, nationalised banks and other such interests [the Government] deems proper.” Id. § 4.2.b.
48 Assignable functions are those pertaining to: registration certificates and identity cards, fee collection, designation and timing of vending zones, record maintenance and surveys, determination of vending capacity, adequacy of civic capacities (water, sanitation, waste management, etc.), monitoring of street vendor activities, determination of activities that merit fines, credit programs, insurance benefits, guidelines for vendor organizations and self-help groups, and grievance redress and dispute resolution. Id. § 9. The TVCs may also constitute ward vending committees and delegate many of their responsibilities there. Id. § 8. If vendors violate the terms and conditions of their registration or stall assignment, TVCs may cancel or suspend vendors’ registration and/or cancel or suspend their allotment of stall or license. Id. §§ 17-18. In either case, however, vendors are entitled to a hearing before any suspension or cancellation takes place. Id. Vendors may also be fined between 200 and 500 rupees (to be set by the TVC or local authority) for vending without registration, beyond designated zones or times, in contravention of the terms and conditions of registration or of the terms and conditions of stall or license assignment, or in contravention
registration with a right of administrative appeal to the local governing authority (a municipal corporation or council or similar entity).\footnote{Id. § 12.4.}

Under the proposed bill, the local authority is responsible for overall management of the vending scheme, appeals of registration rejections, matters pertaining to the licenses of registered vendors, consultation with TVCs on civic facilities, and cooperation with TVCs on issues pertaining to fee collection and vending site surveys.\footnote{Id. § 15.} While the relevant governing authority is allocated licensing responsibilities over a given area, the bill stipulates that the planning authority (the Urban Development Authority or other authority responsible for zoning)\footnote{Id. § 2.e.} is responsible for determining spatial planning norms, zoning plans, monitoring the TVCs, and any other duties assigned.

\section*{2. Civil Society Criticism of Proposed Model Legislation}

On April 28, 2007, Indian civil society groups with expertise on street vendor issues met in New Delhi to critique a draft version of the proposed model legislation, entitled Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2007. Nearly all of the civil society criticisms remain relevant to the revised 2009 version of the bill,\footnote{See Notes from Meeting on the Model Act for Street Vendors, Willow Hall, India Habitat Centre, Delhi (Apr. 28, 2007) [hereinafter Meeting on the Model Act]. One key criticism of the 2007 bill was that, because extensive work had been done by various groups in different states to strengthen and implement the National Policy at local levels, a directive superseding the National Policy was preferable to entirely new legislation. Given the recent Supreme Court decision calling for national legislation (Gainda Ram v. NCD, 2010, \textit{supra} note 1), it is not clear that this proposal remains feasible. Other concerns that appear to have been addressed in the 2009 revised model legislation are the definition of a street vendor and the use of gender neutral language.} the most relevant of which are described below.

\begin{itemize}
  \item \textit{General vision}
    \begin{itemize}
      \item There must be \textbf{national legislation}, whereas the government argues for primarily state-level legislation.
      \item There must be stronger \textbf{transparency mechanisms} built into the legislation, particularly before finalizing members of the TVCs, before making zoning decisions, when identifying vending sites, and when finalizing rules for registration and registration lists.
      \item Stronger protections should be provided to \textbf{regularize existing vendors}, and vendors who are working at the time of legislation should be guaranteed a license and a stall.
    \end{itemize}
\end{itemize}
b. **Specific provisions**

- **2.5 percent of urban space should be reserved** for vending.
- There should be some non-arbitrary criterion for determining market holding capacity.
- **Applications for registration should not be denied**, and should be clearly distinguished from licensing, which is the process for giving permission for specific stalls.
- There should be no confiscation of goods under any circumstances, and no removal should be allowed before replacement sites have been identified.
- A special section should be provided for food vendors, with the burden on the municipality to show violations.
- Any fees should be deposited in a clear manner, with receipts for all fees. Fees should be used for improvements in vending areas.
- There should be specific provisions for declaring hawking zones that consider the proximity of natural markets and provide a number of slots that matches the number of exiting vendors.

c. **Roles of various authorities**

- **District Planning Committees** play an important role in many states and should be included instead of or in addition to the planning authorities listed in the model legislation.
- A **specific appellate authority** should be established to review TVC decisions, perhaps headed by a retired High Court judge or ADJ.
- **Retailers** should not be given disproportionate power on TVCs.
- There should be a municipal **nodal officer** in charge of coordinating implementation of the Act. Currently, there are several local authorities (traffic police, regular police, health department, estate department, municipal officials, etc.) each of which abuses its discretion.

While the civil society critique of the proposed legislation focuses on several particularly problematic points, it also reveals a more fundamental difference of opinion concerning the role that national legislation should play in regulating street vendors. Civil society criticisms point to the need for legislation that establishes with a reasonable degree of specificity guidelines, regulations, and protections for street vendors. The civil society notes demonstrate a desire to use national legislation to achieve specific aims: create mechanisms for transparency and vendor regularization; outline criteria for vendor siting, registration, fee payment, and regulations; create enforcement mechanisms; and limit the power of local authorities to harass vendors. Yet the Street Vendors Bill does not itself establish these guidelines, but instead identifies the government agencies that will do so.
V. COMPARATIVE APPROACHES TO STREET VENDING REGULATION

This section analyzes the range of regulatory schemes employed to regulate street vendors in jurisdictions around the world. Additionally, it examines which options are most suitable for the Indian context and compares those options with the substance of the Indian National Policy on Street Vendors and Model Bill. This comparison is organized into five categories: (1) relationships between the licensing regimes of national and municipal governments; (2) licensing structures; (3) identification of vending sites; (4) environmental, sanitation, and safety regulations; and (5) enforcement and accountability mechanisms.

A. Relationship Between National and Municipal Regulatory Systems

The Indian Supreme Court’s recent Gainda Ram v. MCD decision contemplates a national-level system for regulating street vending policies, but leaves unresolved what the division of authority among different levels of government in India should be. A survey of regulatory approaches in different jurisdictions reveals that the extent to which national governments control the regulation of street vending practices varies widely. On the one hand, there are countries which—due to their political structure, for reasons of policy, or because of a lack of political organization at the national level—have either chosen not to vest the regulation of street vending in their national governments or have been unable to adopt more than rudimentary systems of national regulation. On the other hand, a growing (albeit slowly) number of countries have pursued a path towards comprehensive regulation of street vending practices. However, even in the regulatory approaches employed by this latter group, local governments invariably play key roles in adopting and implementing national directives.

South Africa provides an instructive example of a comprehensive national approach to street vending. In 1991, the South African national government passed the Businesses Act which recognized street vendors as proprietors of legitimate businesses. The Act details the process by which local administrators may issue licenses to vendors and imposes significant constraints on the actions of local authorities. It further outlines the conditions that local authorities may impose upon licensees, legitimate justifications for rejection of licenses, an appeals process, and penal provisions that may be imposed on vendors who violate government regulations.

In 1993, the South African government amended the Businesses Act to provide municipalities with substantially more freedom to regulate vending practices, including through the adoption of bylaws and local regulations. Specifically, the amended Businesses Act endows provincial administrators with the authority to decide, consistent with the Act itself, “the constitution of any body appointed as a licensing authority,” the “powers, duties and functions” of a licensing authority, the application of the Businesses Act’s vending provisions, and the responsibility of individuals for reasonable expenses incurred through inspections and removal. Additionally, the 1993 amendments provide local authorities with the ability to restrict the areas within which vendors may operate but detail a public and consultative process which authorities must utilize in

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54 Id. at (1)(a)(i)-(xi); (b)(i)-(ii). This list is not exclusive.
order to do so. Several municipalities (Johannesburg in 2004 and Durbin in 2010) have recently adopted by-laws according to the Businesses Act.

The devolution of authority to the provincial and local levels has had mixed results. Local governments are frequently accused of failing to adopt regulations that are consistent with the letter and spirit of the Businesses Act and implementation problems have limited the effectiveness of the Act’s ability to protect the rights of street vendors.

Northern Ireland presents a similar example of national-level regulation. For most of the twentieth century, street trading regulations in Northern Ireland were governed by the Street Trading Act of 1929. Because of a marked increase in traders, and because the 1929 Act was considered obsolete in many respects, Northern Ireland enacted the 2001 Street Trading Act in order to provide district councils with greater authority and legal mechanisms to control unlicensed vending. The policy objective of the Act is “to enable district councils to control and regulate street trading in their districts in such a way as to prevent undue nuisance, interference and inconvenience to persons and vehicles.” As such, locations at which street vendors are allowed to sell and the enforcement of the rules are left to local district councils.

The Philippines, on the other hand, lacks comprehensive and enforceable national legislation regulating the practice of street vending. National regulation of street vending practices is largely limited to Executive Order No. 452, “Providing for the Guidelines that Will Ensure the Security of Registered Vendors in the Workplace,” which was signed by President Ramos in 1997. E.O. 452 is primarily aspirational; it did not provide a detailed regulatory framework. Nevertheless, it attempted to protect vendors by declaring that they shall not be “arbitrarily deprived of their livelihood by being unjustly ejected from their workplaces nor their stalls demolished.” E.O. 452 suggested, but did not require in a binding fashion that “each city and municipality shall establish a system for registration and issuance of permit to vendors to protect their rights and the interest of consumers and the general public.” It also suggested that government agencies “provide the support necessary to the vendors’ self-development into healthy, informed, environmentally aware, progressive and productive citizens” and encouraged vendors “to organize themselves into associations reflective of their ideals and aspirations.”

In most other instances, countries did not have lack national-level regulations concerning street vending practices. In Malaysia, for instance, regulation of hawkers was left largely to local authorities. Under authorization of the Local Government Act of 1976, Kuala Lumpur passed the Hawker and Stall Licensing By-Laws in 1989.

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56 Street Trading Act (Northern Ireland) 2001 c. 8, Explanatory Notes, § 5 (U.K.).

57 Executive Order No. 452, “Providing for the Guidelines that Will Ensure the Security of Registered Vendors in the Workplace,” § 6 (Philippines).

58 Id. § 3.

59 Id. § 5.

60 Local Government Act of 1976, 73(1)(f) (“A local authority may from time to time make, amend or revoke by-laws for the better carrying out of the provisions of this Act and in particular. . . to regulate, supervise and license
Similarly, most Latin American countries did not have national frameworks for street vending. In Brazil, rudimentary national legislation defined street vendors as a class of workers and specifies their rights under the country’s system of social security, but regulation was left to municipalities.\textsuperscript{61} Although the national government announced plans to enact a national Law on Street Trading, it only passed two relatively general decrees, and never delivered on the promised legislation, which would have established national “norms and sanctions for non-compliance.”\textsuperscript{62}

Nevertheless, while not directly constrained by detailed national frameworks, local regulatory systems may be shaped by requirements in national constitutional law. For example, in a series of Colombian Constitutional Court decisions, the Court held that the constitutional duty of the government, including local governments, to regulate public space for common use and enjoyment (Art. 82) was recognized as justification for street vendor regulation, so long as that regulation does not overly impede the constitutional right to work (Art. 25).\textsuperscript{63}

\textbf{B. Licensing Structure}

\textit{1. Introduction}

A survey of the existing regulatory schemes showed that, in those jurisdictions in which vending is legal, there were four general approaches to the assignment and distribution of street vending rights: (1) licensing schemes; (2) ownership schemes; (3) organization-based registration schemes; and (4) a scheme in which no license or registration was required at all.

By far the most common type of scheme for assigning and distributing street vendor rights in the jurisdictions surveyed was the licensing scheme. Such a scheme was also proposed in the Indian context by the 2009 National Policy and by the 2009 Model Bill, which proposed that vendors register officially and then apply for licenses for particular vending spaces.

Licensing schemes generally included provisions that regulate: (1) the conditions and criteria for the issuance of a license; (2) the level of discretion allowed to authorities in determining whether to issue a license; (3) the rights of vendors to assign, sublet, and resell the spaces which their license granted them; (4) the types of vending in which licensees were permitted to engage; (5) the number of licenses to be issued; (6) the allocation of licenses among successful applicants; and (7) the rights to government services, if any, a license conferred on the licensee.

\footnotesize{\textsuperscript{61} Lei No. 6.586, de 6 de novembro de 1978, D.O.U. de 7.11.1978 (Brazil).
\textsuperscript{63} Decision T-225 (1992) and T-115 (1995) (Colombia); see also Ventas Ambulantes, \url{http://www.institutodeestudiosurbanos.com/univerciudad/bajar-pdf/ventasambulantes.pdf}.}
Because of the widespread use of licensing regimes to regulate street vending, and their inclusion in the National Policy and Model Bill, the remaining sections of this Part focus on this type of scheme, covering each of the seven types of provisions. Before doing so, however, it will be useful to present the few examples of the three other types of schemes.

The second type, an ownership scheme, allows vendors to purchase vending stalls or spaces on a long-term basis. There were two examples of this type of scheme in the jurisdictions surveyed. First, in 1994 Singapore launched the “Stall Ownership Scheme,” through which the government leased stalls to current holders for 20-year periods at reduced rates. More than 90 percent of hawkers who were offered the option to purchase their stalls took advantage of the program, with the remaining hawkers either surrendering or continuing to rent their stalls. Stall owners were given permission to sublet and even sell their stalls.64 A second example was found in Quito, Ecuador, which allowed for qualified ownership of commercial center vending sites. Because Quito’s stated public policy goal was to relocate hawkers off the streets and into commercial centers, the policy may have been intended to incentivize vending in commercial centers.65 Quito’s regulations, however, allowed for more limited rights than those of Singapore. Under Quito’s regulations, individuals owning vending spaces were prohibited from alienating or subjecting them to encumbrances during the first seven years of occupation. However, with the approval of a technical board, vendors were able to use them for bank mortgages, even during the first seven years.66

The third approach is an organization-based registration scheme. For example, instead of direct vendor licensing, Bogotá, Colombia required potential vendors to enroll in one of the approved associations or organizations of vendors; these organizations then qualified for access to privileged vending locations.67 Unfortunately, no further information was available regarding how Bogotá’s scheme worked in practice.

Finally, there were some instances in which vendors were allowed to conduct their business without any license or registration at all. However, jurisdictions in which authorities adopted a hands-off approach have typically not functioned in a manner favorable for vendors. In Caracas, Venezuela, researchers concluded that “the state no longer enforces regulations regarding public space, a role informally assumed by individuals, who privately gain from the market transaction of buying, selling, and renting the constitutionally given ‘right to work.’”68 The lack of a regulatory scheme meant that local street vending organizations assumed control over management of public space, but the result was disorder and lack of clarity in the allotment of vending spaces.69

65 Reglamento del Centro Historico de Quito (Ecuador), Preamble.
66 Id. at art. 10.
67 Bogotá Resolución DG-088-07 (Colombia).
69 In an attempt to bring some order to the public space, in January 2004, municipal authorities issued a set of norms that vendors should follow. However, a recent survey found that only 9 percent of street vendors thought the rules were well defined, 34 percent agreed that they were defined poorly, and 39 percent stated the rules were not applicable. Id. at 43. In the 2007 Meeting on the Model Act for Street Vendors in India, a participant raised a similar
2. Conditions and Criteria for the Issuance of Licenses

Indian National Policy and Model Bill

India’s Model Bill contains little information regarding the conditions and criteria for issuing licenses. Instead, it leaves these determinations to local governments to specify. The National Policy supplies a few more details but generally follows the same approach as the proposed law, relegating many decisions to local authorities. The National Policy proposes that both a registration fee and a monthly maintenance charge be paid by vendors. However, it specifies that the registration fee must be determined by the local Town Vending Committee and is “not amenable to any kind of discretion or extortion.” The Policy further specifies that “[i]f complaints [regarding registration fees]… are registered with the TVC, adequate measures should be taken to redress the same expeditiously.” Finally, street vendors who are entering the profession for the first time are required to “give a statement on oath that they do not have any other means of livelihood.”

