

# **Extending Occupational Health and Safety Law to Informal Workers: The Case of Street Vendors in South Africa**

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## **Abstract**

Workers in the informal economy are equally – if not more – at risk of injury and disease than formal workers. Although international law enshrines informal workers’ rights to occupational health and safety protection, national laws largely exclude them from their scope. This article proposes how to align national occupational health and safety laws with international law that protects informal workers. It argues for a context- and occupation- specific approach to extending protection to informal workers, drawing on the case of street vendors in South Africa. It proposes legal reform to, inter alia, adapt the institutional framework for occupational health and safety to accommodate the needs and interests of informal workers. It highlights the importance of coordination between different levels of government and interaction between labour law and different policy fields, including urban planning and workers’ compensation. Finally, it argues that legal reforms must be complemented by additional measures, such as organising informal workers and reforming the curricula for occupational health and safety professionals.

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**Keywords:** Informal Workers, Street Vendors, Public Space, Occupational Health and Safety, International Law

## 1. Introduction

The informal economy refers to all economic units, economic activities and workers that fall outside the scope of regulation.<sup>1</sup> It comprises two components. The first is the *informal sector*, which comprises the production and employment that take place in unregistered enterprises.<sup>2</sup> The second is *informal employment*, which refers to employment – whether inside or outside the informal sector – that does not provide employment-based social protection.<sup>3</sup> It includes self-employed workers, employers, wage workers and unpaid family workers who work in a diverse range of sectors and occupational groups.<sup>4</sup>

There is growing recognition that informality makes a significant contribution to employment in both developed and developing countries. In some regions in the developing world, informal employment accounts for more than half of non-agricultural employment. It accounts for 82 per cent in South Asia, 66 per cent in Sub-Saharan Africa, 65 per cent in East and Southeast Asia and 51 per cent in Latin America.<sup>5</sup> Contrary to earlier predictions that it would disappear as developing economies industrialised, the informal economy has persisted and manifested itself in different forms in the developing and developed contexts.<sup>6</sup> Consequently, law- and policy-makers, researchers, development experts, workers and civil society organisations are paying greater attention to the informal economy.

Statistics from some regions in the developing world show that more women rely on the informal economy as a source of non-agricultural employment than men.<sup>7</sup> In Sub-Saharan Africa, for example, 74 per cent

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<sup>1</sup> Martha Alter Chen, 'The Informal Economy: Recent Trends, Future Directions' (2016) 26(2) *New Solutions: A Journal of Environmental and Occupational Health Policy* 155, 158-9.

<sup>2</sup> Martha Alter Chen, 'Women Informal Workers' A Policy Brief for the UN Secretary General's High-Level Panel on Women's Economic Empowerment (2016) 1 (unpublished, on file with the author).

<sup>3</sup> *ibid* 1.

<sup>4</sup> Chen, 'The Informal Economy: Recent Trends' (n 1) 158-59.

<sup>5</sup> Joann Vanek et al, 'Statistics on the Informal Economy: Definitions, Regional Estimates and Challenges' WIEGO Working Paper (Statistics) No. 2 (2014) 7-8. This publication serves as a companion to a publication jointly produced by the ILO and WIEGO, *Women and Men in the Informal Economy: A Statistical Picture* (2<sup>nd</sup> ed, ILO, 2014).

<sup>6</sup> Vanek et al (n 5) 3.

<sup>7</sup> *ibid* 2, 7-8.

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of women non-agricultural workers labour in the informal economy compared to 61 per cent of men, and in Latin America and the Caribbean, 54 per cent of women and 48 per cent of men.<sup>8</sup> Moreover, women are amongst the poorest informal workers, and they bear a higher degree of economic risk as compared to men.<sup>9</sup> Consequently, measures to address the challenges faced by workers in the informal economy are essential in addressing gender inequality,<sup>10</sup> promoting women's economic empowerment<sup>11</sup> and promoting decent work for women.