Results of Comparative Survey

Three requirements emerged as most common in the jurisdictions surveyed. First, vendors frequently were required to provide identifying information about themselves, about the goods to be sold, and about the specific location where they intended to do business. A second common provision barred applicants with recent criminal convictions or vending violations on their record. Finally, almost all jurisdictions required vendors to pay a fee that helps fund the scheme.

Another kind of requirement that was less common but nonetheless appeared in multiple jurisdictions aimed to prevent larger businesses from hoarding licenses or using vendors to warning about not clearly distributing and demarcating spaces for each individual vendor: “Permission to vend should be accompanied by allotment of a pitch. It should not be left open. If it is an open space without marked individual areas, it creates problems. Open spaces have led to worst quarrels and corruption with mafias taking over the space.” Meeting on the Model Act, supra note 52, at § 3.

70 Id. at Chapter II.
71 National Policy, supra note 2, at § 4.6.
72 Id. § 4.6.3.
73 Id. § 4.5.4(c).
74 For example, in Hong Kong, applicants must supply evidence that they are 18 years old in order to receive a license, and provide four passport photos with their applications. Fixed-pitch licenses, which give licensees the right to vend in a specific location, must include a specification of the location of the pitch, the name and address of the licensee, the type of goods authorized for sale, and a notice that the licensee must abide by applicable Hong Kong regulations. Hawker Regulation, Cap 132, 83A, (6)(a); (7)(1)(a),(c); and Cap 132, 83A, (9)(2) (Hong Kong).
75 In South Africa, for instance, licensing authorities are authorized to request that the South African Police provide them with the prior conviction records of applicants for licenses. The South African Police are permitted to request that applicants provide information (including fingerprints) to the extent that this is considered necessary. Businesses Act, supra note 53, at (2)(5(a)-(b).
76 Northern Ireland, for example, requires that vendors pay fees to cover administrative and other reasonable costs. See the Street Trading Act (Northern Ireland) 2001, § 15.
extend their sales. This usually took the form of either requiring that vendors be self-employed and not linked to a larger business or allowing each applicant only one permit.

Finally, there were requirements common in particular regions. For instance, in North American and European jurisdictions, it was common to require that vendors apply for multiple licenses from various authorities. Second, many jurisdictions in these regions mandated that a drawing or photo of the apparatus be used, so that it could be reviewed for aesthetic purposes. The city of Portland, Oregon, was a prominent example in this regard. Third, jurisdictions in the United States commonly required permit applicants to purchase liability insurance, not only on behalf of a vendor but also sometimes on the behalf of the city. And fourth, North American and European regulations typically required vendors to put down a sizable deposit to be forfeited in case of violations of street vending regulations.

One requirement unique to Latin American countries was a participation requirement. In Quito, for example, vendors had to participate as arbitrators in a vendors’ adjudicatory body when requested by the technical agency overseeing licensing. This imposed an additional requirement on vendors, but ensured their voice in the licensing process.

Analysis

The comparative survey revealed a number of considerations pertinent to the Indian context. First, although it was common to require that vendors pay a licensing or registration fee to help cover costs of the regulatory scheme, it is important that these fees not be excessively high. This is not only because street vendors in India tend to be economically disadvantaged, but also because high fees can foster instability that threatens the regulatory scheme as a whole. For instance, increases in street vendor rents by some South African municipalities led vendors to protest in recent years. In 2007, when Durban increased the cost of renting a stall from 10 rand to 40 rand, over 1000 traders marched through the city center in protest. A similar protest took place in Johannesburg to protest abuses in the wake of the World Cup. One important decision

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77 In Lima, Peru, for example, the vendor must not be employed by the supplier and must not be a small business owner him or herself. Lima Ordenanza 002; Reglamento de Quito, supra note 65, art. 12.
78 In New York, selling food on the streets requires two types of authorizations from the Department of Health and Mental Hygiene: a food vendor license and a permit for a mobile food cart. In addition, all vendors must apply to the state for a Sales Tax Certificate of Authority. New York Independent Budget Office Fiscal Brief, Sidewalk Standoff: Street Vendor Regulations Are Costly, Confusing, and Leave Many Disgruntled, (November 2010), p. 2.
80 Thus, the city of Lawrence, Kansas, in the United States, required applicants to purchase insurance for up to $500,000 for a single incident, “for any liability associated with the failure of the licensee, its employees, agents, servants, invitees, and patrons to exercise due care and diligence in the use of the sidewalk.”City of Lawrence Administrative Policy on Street Vending, § 3.0(B) (U.S.).
81 The City of Bend in the United States, for instance, requires a $200 deposit. City of Bend Street Vendor Policy § 4.5.
82 Reglamento de Quito, supra note 65, Art. 12.
in the Indian legislative process, then, will be the decision of how strictly the national legislation will constrain municipal governments in the setting of fees.

Second, requirements that vendors be self-employed, and that applicants be allowed to apply for only one permit, have generally been looked upon favorably by most vendors and their advocates. These requirements serve to prevent licenses and vending spaces from being monopolized by corporations and businesses, which already compete with street vendors.\(^8\)

Third, the requirements common to North American and European jurisdictions are probably too costly or burdensome to impose on Indian vendors. The one exception might be the requirement of a security deposit. While it is important that any such deposit not be excessively high, it could provide an incentive for vendors to take proper care of any existing vending infrastructure and to obey vending regulations. Another advantage is that costs of the violations would fall on the vendors in breach of the regulations rather than being spread across all vendors equally. In order for such a scheme to work, however, it is important that measures be put into place by a transparent and accountable government authority—local or national—to ensure against corruption or abuse of the security deposit funds.

Finally, the Indian Parliament should consider whether to impose a participatory requirement of the kind that is common in Latin America. This requirement might be burdensome to vendors who work long hours and must tend to their families, but it also has the advantage of ensuring that the voices of vendors themselves be heard in the process. Involving vendors in the adjudicatory process, as is done in Quito, also could help prevent abuse in the enforcement of regulations.

### 3. Level of Discretion in Licensing Decisions

**Indian National Policy and Model Bill**

As stated in the previous section, the National Policy and Model Bill generally leave the specification of the application criteria to the local TVC. The Model Bill does, however, provide that “[t]he town vending committee shall not summarily reject the application without giving the applicant an opportunity to rectify deficiencies, if any[,] and hearing him.”\(^8\)

**Results of Comparative Survey**

Jurisdictions varied in terms of the level of discretion that licensing authorities possess to grant or to refuse applications for licenses. In some jurisdictions, authorities were permitted to modify

\(^8\) In New York City, the requirement has been relaxed in the city’s parks, a move which has drawn the protest of an organization representing street vendors: “In 1995, City Council passed the ‘one-vendor, one-permit’ law to limit the exploitation of vendors by the large corporations that had accumulated hundreds of permits. Companies vying for vending spots in the parks, however, are exempt; coincidentally, the Parks Department raises millions of dollars every year from vendor concessions. This exemption has fostered a system where several well-connected companies have grown rich while their workers receive less than minimum wage.” Urban Justice, *Street Vendors Unite! Recommendations for Improving the Regulations on Street Vending in New York City*, at 4, available at [http://www.urbanjustice.org/pdf/publications/VendorsUnite.pdf](http://www.urbanjustice.org/pdf/publications/VendorsUnite.pdf).

\(^8\) Model Bill, *supra* note 3, at § 12.2.
the conditions for the issuance of licenses. For instance, in the U.S. city of Bend, Oregon, the City Manager was given the authority to add conditions as necessary for the protection of public health, safety and welfare.\textsuperscript{87}

Other jurisdictions appeared to put greater restrictions on the ability of authorities to deny licenses. According to South Africa’s Businesses Act, vending licenses must be provided to applicants, unless the applicant fails to comply with public health laws or fails to comply with requirements regarding town planning or public safety.\textsuperscript{88} However, the efficacy of this provision is unclear since a licensing authority may amend licensing conditions at any time due to “changed circumstances,” as long as it gives vendors the right to be heard.\textsuperscript{89} License holders were also permitted to petition a license authority to revoke or amend general requirements for obtaining a license, to extend the time period permitted for compliance with conditions, or to indicate that a license holder is in compliance.\textsuperscript{90}

\textit{Analysis}

The chief advantage of minimizing discretion in favor of strict, bright-line rules is to promote the transparency and accountability of decision-makers. However, no rules can anticipate every case, and therefore some reliance on the discretion of local authorities is likely inevitable. It is also possible that insisting on bright-line rules will lead to regulations that prevent authorities from exercising discretion in favor of vendors.

Allowing for greater flexibility permits decision-makers to take vendors’ special circumstances into consideration. Increased discretion also can allow for greater flexibility that may allow more licenses to be issued.\textsuperscript{91} However, discretion may also allow anti-vendor authorities to make the licensing process more difficult for vendors. To guard against abuse, if more discretion is allowed, a provision could be included guaranteeing vendors the right to a hearing prior to being denied a license.

\textbf{4. Rights of Assignment, Subletting, and Resale}

\textit{Indian National Policy and Model Bill}

The National Policy states that each family is entitled to receive only one vending spot.\textsuperscript{92} But it also allows that a “family helper” be specified on the license, implying that the use of at least one assistant is permitted.\textsuperscript{93} The Model Bill is silent on these issues, presumably leaving them to the TVCs to decide.

\textsuperscript{87} Bend Street Vendor Policy, supra note 81, at § 3.9. The context of this section made clear that the “conditions” referred to were not only conditions imposed on an awarded license, but also conditions on whether a license is to be awarded at all.
\textsuperscript{88} Businesses Act, supra note 53, at (2)(4) and (2)(6)(a).
\textsuperscript{89} Id. § (2)(8)(a).
\textsuperscript{90} Id. at (2)(7)(a)-(d).
\textsuperscript{91} See American Planning Association, Zoning Practice, Issue Number 2, Practice Public Markets, p. 4-5.
\textsuperscript{92} National Policy, supra note 2 at § 4.5.4(b)
\textsuperscript{93} Id. at 4.5.4(d).
Results of Comparative Survey

In most jurisdictions, licensees were not permitted to reassign, rent, or sell their rights to engage in street vending.94 There were two prominent exceptions, however. First, some jurisdictions allowed transfer of rights to family members in cases of illness or death of the licensee.95 Second, a number of jurisdictions allowed vendors to employ varying numbers of assistants in conducting their business without requiring an additional license.96

Analysis

Preventing assignment, subletting, and resale of vending space is supported by considerations of fairness. Especially in jurisdictions in which vending space is a scarce resource, it may seem unjust to those waiting their turn to allow for assignment, subletting, and resale.

The two exceptions, however, appear justifiable. The employment of assistants allows vendors to share their vending rights with family members or a few hired assistants without taking up additional vending spaces. The fairness considerations that militate against transfer and reassignment generally are not present here.

Granting permission to transfer rights in case of death also seems justified, especially in the Indian context in which vendors generally find themselves in precarious economic conditions. Allowing limited transfer of rights serves the purpose of ensuring that the misfortune of an illness or death is not compounded by economic devastation for the licensee’s family.

5. Fixed vs. Mobile Vending Sites

Indian National Policy and Model Bill

The National Policy provides for two types of licenses, fixed and mobile.97 Mobile licenses are recommended to permit sales outside of established markets.98 The Model Bill also includes

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95 According to Hong Kong’s regulations, if a licensee intends to leave Hong Kong or is incapacitated due to illness for more than eight days, she may apply to the Department of Food and Environmental Hygiene for a “deputy” to take over her operating responsibilities for up to six months. Hong Kong Hawker Regulation, supra note 74, at Cap 132, Sec. 83A, (11)(1),(3). In Quito, ownership was transferable but only in the case of death. Reglamento de Quito, supra note 65, at Art. 10, 13. Buenos Aires had a similar exception on non-transferability in the case of death; in either case, the rights may pass to an immediate family member. Buenos Aires Ley 1166 supra note 94, at § 11.1.12-13.
96 For instance, in Northern Ireland, vendors were allowed to employ any person to assist in vending, subject to age requirements. The regulations also at least implied that assistants could be left unaccompanied at the vending site, but stipulated that licensees would be held responsible for violations of policy, even when these violations were committed by the assistant alone. Supra note 76, at § 24.
97 National Policy, supra note 2, at 4.5.4(d).
98 The National Policy states: “Mobile vending should be permitted in all areas even outside the ‘Vendors Markets’, unless designated as ‘No-vending Zone’ in the zonal, local area or layout plans under the master/development plan of each city/town.” Id. at 4.2(d).
mobile vendors in its definition of “street vendor” but does not specify separate regulations
governing them, presumably leaving the issue to be decided by local officials.

Results of Comparative Survey

While some jurisdictions allowed only fixed vending locations, many others allowed for mobile
vending. In some jurisdictions, different types of licenses were issued for fixed and mobile
vendors. For example, in Buenos Aires, one set of regulations governed both fixed and mobile
vendors, but each type of license only allowed one type of vending, and each seller was allowed
to hold only one permit. São Paulo used a dual system of mobile permits and fixed vending
points. Fixed and mobile vendors were also subject to different fee structures.

In Lima, Peru, even outside of commercial centers, many vendors were grouped into organized
rows or blocks. However, some were allowed to vend in decentralized mobile vending
zones. Bogotá, Colombia was slightly more restrictive: the city had a similar policy of
preferential vending zones, in which the government provided special services and allowed
vendors to “professionalize” their activities; the city was increasingly restrictive of vending
outside of the preferential zones while also working to incentivize vending inside the zones.

Analysis

Both the National Policy and the Model Bill in India contemplate some form of mobile street
vending. If mobile vending is allowed in the national legislation, there are two further decisions
that need to be made. The first decision is whether mobile vending should be specified as a right
in the national legislation, thereby binding local authorities on the issue. The jurisdictions
surveyed did not provide guidance as to whether this would be favorable to vendors, though it
seems prima facie that it would be. The second decision is whether to specify specific zones in
which mobile vending may take place. This might be unduly restrictive to vendors who prefer to
sell to customers in many different areas of their cities, but it might also help to improve their
business prospects by allowing customers to better predict where they can find vendors.

6. Open vs. Restricted Licensing

Indian National Policy and Model Bill

The National Policy expresses a preference against numerical quotas for registration but does not
prohibit them outright. The Model Bill does not expressly comment on the issue.

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100 São Paulo Decreto 33.924, supra note 94, at Art. 11, 14.
101 Id. at Art. 17.
102 Lima Ordenanza 002, supra note 77, at Art. 34.
103 Id. at Art. 3.
104 Resolución de Bogotá DG-088-07, supra note 67; Plan Maestro de Espacio Público para Bogotá.
105 National Policy, supra note 2, at § 4.5.4(f). However, this does not mean that numerical quotas are disallowed for
the issuance of licenses. As stated in section (a) above, the National Policy proposes a two-step system in which
vendors apply for registration to be recognized as vendors generally, and then apply for licenses for a specific
vending spot.
Results of Comparative Survey

Among the jurisdictions surveyed, many of the larger cities placed limits on the total number of licenses issued. New York City placed a limit of 853 general merchandise permits\(^{106}\) and 3,000 food vending permits.\(^{107}\) Permit caps may be citywide or may be applied at the neighborhood level.\(^{108}\) In Kuala Lumpur, the number of licenses issued to street vendors has been limited to around 330.\(^{109}\) The number of licenses issued was also severely restricted in a number of other Asian and African countries including Hong Kong and Singapore.\(^{110}\) The lack of an official permit cap did not necessarily mean that in practice an unlimited number of licenses were available. São Paulo, for example, did not place an overall limit on licenses issued, but it did limit the number of permits for fixed vending spaces.\(^{111}\)

Analysis

Numerical caps that are overly restrictive interfere with the rights of vendors. In New York City, for example, the waiting list grew so long that it was no longer accepting new applicants. Street vendor activists have called for the cap to be lifted.\(^{112}\) One key decision for those drafting the Indian legislation is whether to prohibit license or registration caps outright at the national level, or simply express a preference against them, as does the National Policy. If a licensing cap is set high enough, however, it might be beneficial to existing vendors by preventing overcrowding. In this case, the issue becomes one of weighing the interests of existing vendors against the interests of those vendors who are attempting to transition into the profession.

7. Licensing Allocation and Preference Schemes

Indian National Policy and Model Bill

The National Policy proposes that preference in allocation of vending spaces be given to “physically challenged/disabled persons” to promote their rehabilitation.\(^{113}\) The Model Bill does not mention preferences in the distribution of licenses, but it does require that Town Vending Committees meet quotas for women and disabled street vendors.\(^{114}\) The Supreme Court of India considered the issue of gender preferences in \textit{Sudhir Madan vs. Municipal Corporation of Delhi} (2007), and declined to require that women be given preferences during the vending license

\(^{106}\) New York City Administrative Code, § 20-459A.
\(^{107}\) \textit{Id.} § 17-307(b)(2)(a).
\(^{108}\) For instance, the city of Philadelphia in the United States has four designated neighborhood business districts and each has a separate limit on the number of vendors, ranging from three to 100. Philadelphia Code, § 9-206(10).
\(^{109}\) Norhaslina Hassan, \textit{Accommodating the Street Hawkers into Modern Urban Management in Kuala Lumpur}, \texttt{http://www.isocarp.net/Data/case_studies/293.pdf}. Other jurisdictions in Asia also severely limited the number of licenses issued, including Hong Kong and Singapore. \textit{See} Patrick L. Smith, \textit{At Risk in Hong Kong: A Slice of Hawkers’ Magic}, \textit{N.Y. TIMES}, June 14, 2007.
\(^{111}\) São Paulo Decreto 33.924, supra note 94, Art. 12, 14-17.
\(^{112}\) Urban Justice, \textit{supra} note 85, at 1-2.
\(^{113}\) National Policy, \textit{supra} note 2, at § 6.6.
\(^{114}\) Model Bill, \textit{supra} note 3, at § 4.2.b.
allocation process, but explicitly permitted the Municipal Corporation of Delhi to take gender into account if it so chose.115

Results of Comparative Survey

In the jurisdictions surveyed, procedures used for the distribution of vending spots and permits generally fell into three categories, though in the case of many jurisdictions, a hybrid procedure was used: (1) preference given to certain social or economic groups in the issuance of vending spaces or permits; (2) a lottery procedure for vending licenses was employed; and (3) allocation of spaces and permits done on a first-come, first-served basis. A fourth idea mentioned in the secondary literature but not found in any of the surveyed jurisdictions was an auction through which vending spaces are awarded to the highest bidder.116

A number of jurisdictions in multiple regions gave preference to certain social and economic groups. Examples include: veterans;117 disabled persons;118 traditional vending groups and their unions;119 historical occupants of sites with a title right to or possessory interest in the site; vendors displaced because of the construction of commercial centers, and vendors who had sites of sale in the streets or plazas adjacent to commercial centers;120 and the elderly and those who had seniority in vending.121

The second and third types of schemes were lottery systems and first-come, first-served schemes. In the city of Bend, Oregon in the United States, a lottery was conducted every year for all licensees. Those who applied after the lottery had already taken place were allowed to choose from the remaining spaces.122 The policy did not seem to contemplate the possibility that there could be more licensees than spaces available. New York City, on the other hand, operated on a first-come, first-served principle. However, its waiting list grew to several thousand and has since been discontinued.123

Analysis

Preference schemes can be powerful tools for helping disadvantaged segments of society, such as the disabled or the elderly, who might not otherwise be able to make a living. However, if too

115 Sudhir Madan And Others v. Municipal Corporation Of Delhi, supra note 9, para. 18.
116 American Planning Association, supra note 91, at 5.
117 In New York City, out of 2,800 general merchandise permits issued in 2009, more than two-thirds of them (1,900) were issued to veterans with honorable discharge. Fiscal Brief, supra note 78, at 2.
118 In Bath & North East Somerset in Great Britain, the Street Trading Policy stated that “[t]he Council will, where possible, give priority to the provision of consents to disabled persons and to those from minority ethnic groups.” Bath & North East Somerset Street Trading Policy, § 11.
119 In Buenos Aires, 70 percent of licenses were reserved for the traditional vendors or members of their unions, with these categories specified by the National Ministry of Labor or civil society registers; 30 percent were reserved to be divided between: unemployed persons between 50-70 years of age, persons with government recognition of special needs status, and veterans of the Falkland Islands War. Buenos Aires Ley 1166, supra note 94, at § 11.1.9. In the case of vending by third parties (non-permit holders), at least 50 percent of the actual vendors must fall into one of these categories. Id. § 11.10.2.
120 These five categories are listed in order of priority. Reglamento de Quito, supra note 65, at Art. 10.
121 São Paulo Decreto 33.924, supra note 94, at Art. 11, 13.
122 Bend Street Vendor Policy, supra note 81, at § 4.9.
123 American Planning Association, supra note 91, at 4.
many vending spots are set aside for preferred groups, this could cause tensions within the community of vendors, though there has not been evidence of this in the jurisdictions surveyed.

The possibility of auctioning vending spaces to the highest bidder, as mentioned in the secondary literature, has the disadvantage of being economically regressive. Though it would help raise funds for the government and could perhaps be used for social services for street vendors, it would amount to a preference for wealthier street vendors.

8. Provision of Additional Services to Vendors

Indian National Policy and Model Bill

Both the National Policy and the Model Bill recommend a range of benefits for street vendors, but would make very few of them mandatory. Under the National Policy, governments at the central, state, and municipal levels are to provide financial assistance for vendors to construct public toilets. State governments and municipal authorities “may” offer health care, both preventative and curative, and including reproductive and child care. The National Policy goes on to specify that vendors should be provided with vocational and business training. With respect to credit, the National Policy directs state and municipal authorities to help street vendors set up “self-help” groups to access credit from banks, and states that certain special development and microcredit banks can be made available to street vendors. With regard to social security, the National Policy merely refers to the aim of the central government to extend social security to the unorganized sector (including street vendors), and declares that “[t]he national efforts should be supplemented by efforts of State Governments/Municipal Authorities and organisations of/for street vendors.” Finally, the National Policy directs TVCs to assist street vendors in forming their own organizations to access the benefits of social services available to them in the most effective manner.

The Model Bill provides that the local authority shall be responsible for “providing, in consultation with the town vending committee, in the vending zones and to the street vendors, civic services, including: (i) solid waste disposal, (ii) public toilets to maintain cleanliness, (iii) electricity, (iv) drinking water, (v) shelter to protect street vendors and their wares, (vi) storage facilities, beautification, placement of signage and, (vii) other facilities as may be needed by the street vendors and specified in the scheme.” The Model Bill also states that the local government may direct the town vending committee to provide professional development training for street vendors, promote awareness of sources of credit, and determine the terms of social security and other benefits schemes.

124 National Policy, supra note 2, at § 6.1.
125 Id. § 6.2.
126 Id. § 6.3.
127 Id. § 6.4.
128 Id. § 6.5.
129 Id. § 6.8.
130 Model Bill, supra note 3, at § 15(f).
131 Id. § 9(y).
132 Id. §9(u).
133 Id. §9(w).
Results of Comparative Survey

The jurisdictions surveyed provided diverse examples of the services that governments and NGOs are either required to provide to street vendors or effectively provide independently of legal mandates.

In many jurisdictions, marketing and business services were targeted toward helping vendors improve their business outlook, as well as making the public aware of products sold by vendors. In Singapore, for example, the government helped hawkers with marketing, creating earlier this year www.myhawkers.sg, which showed the location of different stands, allowed users to rate their favorite vendors, provided up-to-date news and information on hawker-related issues, and described the history of hawking in Singapore. In New York City, the government provided funding to local NGOs which help train vendors in business skills and entrepreneurship.134

Some jurisdictions provided for general social assistance for licensed vendors, often funded by vendor fees. A case study in Lima, Peru revealed that half of the vendor fees were invested in a fund that was distributed as social assistance to participants. The governing board determining the use of the fees included not only members of the local government but also organizations representing street vendors, ensuring that vendors had a voice in how the assistance was distributed.135

Finally, street vendors often advocated for specific forms of assistance to aid them in their work, though these requests were often left unfulfilled. The Nairobi Informal Sector Confederation (NISCOF) requested that the City Council provide public toilets in hawker areas to help deal with sanitation problems.136 In addition, infrastructural improvements for street vendors have been successful in South Africa, where the Durban’s Department of Informal Trade and Small Business Opportunities secured comparatively large amounts of money for infrastructural development, indicating a degree of political prioritization of street trading.137 Finally, vendors in some jurisdictions requested additional protection with regard to safety from crime.138

Analysis

There are three key points for drafters of Indian legislation to keep in mind when considering

134 “[T]he Upper Manhattan Empowerment Zone provided a $300,000 grant … in 1998 to the Masjid Malcolm Shabazz Harlem Business Outreach Center (HBOC). The HBOC is a not-for-profit organization established in 1994 that seeks to expand a technical assistance program that provides business management skills to vendors selling goods at a market located within the empowerment zone.” JENNIFER BALL, STREET VENDING: A SURVEY OF IDEAS AND LESSONS FOR PLANNERS (2002), 8-9.

135 Case Study: Lima, in U.N. HUMAN SETTLEMENTS PROGRAMME, INNOVATIVE POLICIES FOR THE URBAN INFORMAL ECONOMY 70, 2006 [hereinafter UN-HABITAT, INFORMAL ECONOMY].


which services to mandate. First, services are often funded by fees imposed on the vendors
themselves. If services to vendors are self-financed, having more services available may require
vendors to pay too high a percentage of their earnings to fund benefit programs. Second, the
drafters of the Indian legislation must decide whether to institute services at the national level or
at the local level. Implementing the services on the national level could ensure greater uniformity
and quality control. But leaving service implementation to local authorities might improve
greater sensitivity to local circumstances. Third, in the case of those services that are left to local
authorities, it must be decided whether the national legislation should mandate the provision of
certain services, or simply suggest them to local authorities, as the National Policy does at
various points. Mandating all proposed services runs the risk of being ignored by local
authorities as an unrealizable goal. However, choosing a select few for mandated status might be
feasible, as long as local authorities are provided sufficient funds to properly implement them.

C. Identifying Vending Sites

This section discusses four issues involved in identifying and defining vending sites: the agency
or government responsible for selecting sites, the balance between sites in the streets and in
commercial centers, regulations restricting vending in specific locations or at specific times, and
regulations on the size of individual vending sites.

1. Vending Site Selection Authority

Indian National Policy and Model Bill

The Indian civil society discussion on the 2007 Model Act concluded, “The Act must contain
some provision as to how to declare the hawking zones. As such, presence or proximity of
natural market must be a major consideration. The number of spaces should equal the number of
vendors.” This comparative survey identified three points in the regulating process at which
vending site selection may happen: (1) through legislation designed specifically to regulate street
vending, (2) after legislation is enacted and selection authority is delegated to an administrative
agency, or (3) implicitly, as part of other urban zoning plans (either legislative or administrative).
This sub-section analyzes each of these in light of the stated goals from the civil society meeting.

Results of Comparative Survey

First, vending sites may be identified in street vendor legislation itself. In Lima, for example, a
complex set of street vendor laws, regulations, and by-laws established no-vending, vending-
permissible, and vending-encouraged zones.

A second strategy, and one that might be more responsive to changing needs, is to delegate
selection authority to an administrative agency that makes decisions after the enactment of
legislation. In this model, the administrative agency often has latitude to periodically reevaluate

139 Meeting on the Model Act, supra note 52, at § 14.
140 INFORMAL ECONOMY, supra note 135, at 80, 83.
vendor siting. For example, in Buenos Aires, decisions were made by the Application Authority, an administrative agency.\(^\text{141}\)

Third, in some jurisdictions, selection was made during part of larger urban planning projects. In this model, it may not be clear to the public during the planning process that street vendor access is being regulated, because it happens as only one piece of a larger re-zoning project, and street vendor legislation itself is enacted only later, if at all, and within the constraints already established by the larger urban planning scheme. In Bogotá, for example, most decisions about special street vendor zone locations were made during a citywide urban planning project. Vendors were implicitly excluded from large swaths of the city they had previously used, and only through later legislation did the city specifically reserve areas for vending or explain what regulations would govern vendors and what services the city would provide them.\(^\text{142}\) Although formal street vendors’ associations had access to the best locations in which vending was allowed, there were no provisions in the legislation for their involvement in selecting those locations. While this model is noted here, it is not discussed in the analysis, because the June 30 deadline imposed by the Indian Supreme Court would not make such a two-step process viable, and it does not appear to offer significant advantages to street vendors.

Finally, some jurisdictions use a combination of these models. In Quito, for example, legislation identified nine original sites but left the possibility of new sites open at the discretion of the Municipal Allocation Committee, an administrative agency that includes three representatives from street vendors’ associations.\(^\text{143}\)

**Analysis**

The three approaches from the comparative survey that drafters of Indian street vendor legislation might consider are site selection in national legislation, site selection delegated to local agencies through national legislation, or a combination of some site selection in the legislation with a mechanism for periodic revisions (likely done at the state/Union Territory or local level, for reasons of practicability).

Identifying sites through national legislation would create certainty and might provide greater long-term security for vendors at those sites. Because one stated civil society goal is proximity to natural markets, this might provide a chance legally to codify markets in traditional sites. However, if the goal is to create legislation that is responsive to changing needs, this might be a less productive strategy.

Local decision-making, particularly with a participatory mechanism, offers greater flexibility for local governments to identify market sites. In theory, because local governments may be more aware of traditional vending patterns, they may be better placed to meet two civil society goals: proximity to natural markets and a number of sites that equals the number of vendors. However,

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\(^{141}\) Buenos Aires Ley 1166, *supra* note 94, at § 11.3.1. Crucially, there were no participatory provisions at this stage of the legislation, meaning that the administrative agency had the legal power to make decisions without soliciting street vendor input.

\(^{142}\) Plan Maestro para Bogotá, *supra* note 104.

\(^{143}\) Reglamento de Quito, *supra* note 65, Art. 7 & 9.
local authorities may also be more susceptible to pressures from other local interest groups, and
the relative power of street vendors in decision-making bodies is likely to vary in response to
changing local politics. To ensure that the civil society goals of market location and size are met,
while also allowing for local flexibility and the ability to react to changing numbers of vendors,
drafters of the Indian legislation could use national legislation to set certain guidelines about
vending site selection (e.g., locations must be within a certain distance of natural markets and be
sufficient to accommodate all vendors), while allowing more specific guidelines to be set locally.
Legislation might also mandate minimum levels of street vendor participation in the decision-
making process to ensure that administrative decisions accurately reflect understandings about
natural markets and vendor needs, or it might use an administrative body with existing
 participatory mechanisms, such as the town vending councils.  

The hybrid approach to location selection, in which some sites are codified in legislation and a
local agency, with a participatory mechanism, is also established to add future sites, may offer
one middle ground. In India, it might allow legislators to preserve certain existing sites and
minimum numbers of street vendors now while also creating provisions for new sites, or sites of
different sizes, as the demographics of street vendors change.