Workers in the informal economy experience various forms of insecurity and vulnerability, including exposure to occupational health and safety (OHS) risks. While informal workers' chief asset is their labour, 'their health is compromised by the very work they do'.<sup>12</sup> Occupational hazards have a negative impact on informal workers' work, income security and social security.<sup>13</sup> Yet, national laws that require health interventions such as hygiene, monitoring of hazards and hazard controls are modelled on industrialised country and focus on conventional workplaces such as factories, mines and shops.<sup>14</sup>

Informal workers work in unconventional workplaces such as private homes (either as domestic workers who work in their employers' homes, or subcontracted home workers who produce in their own homes) and in public spaces. Their unconventional workplaces and the fact that many of them are not employees, means that informal workers are often de jure or de facto excluded from OHS laws. Consequently, they face greater risks of injury and disease from the same hazards as compared with formal workers.<sup>15</sup> In addition, they are likely to experience different hazards that arise in the context of their unconventional workplaces.

The absence of legislative OHS protection for informal workers places the burden of preventing and mitigating the risks of occupational

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<sup>8</sup> *ibid* 2.

<sup>9</sup> Chen, 'Women Informal Workers' (n 2) 2-3.

<sup>10</sup> Vanek et al (n 5) 3.

<sup>11</sup> Chen, 'Women Informal Workers' (n 2) 1.

<sup>12</sup> Francie Lund and Rajen Naidoo, 'The Changed World of Work' (2016) 26(2) *New Solutions: A Journal of Environmental and Occupational Health Policy* 145, 146.

<sup>13</sup> Indian Institute of Public Health Ghandinagar, 'An Impact Analysis of Participatory Design and the Use of Tools to Improve the Health and Productivity of Women Workers in the Informal Economy' Self-Employed Women's Association Project Resource (2013) 1 <[http://www.wiego.org/sites/default/files/publications/files/SEWA\\_Productivity\\_Impact\\_Study\\_2013.pdf](http://www.wiego.org/sites/default/files/publications/files/SEWA_Productivity_Impact_Study_2013.pdf)> accessed 1 March 2017.

<sup>14</sup> Laura Alfors, 'Occupational Health and Safety for Market and Street Vendors in Accra and Takoradi, Ghana' (2009) *WIEGO* 2 <[http://www.wiego.org/sites/default/files/publications/files/Alfors\\_OHS\\_Street\\_Trade\\_rs\\_2009.pdf](http://www.wiego.org/sites/default/files/publications/files/Alfors_OHS_Street_Trade_rs_2009.pdf)> accessed 28 April 2018.

<sup>15</sup> Lund and Naidoo (n 12) 146.

health and safety hazards on informal workers themselves.<sup>16</sup> This passes on the costs and risks to poorer workers, and is especially problematic where the costs associated with providing health and safety is disproportionate to workers' income.<sup>17</sup> Women in the informal economy carry the greatest burden, as they dominate the poorest and most vulnerable segments of the informal economy.

This article considers how law can be reformed to meet the OHS needs of informal workers. It assumes that preventing and mitigating occupational hazards in the informal economy will help to improve workers' work environment and thus enable them to work more productively.<sup>18</sup> Arguing that international law requires states to take measures to promote and protect the OHS of workers in the informal economy, this article seeks to explore how a national government can concretely extend OHS protection to these workers. The article provides a contextualised and grounded analysis of the legal issues by considering the occupational health and safety legislation of South Africa.<sup>19</sup> The article explores the South African Occupational Health and Safety Act (the OHS Act)<sup>20</sup> and the provisions of the Act that should be extended to workers in the informal economy.

Recognising that different occupational groups and sectors in the informal economy experience different health and safety hazards<sup>21</sup> that require different interventions, this article focuses on urban street vendors who work in public spaces. It recommends that South African OHS law should be amended to provide for street vendors' access to appropriate infrastructure, training and health assessments. It argues that the law should hold local authorities responsible for these interventions where they own and control the public space and designate it for street vending. These recommendations underscore the need for informal workers to

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<sup>16</sup> Laura Alferts and Ruth Abban, 'Occupational Health and Safety for Indigenous Caterers in Accra, Ghana' (2011) WIEGO 13  
<[http://www.wiego.org/sites/default/files/publications/files/Alfers\\_Abban\\_OHS\\_Indigenous\\_Caterers\\_2011.pdf](http://www.wiego.org/sites/default/files/publications/files/Alfers_Abban_OHS_Indigenous_Caterers_2011.pdf)> accessed 28 April 2018.