2. Vendor Siting: Streets vs. Commercial Centers

Indian National Policy and Model Bill

Neither the National Policy nor the Model Bill suggests the development of commercial centers
as a solution to street vendor growth. However, commercial centers have emerged as a trend,
particularly in emerging economies, merit brief discussion.

Results of Comparative Survey

A number of jurisdictions, particularly in emerging economies, actively promoted a transition
from street vending to vending in commercial centers. These included physical structures, like
the Quito market Polvos Azules, or outdoor spaces in which vendors were organized into formal
markets without historical precedent for a market there, as in the plazas of Mexico City.

This transition was often described as part of an urban modernization plan, and these cities’
regulations commonly emphasized the “professionalization” of vendors. City governments also
often promised additional services and infrastructure in commercial centers. However, the

However, participatory mechanisms alone, without guidelines in the legislation, may be insufficient to meet
stated goals if street vendors are not a strong enough local political bloc. In South Africa, for example, street
vendors are often overpowered by “better resourced and more articulate groupings such as property owners” in local
decision-making bodies. Skinner, supra note 137, at 22-23.

In Singapore, for example, although the country’s laws permitted the issuance of licenses to vendors who wished
to operate on streets, in practice vendors were no longer permitted to operate on streets. Instead, they have been
clustered into about 200 off-street hawker centers dispersed throughout the city-state. In Mexico City, vendors have
been limited to special commercial plazas, and as the borders of those plazas expand in response to market
pressures, legislators have attempted to further restrict their boundaries. John C. Cross, Co-option, Competition, and
Resistance: State and Street Vendors in Mexico City, 25 LAT. AM. PERSP. 41, 43 (1998). In both Quito and Bogotá,
even where some street vending is still allowed, the city governments have promulgated policies that advocate
containing street vending to commercial centers. Reglamento de Quito, supra note 65, at Preamble & Art. 1;
Resolución DG-088-07, supra note 67. Even when there was not an express policy of off-street vending, there may

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secondary literature suggested that many commercial center projects faced similar problems: a failure to deliver promised infrastructure and services; rents that were prohibitively high for many vendors; and an unreasonably low limit on the number of vendors, leaving many unemployed and leaving customer demand unmet. As a result, many vendors eventually returned to the streets to take advantage of the informal infrastructure and lower overhead there, and to take advantage of unmet consumer demand.\textsuperscript{146}

**Analysis**

Because of the problems such centers tend to face, it seems inadvisable to introduce such a policy in India at this time. However, if such a policy is proposed, administrators might learn

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\textsuperscript{146} Four projects analyzed in the secondary literature prove particularly instructive: the creation of vendor plazas in Mexico City, Mexico; the construction of a commercial center co-managed by vendors in Lima, Peru; the Odawna Project, a market-construction project in Accra, Ghana; and a commercial center program in Port of Spain, Trinidad. In 1993, Mexico City passed an ordinance making illegal all street vending outside of approved commercial plazas. However, commercial plazas in Mexico were too expensive for vendors to recoup costs, were not tenable in the face of an economic crisis, and were not kept in the state of repair that the city administration had promised. Street vendor “associations began to encourage vendors to set up stalls outside the plazas in order to make ends meet, arguing that the administration had broken its side of the agreement because of the poor state of the plazas and the large number of vendors still on the streets.” Even street vendors who remained in the plazas often set up second stalls in the streets to pay for commercial plaza costs. Cross, \textit{supra} note 145, at 223. Lima, Peru, has also developed several pilot program commercial centers, including Polvos Azules, which allows vendors to buy or rent spaces and to participate in management of the center. The UN has evaluated Polvos Azules on a series of principles based on ILO and UN guidelines for the informal economy generally, and concluded that Polvos Azules: (a) enjoyed much higher levels of regulatory compliance; (b) has improved security and quality of life for vendors relocated there, while also separating some of them from key producers; (c) was an exemplary instance of public-private partnership in the informal economy; (d) appeared to be economically sustainable, although it could enjoy more interdependence with the local economy; (e) has not sufficiently addressed the gender imbalance either in leadership or in membership; and (f) may not be easily replicable because of the high costs and human resources expended by the government in creating and maintaining the center. Polvos Azules, however, did not seek to replace all street vending, avoiding many of the problems seen in other jurisdictions. UN-HABITAT, \textit{supra} note 135, at 82-83. In 2006 the mayor of Accra, Ghana launched the Odawna Project to construct a large new market that would include a warehouse, police station, bank, daycare center, and health post. After registering with the AMA and receiving ID cards, street vendors would be relocated to the Odawna Pedestrian Shopping Mall where they would be allocated stalls. Odawna is built to accommodate 3,000 vendors inside the mall plus an additional 1,000 mobile vendors. There is concern, though, that Odawna’s price may limit its effectiveness: processing fees cost $20 while vendors must spend another $220 to secure a stall for trading. The Project is undersubscribed, and it is not clear that all promised services will be provided. Furthermore, Accra currently lacks a comprehensive policy for dealing with issues relating to street vending. In 2003 the Accra Metropolitan Authority (AMA) evicted strict vendors from the central city area but later reversed course for fear that eviction of street vendors without providing them with alternative spaces for shopping their wears was unfair and might lead to political repercussions for leaders. Benjamin O. Ofori, Thesis, \textit{THE URBAN STREET COMMONS PROBLEM: SPATIAL REGULATION OF INFORMAL ECONOMIC UNITS IN ACCRA} (June 2007), \url{http://etd.ohiolink.edu/send-pdf.cgi/Ofori%20Benjamin%20O.pdf?ohiou1180940316}. Finally, in Port of Spain, Trinidad, a similar modernization program led to many vendors using their official market stalls for storage and returning to the streets to meet the needs of their customers. John C. Cross and Marina Karides, \textit{Capitalism, Modernity, and the “Appropriate” Use of Space}, in \textit{STREET ENTREPRENEURS} 22 (John Cross and Alfonso Morales eds., 2007).
from the difficulties of similar projects in other contexts and (1) construct commercial centers only when budget and political will allow them to be funded and maintained; (2) ensure that any additional costs to vendors will be more than offset by advantages they gain from relocation; and (3) use commercial centers to supplement, rather than replace, street vending, in order to ensure that vendors have the flexibility to meet consumer demand. While these recommendations may seem self-evident, they also reflect the problems consistently encountered across jurisdictions that engaged in such commercial center development programs.

3. Excluded Locations and Times

The following subsections discuss three types of regulations designed to exclude street vending in certain locations and at certain times: general frameworks for space management; public safety/right-of-way regulations; and regulations protecting the interests of residents and retailers.

a. General frameworks for space management

Indian National Policy and Model Bill

Both the National Policy and Model Bill mandate that urban areas should be zoned into three categories: “restriction-free vending,” “restricted vending,” and “no vending.” Such decisions are to be made at the city/town level, and the National Policy provides certain guidelines to which local administrators should adhere. Consequently, this section analyzes the content of such regulations and the effects of enacting such regulations at various levels.

Results of Comparative Survey

Most jurisdictions used one of four general approaches to space management: (1) vending in specific areas only (and generally with a permit); (2) location-specific vending permits approved on a case-by-case basis; (3) a tiered system of regulations, depending on the area in question; and (4) a presumption that all space was open to licensed vendors, except for a few areas restricted for reasons of public safety or public order.

Under the first approach, municipal authorities selected certain areas or streets in which vending was allowed to take place and prohibited vending in all other areas of the city. The city of Lawrence, Kansas, in the United States, for example, designated five areas in which street vending was exclusively to take place. Similarly, in Buenos Aires, vending in public spaces was restricted to approved areas. While the legislation itself does not identify those areas, a
survey of secondary sources, primarily newspaper articles, indicates that vendors are not allowed in the city’s famous, historic, and commercial streets, including the Plaza de Mayo, a center around which most national government buildings are situated, and chic shopping street Calle Florida.\textsuperscript{151}

A second approach involved location-specific permits approved on a case-by-case basis. Each proposed location was evaluated based on relative advantages and disadvantages. In the U.S. city of Portland, Oregon, for example, vendors proposed and applied for specific sidewalk locations that meet the various licensing requirements of the city. No areas or streets were specifically designated for street vending, although some could have been excluded to street vendors because of other zoning ordinances.\textsuperscript{152}

The third approach divided areas of a city into categories that were subject to different levels of regulation. The levels usually included areas in which street vending was actively encouraged; areas in which street vending was permitted on a case-by-case basis; and areas in which all street vending was prohibited. Most municipalities in Great Britain, for example, used three categories: license streets, consent streets, and prohibited streets. Street trading was allowed only on the first two types of streets. On license streets, the presumption was in favor of the right to trade.\textsuperscript{153} By contrast, on a consent street, the local council had very broad discretion to grant or refuse permission to trade, and did not have to rely on statutory grounds. Similarly, the government of Lima, Peru, identified three classes of spaces: market spaces, which had been specifically upgraded for the purpose of vending; regulated areas, or public spaces in which vendors might sell with permission; and closed zones, where vending was not permitted. Additionally, the metropolitan and district authorities were permitted to identify “decentralized ambulatory trade zones” within the public spaces, in which they would actively promote street vendor commerce in order to redirect traffic from heavy commercial areas.\textsuperscript{154}

A fourth approach was to presume that public space was available for vending (generally with appropriate licenses), unless it fell into one of relatively few categories in which vending was not permitted because of reasons of public safety or order. While other jurisdictions might implicitly follow this approach through an absence of regulation, South Africa was unique in that its national policy explicitly codified this approach. There, outside of a few enumerated potential location restrictions, discussed below in this section, local authorities were not permitted to limit through by-laws the hours or locations of vendors or the goods or services that they provided.\textsuperscript{155} However, the national Businesses Act provided a process through which local authorities may, through enactment of resolutions and in accordance with certain notice and comment provisions, designate certain areas as restricted or prohibited to vendors. In weighing the merits of such resolutions, local authorities had to consider whether there were less restrictive means that could

\begin{flushleft}
\textsuperscript{151} See, e.g., Crece el Enfrentamiento por la Venta Ilegal en la Calle Florida [Confrontation Grows Over Illegal Sales in Florida Street], LA NACIÓN (Arg.), Jan. 7, 2003, at 15; Maria Paz Aizpurua, Los Echaron de Florida y Se Fueron a Lavalle [They Were Kicked Off of Florida and Went to Lavalle], LA NACIÓN (Arg.), Jan. 8, 2003, at 11.

\textsuperscript{152} Portland Policy on Sidewalk Vendors, \textit{supra} note 79, at § 17.26.

\textsuperscript{153} For instance, in the city of Bristol, the council was “duty bound to grant or renew a properly made application unless one or more of the statutory grounds for refusal applies,” such as that there is not enough space to accommodate additional traders. Bristol Street Trading Policy, Appendix C, § 1.

\textsuperscript{154} Lima Ordenanza 002, \textit{supra} note 77, Art. 3.

\textsuperscript{155} Businesses Act, \textit{supra} note 53, at (6A)(1)(b)
\end{flushleft}
be effective in supervising and controlling vendors (including negotiations with vendors themselves), and whether the restriction or prohibition would force a substantial number of vendors out of business.\textsuperscript{156}

\textit{Analysis}

Each system of space management allowed for administrative agency discretion at a different level. Vending in specific areas only allows legislators or administrators to preemptively eliminate certain areas. Location-specific vending permits approved on a case-by-case basis allows for enormous discretion during the approval process. Tiered regulation may be attractive because it allows for relatively unrestricted vending in certain areas, but the overarching authority that categorizes each area may have more discretionary zoning authority. The South African model of relatively open vending was unrestricted according to its plain language, but it gave local authorities relatively wide latitude to enact specific restrictions. In instances in which vendors are less powerful vis-à-vis other local interest groups, it has sometimes been difficult for them to advance their own interests.\textsuperscript{157}

Furthermore, each style of regulation presents different administrative concerns. For example, in Portland, a U.S. city with relatively low population density and a relatively well-funded and well-staffed city government, case-by-case decision-making was feasible in a way that it may not be elsewhere. In South Africa, where people may more often move in and out of the informal economy (or between jobs in the informal economy) in response to market pressures, a broader system that focuses on regulation of space, rather than people, may be more practicable.

For the reasons outlined above, the system of spatial management most appropriate for India will likely depend on the mechanics of the regulatory system. This analysis does lead, however, to two preliminary recommendations. First, to maximize procedural safeguards, it may be helpful to mandate that street vendor representatives be involved at every point at which legislation allows for administrative discretion. However, participatory mechanisms alone are likely insufficient to protect street vendor interests, given the imbalance of political power as between vendors and other stakeholders. This suggests the importance of national legislation that designates certain areas as legally protected vending zones.

\textbf{b. Public safety and right-of-way}

\textit{Indian National Policy and Model Bill}

While the National Policy does not identify specific guidelines for public safety and right-of-way, it does authorize TVCs to “impose reasonable restrictions, if necessary, for ensuring flow of traffic and for addressing concerns relating to public health and hygiene in the public interest.” It may also constitute ward vending committees and delegate such rulemaking to the wards.\textsuperscript{158} Aside from delegating regulatory authority, the Model Bill does not offer more specific guidelines on public safety and right-of-way restrictions.

\begin{footnotesize}
\footnotesize\textsuperscript{156} Id. at (6A)(2)(c)
\footnotesize\textsuperscript{157} Skinner, supra note 137, at 22-23.
\footnotesize\textsuperscript{158} National Policy, supra note 2, at § 2.3.
\end{footnotesize}
Across jurisdictions, street vendor legislation is premised on the idea that the right to practice one’s trade in public space is not unlimited and must be balanced against the rights of the public to safety and to enjoyment of public spaces. Consequently, almost all jurisdictions restrict vending through a series of public safety and right-of-way regulations. Unlike sanitation and health regulations, the content of which varies significantly between jurisdictions, public safety and right-of-way restrictions are surprisingly consistent. Many jurisdictions, for example, prohibit vending in close proximity of intersections, fire hydrants, public walkways (such as crosswalks, bridges, and overpasses), and building entrances and exits. The consistency of these regulations suggests a similar set of public safety concerns related to access to utilities, emergency services, and public sidewalks and thoroughfares.

While the content of the regulations surveyed is relatively similar, the major difference between jurisdictions was whether legislation itself laid out bright-line rules (for example, prohibiting vending within a certain number of meters of an intersection), or whether it listed factors that administrators should consider when granting permits. For example, in São Paulo, vendors were not allowed to set up within 5 meters of a crosswalk, 15 meters of an intersection, or 5 meters of public equipment such as fire hydrants; or on overpasses, bridges, or public stairways, and no vending was permitted on sidewalks less than 2.5 meters in width. By comparison, in the U.S. city of Portland, Oregon, “the use of the permit operating area for sidewalk vending must be compatible with the public interest in use of the sidewalk areas as public right-of-way.” The Portland regulations featured several bright-line rules about proximity to property lines or civic facilities, such as fire hydrants, bus stops, and street trees.
building entrances, and a much broader array of proximity factors which the City Engineer must consider before granting a permit.

Analysis

As with other areas of regulation, the choice between bright-line and flexible rules appears to be a decision between clear, predictable standards and the ability to respond to localized needs. The Portland model, which combines some bright-line rules with some administrative discretion, offers one example of a middle-ground solution; however, it may be necessary to analyze the variation between public safety and right-of-way needs between Indian jurisdictions to determine at what level rules can most effectively be set.

Furthermore, some studies suggested that the effect of street vendors on sidewalk congestion could have been overstated. Whether Indian legislation uses bright-line rules, administrative rulemaking, or a combination, it is important to ensure that decisions are based on empirical evidence of effects of vending on public safety, not prejudices or assumptions. To that end, street vendor advocates may also want to request that any legislation call for regular empirical studies of space use and sidewalk congestion in order to ensure that regulations address actual public order concerns, rather than mere speculation. Such studies are not unprecedented; for example, legislation in both Bogotá and Quito provided for socioeconomic studies of street vendors.

c. Protecting interests of retailers and residents

Indian National Policy and Model Bill

Although the National Policy “recognizes that street vendors constitute an integral and legitimate part of the urban retail trade,” members of Indian civil society have also expressed concerns that urban retailers in fixed stores see street vendors as competitors. As the survey demonstrated, these tensions were common in areas with significant street vendor populations. The Model Bill does not make reference to these tensions.

Results of Comparative Survey

Two sets of restrictions addressed the interests of residents and neighboring retailers in the jurisdictions surveyed. First, some regulations prohibited vending altogether in certain residential or historical areas, or, as in South Africa, gave residential occupants the right to object to vending. The second, and generally more complicated, set of restrictions involved proximity to other businesses and often focused on preventing vendors from selling goods that compete with those of nearby merchants. Such regulations could either ban the sale of similar goods

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163 Gregg W. Kettles, Legal Responses to Sidewalk Vending in STREET ENTREPRENEURS 65 (John Cross and Alfonso Morales eds., 2007).
164 See, e.g., Reglamento de Quito, supra note 65.
165 National Policy, supra note 2, at § 1.6.
166 South African law permitted restrictions on vending in front of and on the same side of the road as a residential building when an occupant objects to such vending. Businesses Act, supra note 53, at (6A)(1)(a)(iii)(ff). In São Paulo, vendors may not sell in neighborhoods in a registry for city’s historical, architectural, artistic, and touristic patrimony or in strictly residential areas. São Paulo Decreto 33.924, supra note 94, at Art. 22(e).
altogether or require that vendors obtain retailer consent to vend similar goods. The nature of the ban gave retailers varying degrees of power over vendors. In the jurisdictions surveyed, retailers could have had: (1) an absolute veto over any type of nearby vending; 167 (2) the power to veto the sale of competing goods; 168 (3) the power to veto vending that obstructs window displays of an existing business; 169 or (4) no direct power, with their interests instead represented through the local political process. 170

**Analysis**

Analysis on the nature of the tension between vendors and retailers is inconclusive, and the specific concerns of each group appear to vary by jurisdiction. In the South African town of East London, for example, formal businesses in the years after apartheid were generally opposed to the existence and growth of an unregulated informal sector, which they saw as cluttering up the [central business district], driving away their customers, providing unfair competition and generally lowering standards. … Formal business owners resented the presence of informal traders selling from the pavements in front of their shops and were frustrated at their inability to change the situation. They regarded this as a form of exploitation, since it is they who are paying for the retail space, whilst their window displays are obstructed and informal traders are often selling similar goods. 171

Street vendor advocates in New York offered another perspective, arguing that “there is some anecdotal evidence that [vendor] marketplaces have been successful in both generating adequate sales for vendors as well as promoting business in surrounding retail stores.” 172

One study suggested that, despite fears that street vendors will threaten local businesses because of flexibility and low overhead, the two do not generally compete head-to-head, and street vendors must absorb other costs related to uncertainty and their small size. Consequently, because of fears about competitive advantage are largely imagined, street vendors were often restricted in a way that put them at a disadvantage in the marketplace. 173

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167 In the U.S. city of Lawrence, Kansas, for example, retailers had an absolute veto over any type of nearby vending: potential vendors were required to send a statement of intention to all businesses within 75 feet of the proposed location and to obtain a signature of approval for all business owners. City of Lawrence Policy on Street Vending, *supra* note 80, at § 3.0.

168 South Africa gives retailers power to veto the sale of competing goods; such sale is prohibited without express retailer consent. *Businesses Act*, *supra* note 53, at (6A)(1)(a)(iii)(ee).

169 Windhoek, Namibia, does not restrict the location or nature of goods vis-à-vis retailer interests, but does prohibit vendors from obstructing the display window of an existing business when the business owner affirmatively objects. *Street Trading Regulations*, *supra* note 160.

170 In the U.S. city of Bend, Oregon, legislation gave discretion to the City Manager, rather than retailers; the City Manager may choose deny the application of a street vendor to sell merchandise within one-half block of a permanent retailer selling the same type of product. *Bend Street Vendor Policy*, *supra* note 81, at § 4.10.


173 *Kettles,* *supra* note 163, at 58, 65-69.
In light of this, legislative responses to street vending might require empirical studies of the economic impact of street vendors as a prerequisite to any protectionist measures; avoid the overregulation of street vendors by allowing vending wherever similar business activities are allowed, and so long as they abide by local ordinances; and not give individual businesses the power to veto street vending, but allow for legitimate community-wide grievances to be addressed through a notice and comment process.

Finally, even the most carefully crafted legislation may require dispute resolution and enforcement mechanisms. A more comprehensive analysis of various dispute resolution mechanisms generally is offered in Part E of this section.

The secondary literature suggested that balancing the needs of vendors and retailers was one of the most complicated and controversial challenges of street vendor legislation. The discussion above suggests that a multi-faceted approach will be necessary to minimize and resolve disputes. It may include some combination of (1) empirical studies of street vendor and retailer needs and market impacts; (2) regular reevaluation of needs and participatory mechanisms for both vendors and retailers; (3) a decision-making mechanism that does not unfairly advantage one group over the other; and (4) a body capable of receiving and addressing complaints.

4. **Sizing and Dimension Specifications**

*Indian National Policy and Model Bill*

Neither the National Policy nor the Model Bill discuss sizing, presumably leaving specific decisions on the issue to local authorities.

*Results of Comparative Survey*

The following chart illustrates how different cities regulated the size and dimensions of street vendor sites. The most common type of sizing regulations set specific limits on the area an individual street vendor may occupy. Sometimes, dimensional specifications also limited roofs, awnings, the size of equipment, or the height of stacked goods. The variety evident in these different jurisdictions indicated that spatial needs and stakeholder concerns vary from city to city.

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174 For an example of how even a carefully-crafted political compromise resulted in ongoing disputes and the need for a dispute resolution mechanism, see Kathleen Staudt, *Street Vendors at the Border: From Political Spectacle to Bureaucratic Iron Cage?*, in *Street Entrepreneurs* 79, 88 (John Cross & Alfonso Morales eds., 2007).
<table>
<thead>
<tr>
<th>City</th>
<th>Max. Space Occupied</th>
<th>Placement of Goods &amp; Equipment</th>
<th>Roofs &amp; Awnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardiff</td>
<td>Receptacles and stalls are not to exceed 3 meters x 2 meters for general merchandise and 4 meters x 2 meters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hong Kong¹⁷⁵</td>
<td>Sites are established, and fixed-pitch hawkers may erect structures on those sites so long as structures are moveable</td>
<td>Food vendors may, with specific permission, place tables and chairs within the immediate vicinity of site</td>
<td></td>
</tr>
<tr>
<td>Kuala Lumpur¹⁷⁶</td>
<td>1.8 meters x 0.9 meters</td>
<td></td>
<td>Roofs not permitted without permission of commissioner</td>
</tr>
<tr>
<td>Lima¹⁷⁷</td>
<td>2 meters x 1.5 meters</td>
<td>Counter sales no more than 1 meter above ground level; merchandise display and awning no more than 1.5 meters above ground level</td>
<td></td>
</tr>
<tr>
<td>London¹⁷⁸</td>
<td>Vendor’s apparatus may not extend beyond the licensed area</td>
<td></td>
<td>Roofs are allowed, but “any roof, awning, or supports of the stall or goods suspended from any of these” must be at least 2.6 meters high</td>
</tr>
<tr>
<td>Philadelphia¹⁷⁹</td>
<td>Equipment may not exceed 4 feet in width, 8 feet in length, 8 feet in height</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portland¹⁸⁰</td>
<td>Pushcarts may not exceed 5 feet in height and 6 feet in length</td>
<td></td>
<td></td>
</tr>
<tr>
<td>São Paulo¹⁸¹</td>
<td>Must leave at least 60 percent of sidewalk space for pedestrians</td>
<td>Equipment may not extend more than 1.2 meters into public space; total area of equipment may not exceed 2 meters</td>
<td></td>
</tr>
</tbody>
</table>

¹⁷⁵ Hong Kong Hawker Regulation, supra note 74, at Cap 132, Sec. 83A, (45), (49)
¹⁷⁶ Hawker and Stall Licensing By-Laws, supra note 160, at n15-16.
¹⁷⁷ Lima Ordenanza 002, supra note 77, at Art. 15.
¹⁷⁸ London Local Authorities Act, (1990) as Amended, Street Trading, Section 9, at §§ 22-23 (U.K.).
¹⁷⁹ Philadelphia Code, supra note 108, at § 9-203(7)(g).
¹⁸⁰ Portland Policy on Sidewalk Vendors, supra note 79, at 17.26.130A.
¹⁸¹ São Paulo Decreto 33.924, supra note 94, at Art. 21-22.
Analysis

The variety of dimension regulations across jurisdictions suggests that different cities may have different spatial needs; consequently, national legislation may want to give individual cities the flexibility to legislate accordingly.

Regardless of whether spatial use is negotiated at the national or sub-national level, regulations from various jurisdictions suggest that at least four sets of stakeholders must be considered: (1) vendors; (2) customers (reflected, for example, in the provision of tables and chairs at food stalls in Hong Kong); (3) local residents or businesses (reflected, for example, in limitations on roofs); and (4) pedestrians. While these groups are often understood to vie for limited public space, empirical studies suggest that they often have similar space management goals, that managed street vending does not lead to increased sidewalk congestion, and that one individual may occupy several of these categories throughout the day.182

Consequently, to meet stakeholder needs, it is necessary to understand points at which needs might conflict or overlap, without assuming that needs or rights are in conflict. One way to achieve this through national or state-level legislation might be to create a framework for stakeholder participation that would then be replicated in each metropolitan or municipal subdivision, as appropriate. Such a framework might include an empirical analysis of street vending on the economy and on sidewalk congestion as well as a decision-making body that included stakeholders from each affected group.

This survey and analysis suggest three decisions related to sizing that drafters of the new law should consider: (1) At what level of government should sizing decisions be made? (2) To the extent that sizing guidelines are incorporated into national legislation, what should they contain? And (3), how might various stakeholders’ interests be included and evaluated in decisions on sizing?

5. Notice and Comment During the Location Designation Process

Indian National Policy and Model Bill

The National Policy does not contemplate a notice and comment period during the location designation process. The Model Bill broadly requires TVCs to “identify and declare” vending zones and to place signs at each zone indicating the zone type, boundaries, and time limitations, but does not require vending committees to incorporate a notice and comment process into such designations.

Results of Comparative Survey

A significant number of policies for regulating street vendors, although not all, require the political actors responsible for designating locations to provide public notice, include street vendors and other relevant stakeholders a consultative selection process, or both.

182 Kettles, supra note 163, at 58, 65-69.
In Northern Ireland, locations for vending were specified by means of “designating resolutions” passed by local district councils. Any new designating resolutions, or changes to existing designating resolutions, were subject to extensive and clearly defined notice and comment period. Some jurisdictions created a two-level process in order to ensure that local authorities comply with notice and comment requirements. For example, prior to promulgating regulations under South Africa’s Businesses Act, a provincial administrator must publish a draft of the locally created regulations and invite concerned individuals to comment. The Businesses Act provided provincial administrators with the authority and responsibility of ensuring that the notice and comment process was properly carried out at the local level.

In addition, a number of jurisdictions required local governments to include specific stakeholders in the policy formulation process in addition to proving notice to the general public. For instance, the Bath and North East Somerset Council Street Trading Policy, in England, provided for consultation with a number of groups before a new pitch is created for street vending purposes. Any changes with regard to the criteria and conditions on the basis of which licenses are granted take place only after consultation with license holders “and others,” though who these others are was not specified.

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183 This scheme is laid out in Northern Ireland Act, supra note 76, at § 4. The procedures established that when a district council proposes such new resolutions, or proposes to rescind or vary a designating resolution, it must publish the draft resolution in two district newspapers. At least 28 days must be given to the public for written comment on the proposed change. The council is then instructed to consider the comments received and reconsider whether the resolution should be abandoned and varied. Once the council decides to adopt or abandon the proposed resolution, or has determined not to pass the resolution, it shall publish notice of this in two newspapers for two consecutive weeks, and circulate this result to any person who submitted comment. In addition, in cases in which a new designating resolution is considered, the district council must also consult the police sub-division that has jurisdiction over the relevant location, and it must consult the Department of Regional Development in regard to roads and the regulation of traffic. In cases in which the district council proposes to rescind or limit the scope of an existing resolution, it must consult license holders who trade at the locations to which the resolutions would apply, and any group representing these license-holders.

184 Businesses Act, supra note 53, at (6)(4)(a). In instances where a local authority decides to designate certain areas as restricted to vendors, it must publish a map showing such area in a local newspaper, the reasons for restricting vending in that area, and an invitation for individuals to submit objections in writing within a period that is no shorter than 21 days from the publishing of notice. Notice must also be provided in a “suitable location” in or near the area where the restriction is intended to take effect. Id. at (6A)(2)(f). Local authorities are required to consider all objections to their plans. Id. at (6A)(2)(g).

185 At the end of the notice and comment period, local authorities must provide to the provincial administrator plans for designating prohibited or restricted areas, proof that proper notice was provided to the public, and all objections submitted in response to the plans along with responses produced by the local authority. Id. at (6A)(2)(i). The administrator then has 60 days, in consultation with the local authority, to amend or revoke the local authority’s original resolution. Id. at (6A)(2)(j). If, based on public comments, an administrator decides to alter the draft regulations, the alteration need not be published prior to entering into effect. Id. at (6)(4)(b).

186 The parties to be consulted are occupiers of premises immediately adjacent and opposite the proposed vending location, ward councilors, the parish or town council, the Acon and Somerset Constabulary, the Development Control Office, the Highways Office, and existing holders of street trading consents in the immediate area. The Council is also instructed to consider any responses to public notices posted on the highway. Bath & North East Somerset Trading Policy, supra note 118, at § 6.

187 Id.
Analysis

Drafters of the new law may want to include a notice and comment period to ensure that individuals and groups that are not directly represented on the TVCs or other important bodies are able to voice their concerns. Without provisions mandating that street vendors and their representatives play a role in the notice and comment process (and sometimes even with them), certain social groups are likely to be excluded. In many areas, low levels of literacy, poverty, and other factors leading to a general lack of representation in the political process may prevent street vendors from participating meaningfully in policy development, leaving other wealthier and better organized groups, such as property owners, to dominate. 188

D. Environmental, Sanitation and Safety Regulations

Most jurisdictions surveyed had a set of environmental, sanitation, and safety regulations governing street vendors. The specific nature of the regulations varied by jurisdiction, suggesting that they may be produced by a combination of practical concerns, cultural and political norms about space, and political deal-making unique to each location. However, the survey pointed to two recurring themes. First, regulations governing street vendors generally discussed personal hygiene and equipment sanitation, waste disposal, quality and nature of wares, noise pollution, and permit display. And second, food vendors were generally subject to additional regulations.

1. Content of Health and Sanitation Regulations

Indian National Policy and Model Bill

In the National Policy, while most of the specific health and sanitation regulations are delegated to “appropriate Government” or the TVCs, the National Policy establishes some general guidelines on issues such as waste disposal. 189 The Model Bill delegates the authority for establishing such standards entirely to the “appropriate Government.” 190

Results of Comparative Survey

Across jurisdictions, regulations governing street vendors fell into one of four categories: (1) personal and equipment cleanliness; (2) waste disposal; (3) wares; and (4) noise pollution.