<sup>17</sup> Francisco Comaru and Edmundo Werna, 'The Health of Workers in Selected Sectors of the Urban Economy: Challenges and Perspectives' ILO Sectoral Activities Department Working Paper No. 288, 17-8  
<[http://www.ilo.org/wcmsp5/groups/public/@ed\\_dialogue/@sector/documents/publication/wcms\\_208090.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_208090.pdf)>; Francie Lund, Laura Alferts and Vilma Santana, 'Towards an Inclusive Occupational Health and Safety for Informal Workers' (2016) 26(2) *New Solutions: A Journal of Environmental and Occupational Safety* 190, 202.

<sup>18</sup> Chen, 'The Informal Economy' (n 1) 156.

<sup>19</sup> Laura Alferts et al, 'Extending Occupational Health and Safety to Urban Street Vendors: Reflections from a Project in Durban, South Africa' (2016) 26(2) *New Solutions: A Journal of Environmental and Occupational Health Policy* 271, 272-3.

<sup>20</sup> Act No. 85 of 1993.

<sup>21</sup> Alferts et al (n 19) 272-3.

actively participate in the law-making process to enable them to articulate their experiences and their needs.

The article is organised as follows. Section 2 describes the international law provisions concerning informal workers' right to health and safety in the workplace. Section 3 provides a case study of street vendors and the occupational health and safety challenges they encounter, with a view to analysing the OHS legislation's shortcomings in relation to informal workers in the South African context. Section 4 considers the legal and practical implications of extending OHS protection to street vendors. Section 5 considers the practical measures that certain actors can take to promote occupational health and safety of informal workers drawing from examples relating to street vendors. This is followed by a brief conclusion, which reflects on the key lessons that can be drawn from the analysis.

## ***2. The Right to a Healthy and Safe Workplace in International Law***

The Universal Declaration of Human Rights (UDHR) protects the right to just and favourable conditions of work,<sup>22</sup> which includes health and safety at work.<sup>23</sup> In addition, the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) specifically mentions safe and healthy working conditions as a component of just and favourable conditions of work.<sup>24</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) guarantees women's 'right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction' and requires states to provide special protection to pregnant women performing types of work that are harmful to them.<sup>25</sup> These rights are extended to 'everyone' or 'every woman', without qualification based on labour market status, sector or occupation.

The International Labour Organization (ILO) has several instruments on occupational health and safety. The principle instrument that establishes employers' obligations to protect workers' health and safety is the Occupational Safety and Health Convention, adopted in

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<sup>22</sup> (adopted 10 December 1948) UNGA Res 217 A(III), art 23.

<sup>23</sup> Benjamin O. Alli, *Fundamental Principles of Occupational Health and Safety*, (2<sup>nd</sup> ed, ILO, 2008) 20.

<sup>24</sup> (adopted 16 December 1966, entry into force 3 January 1976) 3 UNTS 999, art 7(b).

<sup>25</sup> (adopted 18 December 1979, entry into force 3 September 1981) 1249 UNTS 13, art 11(1) (f), 11 (2) (d).

1981.<sup>26</sup> This requires employers to take measures to ensure that workplaces, machinery, equipment and processes under their control are safe and without risk to workers' health.<sup>27</sup> Employers must also provide protective clothing and protective equipment to prevent the risk of accidents or adverse effects on health.<sup>28</sup> In addition, they must also provide for measures to deal with emergencies and accidents.<sup>29</sup>

This Convention presupposes that liability arises in the context of an employment relationship and liability is based on the employer's control of the workplace and activities conducted therein.<sup>30</sup> The provisions of the Convention cover workers in an employment relationship where the workplace is owned and controlled by the employer. Therefore, on a narrow interpretation, it excludes workers in the informal economy, including those working on their own account and in public spaces.