Among regulations governing street vendors, regulations addressing standards of cleanliness and waste disposal were typically the most extensive, but they also tended to use less specific language than regulations governing areas such as size, location, and licensing. They may require vendors to maintain a certain standards of personal, equipment, and workplace cleanliness. The

188 Skinner, supra note 137.
189 National Policy, supra note 2, at § 6(1) (“Every street vendor shall pay due attention to public health and hygiene in the vending zone/vendors’ market concerned and the adjoining area. He/she shall keep a waste collection basket in the place of vending. Further, he/she shall contribute to/promote the collective disposal of waste in the vending zone/area. ...”).
190 Model Bill, supra note 3, at § 3 (1)(k) (“[T]he terms and conditions for street vending including norms to be observed for upkeeping public health and hygiene;”)
language of these regulations is often vague and does not define precise metrics by which compliance can be measured. One jurisdiction, Kuala Lumpur, also prohibited vendors with infectious diseases from vending and included a provision by which vendors may be required to submit to medical exams.

Regulations in the second category included requirements that vendors not litter or dump waste; that they provide some sort of receptacle for patrons; and that they actively take responsibility for the cleanliness of the public areas near their vending site.

The third category of regulations governed the quality and nature of wares and includes prohibitions on the sale of certain types of goods and special requirements for the sale of particular goods. In Lima, for example, sale of pirated material was prohibited as part of the street vendor statute.

A fourth category of regulations governed noise pollution. These regulations may prohibit vendors from using loudspeakers and other devices that produce loud noises, or they may require that such devices be kept to a low volume.

Analysis

While the categories of regulations were relatively consistent across jurisdictions, there was some variety in their content, suggesting that various jurisdictions may have to balance different stakeholder needs and that they may respond differently to competing needs. Because of India’s size and diversity, national regulations may reduce this flexibility, but they are also likely to reduce uncertainty and the discretionary power of local officials.

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191 See, e.g., São Paulo Lei 11.039, supra note 94, at Art. 32-33, which required vendors to “demonstrate rigorous personal and equipment hygiene,” to maintain a clean workplace, and to store all equipment in an approved manner and location. In Hong Kong fixed-pitched hawkers were required to ensure that their areas are maintained in a clean and safe condition. Hawker Regulation, supra note 74, at Cap 132, Sec. 83A, (36). In Kuala Lumpur, vendors were required to maintain high standards of personal hygiene and to wear clean clothes. Hawker and Stall Licensing By-Laws, supra note 160, at 30. In Windhoek, Namibia, vendors were tasked with keeping both the goods they sell and the areas in which they work in clean and sanitary condition. They were also prevented from operating their businesses in a manner that poses “a danger or threat to public health or public safety.” Street Trading Regulations, supra note 160, at 7.

192 Hawker and Stall Licensing By-Laws, supra note 160, at 28-29.

193 In Stratford on Avon, street traders were required to provide a place for the storage of trash adjacent to the sale area. The trash container must be “of a substantial construction” and be waterproof and animal proof. The vendor also has the responsibility for ensuring that any space within 10 meters of the vendor, including the sidewalk but not the road, be kept free of trash. Street Trading and Collections Policy, Appendix A, §§ 11, 13, 14. In Philadelphia, vendors must simply provide trash receptacles and mark them for patrons’ use. Philadelphia Code, supra note 108, at (7)f. In Windhoek, vendors must refrain from dumping waste. Street Trading Regulations, supra note 160, at 7.

194 Lima Ordenanza 002, supra note 77, at Art. 27-28. São Paulo prohibited sale of toxic products, pharmaceuticals, explosives, fireworks, alcoholic beverages, live or embalmed animals, watches, jewelry, or glasses. São Paulo Lei 11.039, supra note 94, at Art. 33. For requirements on the sale of specific goods, see, e.g., id. at 23-24, 27-28 (requiring vendors of used clothing to certify its origins and requiring vendors to verify the accuracy of weights and measures for the sale of food by weight); Sidney Policy and Procedures, supra note 148, at § 11 (Sidney required that vendors obtain a permit from the fire department to use fuel.)

195 See, e.g., Hawker and Stall Licensing By-Laws, supra note 160, at 20 (hawkers in Kuala Lumpur were prohibited from using microphones, speakers, or other devices that produce loud noises); Lima Ordenanza 002, supra note 77, at Art. 24 (headphones must be kept to a low volume in Lima).
2. Rule-Making Body: Legislature vs. Administrative Agency or Local Authority

*Indian National Policy and Model Bill*

Under the 2009 National Policy, health and sanitation regulations are to be set through a combination of vendor self-regulation, regulations promulgated by the TVCs, and guidelines in the National Policy itself. A similar hybrid framework was proposed in the 2009 Model Bill. The bill would allow the “appropriate Government” to either set hygiene and other standards for vending or to delegate rulemaking to the town vending committee, but it does not mandate that the Government set standards or delegate authority to do so.

*Results of Comparative Survey*

In the jurisdictions surveyed, health and sanitation regulations, more than other types of regulations, tended to be promulgated locally and/or by administrative agencies, rather than through general street vendor legislation. In a few jurisdictions (including São Paulo, Buenos Aires, and Lima), these types of regulations were part of local legislation on street vendors. In most others, sanitation and environmental guidelines were issued by administrative agencies.

*Analysis*

Other points at which standards could be set include: (1) in national legislation; (2) by the national, state, or Union Territory (UT) government on land owned by each; (3) by the “appropriate Government,” with an option to delegate to local bodies (the current option); (4) by the “appropriate Government,” which is bound by legislation to delegate to a local authority or administrative body if it does not set standards itself; or (5) by a local body (such as the TVC). Drafters of the final legislation may wish to analyze the local politics in India to determine that point at which rules can achieve the ideal balance of flexibility, consistency, and enforcement.

3. Special Regulations Governing Food Vendors

*Indian National Policy and Model Bill*

Neither the 2009 National Policy nor the Model Bill includes provisions specifically addressing food vendors. Nevertheless the civil society meeting notes identify the need for a special

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196 National Policy, *supra* note 2, at §§ 2(3) (guidelines to be set by TVCs), § 3(2)(f) (self-regulation).

197 The term “appropriate Government” comes from the Model Bill, *supra* note 3, at § 2 (a), and it refers to the Central government, the State government, or the Union Territory (UT) government “in relation to the lands owned or controlled” by each.

198 Model Bill, *supra* note 3, at §§ 3(k), 9(q).

199 See, e.g., Reglamento de Quito, *supra* note 65, at Art. 4 (governing licensing and restrictions but delegating specific regulations to administrative bodies).

200 Meeting on the Model Act, *supra* note 52, at § 10.
section on food vendors and state, “The onus should be on the Municipality to show concrete evidences of violation of hygiene norms by street vendors.”

Results of Comparative Survey

Most of the jurisdictions surveyed featured additional regulations that apply only to food vendors. As with other types of regulation, while the content varied considerably, the general categories of regulation were relatively consistent across jurisdictions and included rules on the preparation, handling, and storage of food; requirements for food handling permits; and additional sanitary requirements, such as medical exams and the use of water from an approved source.

Regulations governing food vendors were often a particular source of contention among vendors, municipalities, and the public. Municipalities and some members of the public perceived the sale of food, more than goods, to pose a potential public health risk. At the same time, vendors and their advocates argued that rules governing food handling did not always reflect realistic practice. In Mexico City, for example, city officials responded to a cholera scare in the 1990s by proposing that each stall should be equipped with washing stations and running water. A scholar on Mexican street vendors called the idea “completely unfeasible” and argued was “completely out of touch with what is actually possible (and necessary) on the street.”

While the discretion involved in rules governing food sales leaves them prone to abuse, and authorities may be likely to propose solutions that are not feasible on the ground, it is clear that some sort of hygiene regulation is necessary. Food vending on the street, like any food sales, can pose real public health and safety concerns if not properly regulated. In Guatemala, for example, epidemiologists conclusively traced a 1993 cholera epidemic back to street vendors. However, regulations alone may be insufficient to truly address health concerns. After the Guatemalan cholera outbreak, a study of Guatemalan street vendors found that they had “good knowledge of food safety and cholera but unsafe practices, implying that more effective, practical training was

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201 Id.
202 In Lima, for example, food must be kept in special containers, vendors must always handle it with gloves, certain preservation standards must be maintained, and signs certifying the sanitation of certain food products must be visible. Lima Ordenanza 002, supra note 77, at Art. 19-23. In Buenos Aires, food vendors must complete a hygiene course and must meet different standards of production and preservation for various types of products. Candy, ice cream, non-alcoholic and alcoholic drinks, and other categories each have specific requirements for manufacture, preservation, and sale. Buenos Aires Ley 1166, supra note 94, at 11.12.12. In Hong Kong, food vendors were required to keep both food and utensils uncontaminated by dust, dirt, insects, vermin, and disease. Food must be stored in glass, plastic, metal or other approved containers and vendors must wear appropriately hygienic clothing. Water used for cooking or drinking must come from a government or other approved source. Hong Kong Hawker Regulation, supra note 74, at Cap 132, Sec. 83A, (52). In Kuala Lumpur, vendors must keep food and drinks in covered glass containers and must prevent contamination of food items by dust, dirt, smoke, and insects. Hawker and Stall Licensing By-Laws, supra note 160, at 26. In the U.S. city of Philadelphia, when food or drink is sold, vendors must show that he or she, and any employee, are free of communicable diseases. Philadelphia Code, supra note 108, at § 9-203(3)(a),(5). Sidney required vendors to submit to inspections or request separate approval from the Health Department where food is to be sold. Sidney Policies and Procedures, supra note 148, at § 11.
needed.”

This suggests that at least in the Guatemalan context, a requirement for a food handler’s license alone—a common requirement in many jurisdictions—may not be sufficient to ensure food safety. Other jurisdictions have also found that the most successful programs may focus on providing practical training and sanitation equipment to food vendors.

Analysis

A review of the secondary literature and successful hygiene regimes suggests three potential solutions that drafters of Indian legislation may want to evaluate: (1) mandate that local authorities or administrative agencies provide better food hygiene training and support for food vendors; (2) set bright-line rules and require clear evidence of violations before sanctioning food vendors; and (3) look to regulations governing food sales in other contexts to identify rules that protect both vendors and consumers. Depending on local needs, it may prove useful to implement one or a combination of these proposals.

The first possible solution is to provide more practical education and support to food vendors. While theoretical knowledge may be a useful first step, vendors and their patrons may also benefit from infrastructure (waste disposal, drainage systems, etc.), specific equipment, on-site inspections (which would raise another set of corruption and extortion concerns), and more practical training. Following an analysis of the specific needs of Indian street vendors, either as a whole or in individual municipalities or localities, practical training programs, with equipment and infrastructure (such as running water, soap, and public facilities) to put such training into practice, may prove beneficial.

A second possible solution is to establish bright-line rules for hygiene violations, with specific standards of proof for violations. This may reduce harassment and corruption, which tend to be more significant problems when rules are murky or stem from multiple sources of authority. To achieve this goal, new model legislation could either establish specific rules and standards


207 In New York, for example,

[under the guise of public safety, the city has erected a complex web of overlapping and conflicting regulations that make life nearly impossible for vendors. Jurisdiction over vending is divided between at least ten different city agencies, none of which is responsive to the real needs of vendors. Punishments for minor violations have become so severe that many vendors cannot work. Licensing restrictions have forced many to vend illegally, under constant threat of arrest. … While the city must regulate street vending to ensure the health and safety of the public, it has no interest in harassing vendors with endless arrests and exorbitant fines, delaying their ability to work, destroying their products, denying them a fair hearing, driving them from areas where they have vended for years at the whims of giant corporations, passing regulations governing their livelihood without any notification, failing to acknowledge the contribution they make to our city, disrespecting them when they attempt to voice their grievances, and in many other ways impeding their right to vend on the streets of New York City. But the city does.]

Urban Justice, supra note 85, at 1.
itself, or it could require municipalities or local authorities to meet a minimum level of specificity in setting new rules.

A third potential solution is to study the rules governing food sales in other contexts, such as nearby retail stores or restaurants. In some jurisdictions, particularly in industrialized economies, food markets were “dominated by a bureaucratic and ‘hyper-hygienist’ approach in which markets are treated with suspicion as a relic from the distant past.” To avoid stigmatizing or “hyper-hygienizing” markets while still ensuring public safety, authors of India’s street vendor laws might look to other food hygiene rules in force in grocery stores and restaurants, as well as common practice among street vendors (who are presumably highly incentivized to keep customers healthy) to find a baseline for the appropriate level of regulation. Such a solution is successful in industrialized economies because street vendors are often able to replicate restaurant-style conditions in small food carts. However, such a solution may prove challenging if Indian street vendors do not have access to infrastructure and equipment analogous to that of retail food sellers.

E. Enforcement and Accountability Mechanisms

1. Enforcement Authority and Process

Despite significant variation in approaches to enforcement adopted by different jurisdictions, each policy contained one or more of the following elements: a designated institution (or institutions) as an enforcement authority; the scope of the enforcement authority’s responsibilities; a set of justifications applicable to the suspension or termination of licenses; a means for providing notice to individual vendors in advance of enforcement actions; and a process for appealing adverse administrative determinations. In some jurisdictions, private organizations, such as those representing street vendors, played a significant role in the enforcement and/or appeals process. Nevertheless, even in jurisdictions in which enforcement mechanisms were clearly defined and appeared favorable to street vendors, conflicting laws, corruption, and lack of transparency could render important procedural and substantive protections ineffective.

a. Notice and enforcement bodies and basic process

Indian National Policy and Model Bill

Although the National Policy and Model Bill explicitly cover issues related to notice and dispute resolution (these will be discussed in greater detail below), neither specifies which entity should be vested with enforcement power, implicitly leaving such authority to municipal governments.

Results of Comparative Survey

In many jurisdictions, primary responsibility for enforcement was split between two or more agencies or groups of agencies typically including a municipal licensing authority and local police. Vendors accused of violating relevant regulations may face both civil sanctions (typically

208 Colin Sage, Trust in Markets, in STREET ENTREPRENEURS 147, 160 (John Cross and Alfonso Morales eds., 2007).
imposed by licensing authorities) and criminal penalties (typically imposed by police). In some jurisdictions, other agencies, such as those regulating over public health, also exercised authority over the enforcement of certain rules regarding street vending operations.

Municipal police forces typically adopted a “law enforcement” paradigm when exercising authority over street vending issues and applied their power primarily in coercive ways, emphasizing confrontation and the use of criminal sanctions. Soon after the end of Apartheid and the enactment of the Businesses Act of 1991 at the national level, some South African municipalities slowly moved towards a “management” paradigm for street vending regulation where primary authority was exercised by agencies or units dedicated exclusively to the street vending activities. Such an approach focuses more on civil than criminal penalties and may be more likely to pursue cooperation than confrontation.

**Analysis**

The particular type of agency or agencies exercising primary enforcement authority may produce significant consequences for how enforcement is carried out in practice. In South Africa, municipal traffic departments traditionally enforced regulations relevant to street vending. But as University of Cape Town researcher Caroline Skinner noted, “Moving street trading responsibilities from the traffic department is essential if local authorities are to manage and develop the informal sector, rather than simply enforce by-laws.”

Additionally, some experts have questioned the wisdom and propriety of delegating both management and enforcement authority to a single agency, particularly when that agency is also responsible for general law enforcement. In Nairobi, Kenya, the Department of the City Inspectorate was responsible both for issuing licenses as well as enforcing the city’s by-laws. While the integration of management and enforcement roles may provide a certain level of administrative convenience for vendors, it may also damage the ability of vendors and authorities to build a trusting relationship even when authorities are exercising non-enforcement related management responsibilities.

b. **Notice and process in enforcement actions**

**Indian National Policy and Model Bill**

The National Policy requires notice before enforcement actions are taken against vendors who are obstructing public streets and sidewalks, providing vendors with a period of time within which to correct violations before further consequences are incurred. India’s Model Bill similarly requires TVCs to provide street vendors with notice and a hearing prior to revoking licenses obtained through fraudulent means, or for health violations, vending beyond specified times and locations, or other violations of the terms or conditions of licenses.

**Results of Comparative Survey**

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209 Skinner, supra note 137.
210 Kamunyori, supra note 136.
211 National Policy, supra note 2, at § 5.1.
Many jurisdictions provided notice to vendors who were subject to enforcement actions and adopted other process-based protections for vendors as well as prohibitions on the arbitrary exercise of enforcement authority. In South Africa, for instance, the Businesses Act provided vendors with a number of protections against abusive process. For instance, individual officers of government agencies tasked with managing licensing and enforcement were not permitted to revoke licenses at will. When a licensing authority decided to deny an application for a license or grant an application subject to conditions, it was required “as soon as practicable” to provide written notice to the license holder of its decision, the reasons behind its decision, and the right of the license holder to appeal the decision. While the intention of this provision appeared to be focused on the process for granting licenses, a similar requirement providing the same protections could be tailored to instances involving the revocation of licenses. Additionally, before a license could be withdrawn or suspended, a licensing authority must provide license-holders with a reasonable opportunity to be heard.

Street vending regulations often outline the permitted bases for enforcement decisions and specify that enforcement authorities communicate the legal basis for an enforcement action to vendors. Portland, Oregon, a moderately-sized city in the United States, required the City Engineer to provide written notice listing one of four reasons for revoking, suspending, or denying a vending permit.

In other regulatory regimes, however, authorities could revoke licenses without cause but in doing so, had to afford hawkers certain protections. In Hong Kong, upon at least 15 days notice, the city could suspend without cause the use of a fixed pitch by a licensee. However, if this suspension was permanent, the city was required to allocate the licensee another fixed pitch.

Analysis

National legislation in India may expand protections for street vendors beyond those currently offered under the Model Bill and National Policy schemes. For instance, while the National Policy appears only to require notice for vendors found to be obstructing roads and sidewalks, national legislation may aim to clarify that proper notice must be provided in every case in which municipal authorities find vendors to have violated laws and regulations.

Additionally, the Model Bill and National Policy do not address potential linguistic challenges to both the notice and hearing process. In areas in which the first language of vendors is different from the language used by the government, it may be necessary to provide interpreters and/or written translations to ensure that vendors comprehend the enforcement action the government

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212 Businesses Act, supra note 53, at (2)(10)(a)-(c). If a licensing authority fails to make a decision on a vending application within 21 days or another agreed upon period of time, that vendor’s application is presumed to have been denied. Id. at (3)(2).

213 Id. at (2)(9)(a).

214 Hong Kong Hawker Regulation, supra note 74, at § 17.26.160. These are: violation of any provision in the chapter, cart operation has been detrimental to businesses or public (either in appearance or condition of cart); any required permit has been suspended, revoked or canceled; and no insurance policy.

215 Id. at Cap 132, Sec. 83A, (34).
has taken, understand hearing procedures, and, ultimately, receive adequate process.216

National legislation also should ensure that local governments provide a right to an administrative hearing on request as well as notice. The National Policy, for instance, does not make this right clear.

Regardless of which of the proposed process-based procedures is ultimately adopted, local authorities (such as TVCs) should be given sufficient flexibility to resolve disputes. While specifying precise procedures for hearings may offer vendors the protection of the law and the opportunity to gain an understanding of how hearings operate, rigid procedures may also constrain the hearings process in ways that harm the vendors’ interests. In New York, two different bodies were delegated authority for, on the one hand, adjudicating the approximately 30,000 vending violations every year and, on the other, conducting license revocation hearings. Judges in both fora lacked the discretion to engage in mediation or settlement or to reduce the fines levied against vendors under applicable statutes even when the interests of justice and fairness might otherwise require judicial intervention. In addition, police officers often failed to appear at hearings, damaging the livelihood of vendors who might have to return to court on multiple dates. Regulations outlining an enforcement regime might require officers responsible for taking an enforcement action to appear in court and specify that a failure to appear will mean the expungement of an alleged violation.217

Finally, it is worth cautioning that, even in jurisdictions that adopted written laws and regulations that appear to favor vendors, in practice, inconsistent regulations posed an obstacle to fair and effective enforcement. Nairobi, Kenya, for example, enacted a set of by-laws that declared hawking as a legal activity. Yet the separate General Nuisance by-law permitted local authorities to arrest anyone—including vendors—who was determined to be a “general nuisance” in a public place. As a result, despite the existence of protections for vendors, the nuisance regulations were often used to provide a legal basis for arbitrary and unfair actions including

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216 Urban Justice, supra note 85, at 4. See also Caroline Skinner’s thoughtful description of the importance of language in the South African context:

Street trading by-laws in the form which they are gazetted tend to be very legalistic and wordy. Making them accessible is a challenge. In speaking to street traders about how to most effectively explain the new by-laws two issues became clear - it was important that information dissemination occurs in the first language of traders, and that it is not only in written form, but also verbally presented. It is ironic that in Durban, for example, where the majority of residents speak Zulu, laws are still promulgated only in English and Afrikaans, the two official languages of the former regime. In the East London Policy Dialogue the importance of explaining the logic behind the clauses was emphasised by traders themselves. They said that they would be far more willing and able to abide by rules that made sense to them. Johannesburg produced a booklet in which each by-law is explained in three languages and accompanied by a clear visual representation. These booklets were mass produced and handed out to traders all over Johannesburg. In other cities workshops have been held with street traders to inform them of the by-laws. Workshops conducted in consultation with street traders and their organisation leaders, are an effective means of explaining the content of by-laws and logic behind clauses.

Skinner, supra note 137.

217 Urban Justice, supra note 85, at 4.
harassment by city inspectors against vendors—even when vendors possessed the requisite street trading license.  

**c. Bribery and corruption as an enforcement challenge**

*Indian National Policy and Model Bill*

While it is widely understood that bribery and corruption among public authorities are pervasive problems in enforcement of street vendor regulation, neither the National Policy nor the Model Bill explicitly discusses the issues, nor does either create a scheme for addressing them. The National Policy comes closest when it states that appropriate governments may amend laws and other rules to prevent “undue harassment” of street vendors.  

*Results of Comparative Survey*

It is difficult to collect accurate data with respect to official corruption and the solicitation of bribes by the local authorities tasked with enforcing street vendor regulations. Nonetheless, a number of studies found bribery to be widespread across many jurisdictions. The burden of official corruption may fall disproportionately on the backs of those who are least able to bear it such as the poor and politically marginalized.  

*Analysis*

Methods for mitigating the bribery problem may include the inclusion of effective oversight mechanisms and the provision of complaint channels which vendors can use to report corrupt municipal officers. These methods, however, will do not much to solve what, in many places, is the root of the problem: poor pay to local officials. In Nairobi, for instance, local inspectors can earn several times their official monthly salaries through bribes.  

A proposed law on street vendors may consider explicitly addressing these issues in the text. Even the best statute, however, may not deal effectively with bribery and corruption issues without sustained political will and changes in the culture of local governance.  

**d. Appeals process**

*Indian National Policy and Model Bill*

The National Policy vests TVCs with the authority to resolve disputes among vendors, between vendors and third parties, and between vendors and municipal officials, but does not discuss in

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219 National Policy, *supra* note 2, at § 5.4
220 For instance, according to one survey of trading in Durban, South Africa foreign vendors, many of whom lack proper documentation, reported that it was commonplace for police to ask for bribes. Nina Hunter & Caroline Skinner, *Foreigners working on the streets of Durban: Local government policy challenges*, 14 Urban Forum 301 (2003).
detail a mechanism for adjudicating appeals.\textsuperscript{222} The Model Bill conceives of a process for appealing the decisions of local authorities on street vending registration. Nevertheless, it leaves the “form and manner” of filing appeals as well as the specifics of the appeals procedure for local governments to implement. It also mandates an appellate process for addressing non-registration issues.\textsuperscript{223}

\textit{Results of Comparative Survey}

A number of jurisdictions provided appeals processes to hawkers who have been subject to enforcement sanctions. In addition to providing a check on arbitrary action by local officials, appeals systems can institute a platform for basic dispute resolution, give vendors a voice in the enforcement process, and, by adjudicating disputes, prevent conflict from escalating.

Northern Ireland had one of the more developed appellate systems, and it possessed three principal features. First, street vendors were permitted to appeal decisions of the local council to a court of summary jurisdiction.\textsuperscript{224} Second, Northern Ireland’s system allowed street vendors to appeal any kind of adverse decision of the district council, even if the decision is only partially adverse.\textsuperscript{225} Third, licenses that are revoked or not renewed by a district council were required to remain in effect until an appeal is resolved or until the deadline for filing an appeal—21 days after the district council’s decision is rendered—passes.

A few jurisdictions limited the right of vendors to appeal enforcement actions to certain types of actions.\textsuperscript{226} Additionally, some jurisdictions required the inclusion of street vendors or their representatives in the composition of the appellate decision-making bodies. For example, a number of towns in the Eastern Cape Province of South Africa enacted by-laws providing for a five-person committee—at least one of whom must represent street vendors—to hear appeals from vendors who disagree with vending-related sanctions imposed by the town.\textsuperscript{227}

Many other jurisdictions lacked clearly defined mechanisms for appeals, leaving lawsuits before regular courts as the sole means for challenging potentially unfair enforcement actions. One study in South Africa found that the by-laws of the five major cities included in the study lacked appeals procedures, leaving courts as the sole recourse available to street vendors, despite the

\textsuperscript{222} National Policy, \textit{supra} note 2, at § 9.
\textsuperscript{223} Model Bill, \textit{supra} note 3, at § 3(1)(c).
\textsuperscript{224} Northern Ireland Act, \textit{supra} note 76, at §13.1. Courts of summary jurisdiction in Northern Ireland deal with relatively simpler matters without the need for a jury. Decisions of these courts are in turn reviewable by higher appeals courts.
\textsuperscript{225} Thus, appeals are permitted not only in response to decisions to deny an application for a vendor’s license or to revoke an existing vendor’s license, but also in response to decisions to grant a license to vend in a different time or place than that requested by the applicant, to vary the time-and-place conditions of an existing license due to changed circumstances, or to refuse to vary the time-and-place conditions of an existing license at the request of the vendor. \textit{Id.}
\textsuperscript{226} In Bend, United States, only revocations of permits are appealable. Initial decisions are made by the City Manager and appeals can be made within ten business days to the Bend Municipal Court. Vendors whose permits are revoked can continue to operate until their appeal is decided “if the nature of the violation is rectified.” City of Bend Street Vendor Policy, \textit{supra} note 81, at § 6.3.
\textsuperscript{227} Skinner, \textit{supra} note 137.
fact that many lacked sufficient time, resources, and education to take advantage of the judicial option.\textsuperscript{228}

In many jurisdictions reliance solely on courts produced mixed results for vendors seeking to challenge both individual agency determinations and the legality of larger enforcement frameworks. Even in jurisdictions in which the courts regularly played a role in reviewing administrative decisions, regulations sometimes did not grant the courts a great deal of authority to overturn these decisions. Vendors in New York City, for instance, did not have much success challenging enforcement measures. In a prominent 2003 case, a vendor challenged the seizure of his vending cart as an overly harsh punishment for vending without a license. After prevailing in the trial court, his victory was unanimously reversed on appeal, with the appeals court holding that the lower court had “no discretionary authority” to order the return of the cart if it is seized for vending without a license.\textsuperscript{229}

Analysis

Drafters of new Indian national legislation may want to outline at least a two-tiered system that includes both a primary means for resolving disputes that may arise among and between vendors, the government, and others, as well as an oversight or appeals mechanism to ensure fairness. Additionally, it may be helpful for the legislation to specify what role courts should play in the dispute resolution and appeals process—something neither the Model Bill nor the National Policy do.

d. **Unions and associations of informal workers and the enforcement process**

*Indian National Policy and Model Bill*

The National Policy recognizes the important role that trade unions and other voluntary associations can play in street vending schemes, and recommends that TVCs “take steps to facilitate the formation and smooth functioning of such organizations.”\textsuperscript{230} It also suggests that TVCs include associations of street vendors and other vendor representatives as members.\textsuperscript{231} The Model Bill mandates that TVCs include vendors’ representatives as members. Specifically, it requires vendors and their representatives to constitute at least 40 percent of the total TVC membership. Additionally, at least one-third of vendor representatives must be women and a “reasonable” number must represent the physically challenged.\textsuperscript{232}

*Results of Comparative Survey*

In many jurisdictions, private organizations of vendors played an integral role in the licensing and enforcement process. In Quito, Ecuador in cases in which there was a dispute about the

\begin{itemize}
  \item \textsuperscript{228} Id.
  \item \textsuperscript{229} *City of New York v. Nadler*, 304 A.D.2d 491 (N.Y. Sup. Ct. 2003).
  \item \textsuperscript{230} National Policy, *supra* note 22, at §6.8.
  \item \textsuperscript{231} *Id.* at § 4.5.1.
  \item \textsuperscript{232} Model Bill, *supra* note 3, at 4(2)(b).
\end{itemize}
conduct of an existing licensee, a Recognition Committee, comprised of other licensed vendors and under the auspices of the technical agency in charge of enforcement, reviewed and voted on the member’s activities. Unions and other membership-based associations can organize and educate vendors and serve as an important counterweight to governments which may not always act in the best interest of vendors.

However, this role may not always be a positive one for all vendors. In some cases, the membership of unions and other organizations that represent the interests of vendors constituted only a fraction of the entire population of street vendors. In one case, a vendor organization worked with governmental authorities to prevent non-licensed vendors from operating. In Pretoria, South Africa—a city where street vending is highly regulated—the local government worked closely with the Pretoria Informal Business Association (PIBA), a vendor’s membership association. PIBA played a role not only in the allotment of trading sites to vendors but also in the enforcement of regulations prohibiting unlicensed vendors from conducting business. Indeed, one Pretoria official in charge of street trading explained that his department frequently removed individual vendors from trading sites at PIBA’s request.

Analysis

The Model Bill and National Policy both envision a central role for street vendors unions and associations. The language of the Model Bill, in particular, also creates a means for ensuring that traditionally marginalized groups—like women and the physically handicapped—receive adequate representation in important regulatory bodies. One concern, however, still remains. The National Policy and the Model Bill do not specify precisely how the individuals representing vendors will be selected. The means for selecting vendors for TVCs is critically important for ensuring that all vendors are fairly and adequately represented. Increased attention to selection mechanisms in future draft national legislation might be helpful in involving future disputes in this area. For instance, future legislation might specify that vendor representatives affiliated with multiple organizations be included when possible. It might also include language attesting to the importance of selecting representatives from all segments of the vendor population. In order to ensure that these criteria are implemented in practice, legislative provisions could specify that adherence in particular cases to a fair and representative selection process is judicially reviewable.

2. Punishment for Violations

In order to prevent the violation of laws meant to regulate hawking, nearly all jurisdictions include methods of deterrence, most commonly the levying of fines and the threat of imprisonment. Also typical are rules permitting the confiscation of a violating vendor’s goods and supplies and the demolition of structures erected contrary to regulation. In many cases,

233 Reglamento de Quito, supra note 65, at Art. 19-23.
234 Skinner, supra note 137.
235 The National Policy does list the following as selection criteria: “Participation in membership-based organizations; and Demonstration of financial accountability and civic discipline.” These criteria may, however, prove insufficient without further guidance. National Policy, supra note 6, at § 4.5.1.
corruption and the unequal application of the law pose major barriers to the creation of a fair and effective enforcement regime.

a. **Fines and imprisonment**

**Indian National Policy and Model Bill**

The National Policy does not specifically address the topic of fines or imprisonment. However, the Model Bill delegates to local authorities “[t]he manner of giving notice to, and eviction of, street vendors; impounding, destruction or seizure of stalls, goods and equipments and relocation of, and compensation payable to evicted street vendors.”236 It also includes a list of actions that might be punishable through license revocation and through fines. The Model Bill is silent as to incarceration as a penalty for violation of vending rules.