Subsequent developments within the ILO have called for a broader interpretation to the right to OHS. In 1999, the ILO adopted the Decent Work Agenda, which encourages global, regional and national efforts to promote its four pillars, namely opportunities for work, rights at work, social protection and social dialogue.<sup>31</sup> The Decent Work Agenda reiterates the ILO Constitution's call for the improvement of 'conditions of labour' which relate to all those who work.<sup>32</sup> The Decent Work Agenda therefore embraces all work, 'whether organised or not, and wherever work might occur, whether in the formal or the informal economy, whether at home, in the community or in the voluntary sector'.<sup>33</sup> A safe working environment is one of the elements that constitute the 'rights at work' pillar of the Decent Work Agenda.<sup>34</sup> This means that the ILO envisages that measures should be taken to ensure that workers in the informal economy enjoy a healthy and safe working environment.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)'s General Survey on Occupational Safety and Health were published in 2009. In this General Survey, the

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<sup>26</sup> C-155 Occupational Safety and Health Convention, 1981 (No. 155).

<sup>27</sup> *ibid* art 16(1).

<sup>28</sup> *ibid* art 16(2).

<sup>29</sup> *ibid* art 18.

<sup>30</sup> *ibid* art 3(b)-(c) read with art 16(1)-(2).

<sup>31</sup> Report of the Director-General, 'Decent Work' (1999) 87<sup>th</sup> Session of the International Labour Conference  
<<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>> accessed 28 April 2018.

<sup>32</sup> *ibid*.

<sup>33</sup> *ibid*.

<sup>34</sup> ILO, *Decent Work Indicators: Guidelines for Producers and Users of Statistical and Legal Framework Indicators* (2<sup>nd</sup> ed, ILO, 2013) 12.

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CEACR expressly recognised the challenge of extending protection to workers in the informal economy.<sup>35</sup> The Committee stressed the need for major efforts to assist the informal economy in implementing at least basic preventative and protective measures.<sup>36</sup> It further called on governments to design and implement specific measures to extend occupational health and safety protection to the informal economy, and for workers' and employers' organisations to consider providing support in this area.<sup>37</sup>

More recently, the ILO adopted the Recommendation Concerning the Transition from the Informal to the Formal Economy, 2015 (No. 204). Recommendation 204 (R 204) requires member states to adopt 'an integrated policy framework to facilitate the transition to the formal economy' in the context of national development strategies.<sup>38</sup> This policy framework should address, inter alia, the adoption of an appropriate legal and regulatory framework to promote formalisation.<sup>39</sup> Importantly, R 204 exhorts member states to address unsafe and unhealthy working conditions in the informal economy, and to promote and extend occupational health and safety to employers and workers in the informal economy.<sup>40</sup>

The above discussion demonstrates that international law guarantees informal workers, including street vendors, the right to a safe and healthy workplace as a human right. International law requires states to take measures to ensure that informal workers enjoy these rights. There are no clear rules as to how the rights are to be realised in practice or who should be responsible for providing the necessary infrastructure and services for workers falling outside the conventional employment relationship.

### ***3. Extending South African OHS Law to Informal Workers***

This section considers how South Africa can recognise and give effect to informal workers' right to occupational health and safety at the national

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<sup>35</sup> CEACR, 'General Survey on Occupational Safety and Health' (2009) ILO xii <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_103485.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_103485.pdf)> accessed 28 April 2018.

<sup>36</sup> *ibid* 3.

<sup>37</sup> *ibid* 102.

<sup>38</sup> Recommendation 204 [10].

<sup>39</sup> *ibid* [10(b)].

<sup>40</sup> *ibid* [17(a)-(b)].

level. It describes the situation of street vendors as a concrete example to highlight the OHS Act's shortcomings in addressing the concerns of informal workers. It then recommends legal reforms and reflects on South Africa's obligations under international law, which requires the extension of occupational health and safety protection to informal workers. It ends by highlighting the challenges related to South Africa's workers' compensation law, which is related to OHS protection.

Street vendors are informal traders who operate in public spaces including streets, pavements, and informal trading markets. They include stationary vendors who operate from a fixed space, and mobile vendors who move from place to place. Their operations include buying and selling goods, producing and selling goods, and providing services.<sup>41</sup> Street vendors engage in this activity as own-account operators, employers, paid employees and unpaid family workers.