**Results of Comparative Survey**

Most regulatory frameworks for street vending provided for both monetary and incarceration-based sanctions for individuals who violated prescribed rules and regulations, as well as the revocation of their trading licenses. In order to deter vendors from treating fines as a normal cost of doing business, many punishment provisions allowed enforcement bodies to increase the severity of punishments for repeat and continuous violators.

South Africa’s punishment schedule was typical of those found in many other jurisdictions.237 Individuals who engage in street vending without a license may be fined up to 1,000 Rand

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236 Model Bill, supra note 3, at § 3(1)(c)
237 For instance, individuals who violate Windhoek’s Street Trading Regulations are subject to a fine of up to 2,000 Namibian dollars (approximately $290 American dollars) and imprisonment of up to six months. In the case of continuing offenses, additional fines may be levied up to 200 Namibian dollars and additional imprisonment of up to 10 days for each day that an individual acts in violation of the law. Street Trading Regulations, supra note 160. Individuals are considered to have committed a continuing offense if, after a prior conviction or the provision of a warning, that individual continues to operate in violation of the law.

In Hong Kong, those who violate the City’s Hawker Regulations typically are liable for a fine and imprisonment up to 3 months. Continuing offenders typically may be fined $100 for each day. Individuals found to knowingly provide false information in order to obtain license or other permission under the Hawker Regulations may be liable for a fine and a prison sentence of up to 6 months. Hong Kong Hawker Regulation, supra note 74. When a licensee is found guilty of a second or subsequent offense under the regulations, the magistrate convicting the licensee may also recommend that the Department cancel or suspend the hawking license.

Lima, Peru also used a progressive sanction structure: a first violation of most rules results in a fine equal to the national daily wage, a second violation results in a fine three times the price of the first, and a third violation results in revocation of the license. Sale outside of permissible zones or without a proper license subjects vendors to a different penalty structure: first, a warning; second, fine and temporary retention of goods; third, seizure and sale of goods; fourth, loss of license, if the vendor possesses a license; and fifth, referral to the Public Prosecutor for criminal sanctions. Additionally, certain criminal violations by licensed vendors, such as the use of false weights and measures and the sale of adulterated or pirated goods, may subject the vendor to additional criminal sanctions. Lima Ordenanza 002, supra note 77.

In many but not all American localities the most commonly used penalty for trading without a license was a fine. In some jurisdictions, municipal officials were given wide latitude in determining the size of this fine. For example, the city of Lawrence prescribed that fines are to range anywhere from $20-$500. And in fact, this latitude is even wider than it initially seems, as each day of violation is to be considered a separate offense. The total fine for a few days’ violation can therefore easily reach into the thousands of dollars. In some jurisdictions, convicted
(roughly equivalent to 6,500 Indian Rupees) and imprisoned for up to three months. Additional fines of up to 10 Rand may be levied for each further day that an individual engages in unlicensed vending.\textsuperscript{238} Fines accrue to the local vending authority.\textsuperscript{239} The law provided for a rebuttable presumption in favor of the government with respect to allegations concerning: the “particular kind, class, type or description” of goods sold, the location of a business, and the control of a business by the licensee.\textsuperscript{240}

Licensees were also deemed responsible for any actions in contravention of the law which are performed by agents and employees, unless those acts were undertaken without the licensee’s permission, “reasonable steps” were undertaken to prevent violations, and such actions were not within the course of employment.\textsuperscript{241} Additionally, local authorities were permitted to provide for the impoundment of goods, vehicles, or moveable structures which a police officer “reasonably suspects is being used or intended to be used . . . in connection with” illegal hawking.\textsuperscript{242}

As discussed above, some jurisdictions adopted a less punitive model for regulating street vending. In Great Britain, penalty provisions were either non-existent or unclear. For example, in instances where an individual was convicted three times of unlawful street trading, the Council was instructed to pursue a High Court injunction prohibiting that person from continuing to trade illegally.\textsuperscript{243} The otherwise lengthy and detailed “Street Trading and Collections Policy” of Stratford-on-Avon was notably brief on enforcement issues, stating only that “when licensable activities are conducted without a license, permit, or consent the Council will look to gather evidence and take enforcement action as appropriate.”\textsuperscript{244}

Interestingly, in Bogotá, Colombia, where association membership was crucial because vending zones were allocated to unions, penalties against street vendors accrued not only to the vendors, but also to the membership-based organization to which they belonged. Vendors’ associations and organizations in violation of regulations could be removed from the registry, denying their members access to preferential vending zones. Individuals may lose their permits for individual violations as well.

\footnotesize{vendors may receive not only a fine but also a prison term. Thus, in Portland, those trading without a license are punishable with a fine not exceeding $500 or imprisonment not exceeding 6 months. Portland Policy on Sidewalk Vendors, supra note 79.
\textsuperscript{238} Businesses Act, supra note 53, at (5)(1)(a)-(b).
\textsuperscript{239} Id. at (5)(4)(a).
\textsuperscript{240} Id. at (5)(3)(a)-(c).
\textsuperscript{241} Id. at (5)(2)(a)-(c).
\textsuperscript{242} Id. at (6A)(1)(d)(ii). It is also worth noting that in 2005, the South African High Court for Kwazulu Natal—which includes the city of Durban—considered whether local bylaws authorizing the removal of a street trader and impoundment of her goods without a court order complies with the South African Constitution. The Court concluded that, because the bylaws serve the rational purpose of regulating the business of street vending, require prior to impoundment of wares a rational suspicion that vending is being carried out in a restricted area, no violation of the Constitutional provisions had occurred. Bizimana and Another v. eThekwini Municipality (7262/2005) [2005] ZAKZHC 22 (9 June 2005).
\textsuperscript{243} Cardiff County Council Street Trading Licensing Policy Statement, § 5 (U.K.).
\textsuperscript{244} Stratford on Avon Regulations, supra note 193, at Part 4.}
In some places, generally applicable legal protections were often denied to street vendors as a class. In Nairobi, for instance, individuals who were arrested possessed a legal right to post bail, but street vendors were usually denied bail and were held in jail until they had the opportunity to appear in court.  

**Analysis**

The National Policy and Model Bill largely allow local authorities to decide the proper terms of imprisonment and fines that may be levied against vendors who violate the law. To the extent that income levels and other local conditions are relevant to determining appropriate levels of punishment, the current model may be preferable. However, the specification of maximum permissible punishments may help prevent unfair and abusive local policies.

b. **Confiscation and demolition**

**Indian National Policy and Model Bill**

The National Policy permits the confiscation of goods “as a last resort” and requires authorities to return these goods within a “reasonable” amount of time. TVCs may require vendors to pay a fee or fine before the return of goods.  

**Results of Comparative Survey**

In many jurisdictions, street vending enforcement laws allowed for the temporary seizure or permanent confiscation of the goods, carts and other property of street vendors who violate regulations. In New York City, some civil society groups have criticized the use of permanent seizure authority as grossly disproportionate to street vending violation. In one particularly egregious case, the city sued an ice cream vendor for a truck worth $80,000 in response to a single violation.  

Nevertheless, the confiscation of street vendors’ goods is a common practice in much of the world. In areas where those entering into the business of street vending typically come from poorer segments of society, confiscation can pose a severe setback for businesses and, furthermore, threaten the very livelihoods of vendors and their families. As a result, some street vendor advocates propose that individuals should receive warnings in advance of confiscation. A study comparing the municipal policies of five major South African cities found that officials in none of these cities were legally required to provide such a warning. Only in Stillbaai, a small town in the Western Cape Province, did local by-laws require a written warning prior to confiscation as well as a verbal explanation.

Rules by South African municipalities regarding who will bear the costs in instances where goods are removed were also of central importance to vendors. In Johannesburg and East

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246 National Policy, *supra* note 2, at § 5.2
London, by-laws specified that vendors were liable for any costs incurred in the confiscation process, while in many other South African cities, the municipality paid for removal costs.248

In addition to laws permitting for the temporary and permanent removal of traders’ property, many cities had regulations permitting local authorities to demolish immovable structures that failed to comply with street vending laws. In Kuala Lumpur, after the provision of written notice and a failure of the hawker to correct a violation within a specified period, the Commissioner could demolish any hawker-erected structures.249

Analysis

The National Policy provides a good model for reasonable limitations on the authority of local officials to seize the property of street vendors. Of particular importance is the Policy’s specification that vendors have a right to the return of confiscated property upon the return of a fine. The National Policy’s requirement that confiscation only be used “as a last resort,” however, may prove too vague to stop abuses. Future draft legislation may want to state with additional specificity when local officials may or may not confiscate the property of vendors.

248 Skinner, supra note 137.
249 Hawker and Stall Licensing By-Laws, supra note 160, at § 16.
VI. CONSIDERATIONS FOR STAKEHOLDERS

Four recurring and interrelated themes underline many of the decisions that legislators must make in drafting new legislation for street vendors. First, lawmakers must balance the need for bright-line rules with a desire for some local flexibility and discretion. Second, whether rules are written as bright-line rules or general guidelines, lawmakers must establish the level of government at which each should be promulgated. Third, lawmakers must identify points at which participatory mechanisms for vendors are necessary, and how such mechanisms should operate. And fourth, to ensure that rules are effective in practice as well as on paper, lawmakers must provide mechanisms for administration, enforcement, and dispute resolution. The following chart illustrates how each of these themes interacts with the major topics from the comparative survey, above.

<table>
<thead>
<tr>
<th>Conditions for receiving licenses</th>
<th>Rules vs. Standards</th>
<th>Level of Government Promulgating Regulations</th>
<th>Participation &amp; Transparency</th>
<th>Administration &amp; Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights and duties associated with licenses</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
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<tr>
<td>Number of licenses issued</td>
<td>●</td>
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<td>●</td>
<td>●</td>
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<tr>
<td>Provision of services and support to vendors</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
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<tr>
<td>Identification of vending sites</td>
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<tr>
<td>Monitoring of vending sites and activities</td>
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<td>●</td>
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<tr>
<td>Regulations governing public safety, right-of-way</td>
<td>●</td>
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<td>●</td>
<td>●</td>
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<tr>
<td>Health and sanitation regulations</td>
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<td>●</td>
<td>●</td>
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<tr>
<td>Burden of proof for demonstrating violations</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
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<tr>
<td>Fines and sanctions</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Appeals process for decisions regarding licensing, sanctions, etc.</td>
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<td>●</td>
<td>●</td>
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<tr>
<td>Other dispute resolution mechanisms (between vendors, vendors vs. other stakeholders, etc.)</td>
<td>●</td>
<td>●</td>
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</tbody>
</table>

As the chart above demonstrates, nearly all of the topics discussed in the comparative survey require decisions about each of these four points; for example, when considering conditions for receiving licenses, lawmakers must define how much discretion is involved in licensing decisions, which governmental body sets rules for licensing, how street vendors can participate
in and learn the rationale behind licensing decisions, and what administrative mechanisms can effectively administer the actual licensing. The following sections describe the four categories of decisions that must be made and highlight topics for which each type of decision is particularly important.

A. Bright-Line Rules Versus Discretion

Bright-line rules offer a number of advantages, including predictability and consistency for street vendors and fewer opportunities for local authorities to abuse discretionary authority. However, they may also limit the ability of local governments or town vending committees to respond to changing or local needs, and they may encourage rule-makers to apply the most conservative and restrictive standards in order to ensure that bright-line rules are sufficiently strict.

Considerations about bright-line rules versus local discretionary authority are particularly important when deciding:
- What conditions might be required of those receiving licenses;
- How officials should determine how many licenses to issue;
- What rules should govern restrictions on vending locations and times;
- What rules should govern the size and location of individual vending sites;
- What health, safety, and sanitation regulations should govern vendors;
- What burdens of proof should be set, and on whom, for demonstrating violations by street vendors.

B. Level of Government Making Rules

The decision to assign authority to establish specific rules governing the regulation of street vendors between state, Union Territory (UT), or national bodies versus local bodies presents a challenge similar to that presented by bright-line versus discretionary rules. Rules made by the national or state/UT governments and codified in national or state/UT legislation are likely to be more consistent and present fewer opportunities for abuse of local authority. However, they may be less responsive to local needs, and they may not capture the needs of local stakeholders the way that town vending committees can.

The level of decision-making presents an additional challenge, however: if certain local governments or institutions are likely to be dominated by interests unfriendly to street vendors (such as local retailers hostile to vendors), vendors may gain certain advantages by national or state/UT legislation. However, if local interests remain hostile to that legislation, it may remain difficult to enforce locally.

Based on the survey of comparative street vending laws, the level of government responsible for making rules appears to be particularly important when deciding:
- Who can receive a license, and under what conditions;
- Which level of government is responsible for providing services and support to vendors;
- Which level of government or agency is responsible for general urban zoning, for specific zoning of vending sites, and for restrictions on where vending can take place;
• Which level of government promulgates regulations governing the activities of vendors at their sites;
• Which level of government is responsible for enforcement, dispute resolution, and appeals;
• Which level of government is authorized to punish vendors who disobey regulations; and

C. Participatory Mechanisms

As defined by the National Policy, town vending committees include representatives of street vendor associations, as well as other local stakeholders. Lawmakers must consider mechanisms by which street vendors can have their interests represented without being overruled by other interests that may be more politically powerful, such as local law enforcement agencies, neighborhood associations, or retailers.

The presence and nature of participatory mechanisms are particularly significant considerations when deciding:
• Who should receive licenses;
• The rights that should be associated with such licenses;
• How many licenses should be issued;
• Where sites should be located, how they should be restricted, and how various stakeholders’ needs should be expressed and balanced;
• Who should be represented generally (individual street vendors, associations, civil society generally, etc.) in comment and notice processes; and
• Whether street vendors should participate in creation, enforcement, or review of sanctions against other street vendors.

D. Administration, Enforcement, Dispute Resolution

Finally, as India’s own experience and the review of comparative laws demonstrate, even the best laws are meaningless if they cannot be adequately enforced, if they are impracticable, or if there is not a forum for dispute resolution. For each legislative provision, lawmakers must consider what governmental bodies will enforce it, how it will be monitored or overseen, and how disputes will be handled.

Considerations about administration, enforcement, and dispute resolution permeate nearly every decision point, but they are particularly important when deciding:
• How licensing will be conducted, and how the efficacy and fairness of licensing will be reviewed;
• How vending sites will be identified and monitored;
• Who will be responsible for monitoring street vendors for health, safety, and other vending violations, and how such power will be delegated in a way that minimizes the potential for abuse;
• What appeals process will be available to street vendors; and
• What dispute resolution mechanisms will be available between street vendors themselves, between street vendors and other local stakeholders (home owners, retailers, etc.), and between street vendors and local authorities.
### APPENDIX I: TABLE OF JURISDICTIONS SURVEYED

(Countries with national-level regulations that were studied are listed in **bold**)

<table>
<thead>
<tr>
<th>REGION</th>
<th>COUNTRY</th>
<th>CITY</th>
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<tbody>
<tr>
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<td>Nairobi</td>
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<td>Windhoek</td>
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<td>Pretoria</td>
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<td></td>
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<td>Stillbaai</td>
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