Women make up a large proportion of street vendors in a number of countries, including in South Africa.<sup>42</sup> In South Africa, employment in the informal sector (which includes street vendors) accounted for between 16 and 18 per cent of non-agricultural employment between 2008 and 2014.<sup>43</sup> According to the ILO, street vending accounts for about 15 per cent of all urban (formal and informal) employment in the country.<sup>44</sup> About 70 per cent of street vendors in South Africa are women,<sup>45</sup> and approximately 67 per cent of them sell food items.<sup>46</sup>

Street vendors all over the world experience several threats to their health and safety at work. They typically contend with air pollution from sources including open garbage and choked drains, which may cause breathing disorders, such as asthma.<sup>47</sup> Because they stand or sit

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<sup>41</sup> Sally Roever, 'Informal Economy Monitoring Study: Street Vendors' (2014) WIEGO 1 <<http://www.wiego.org/sites/default/files/publications/files/IEMS-Sector-Full-Report-Street-Vendors.pdf>> accessed 28 April 2018.

<sup>42</sup> *ibid.*

<sup>43</sup> Michael Rogan and Caroline Skinner, 'The Nature of the South African Informal Sector as Reflected in the Quarterly Labour Force Survey 2008-2014' (2017) REDI3X3 Working Paper No. 28, 2. South Africa is an outlier compared to other countries amongst other developing countries, as it has a higher rate of unemployment and a lower rate of informal employment than other countries in Sub-Saharan Africa and other regions. See ILO, *Women and Men in the Informal Economy* (n 5) 19.

<sup>44</sup> ILO, *Women and Men in the Informal Economy* (n 5) 45.

<sup>45</sup> Debbie Budlender, 'Statistics on Informal Employment in South Africa' (2011) WIEGO Statistics Brief No. 3, 3 <[http://www.inclusivcities.org/wp-content/uploads/2012/07/Budlender\\_WIEGO\\_SB3.pdf](http://www.inclusivcities.org/wp-content/uploads/2012/07/Budlender_WIEGO_SB3.pdf)> accessed 28 April 2018; ILO, *Women and Men in the Informal Economy* (n 5) 46.

<sup>46</sup> ILO, *Women and Men in the Informal Economy* (n 5) 46.

<sup>47</sup> Conchita Tangworamongkon, 'Street Vending in Bangkok: Legal and Policy Frameworks, Livelihood Challenges and Collective Responses' (2014) WIEGO Law and Informality Project 26 <<http://www.wiego.org/sites/default/files/resources/files/Street-Vending-Bangkok-Legal-and-Policy-Framework-Law-Case-Study.pdf>> 28 April 2018.

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uncomfortably for lengthy periods, street vendors also encounter physical and ergonomic hazards, which result in muscular-skeletal disorders, including back ache.<sup>48</sup> Street vendors are also exposed to weather elements including extreme heat, cold and rain.<sup>49</sup> Limited access to toilet facilities results in urinary infections and other disorders.<sup>50</sup>

Street vendors are often blamed for operating under unhygienic conditions, for the dirt in urban areas and for the spread of diseases.<sup>51</sup> To the extent that laws and policies governing street vending mention health and safety, they focus on protecting public health and safety and punishing street vendors for working under unhygienic conditions.<sup>52</sup> Consequently, they fail to recognise that insofar as street vendors operate under unhygienic conditions, this is partly a result of structural and infrastructural constraints such as limited access to clean water and toilets, and inadequate or no refuse collection.<sup>53</sup> Access to these facilities is determined by local governments (also known as municipalities or local authorities) regulating the spaces where street vendors trade, and is largely beyond street vendors' control.

### *A. Analysis of Provisions on OHS Protection for Informal Workers*

The OHS Act provides for the occupational health and safety rights and obligations in the workplace. It aims to eliminate health and safety risks in the work systems, plant and machinery and risks associated with all work-related activities. The discussion below analyses key provisions of the OHS Act and demonstrates: (i) the scope of the Act is limited to the standard employment relationship in a conventional workplace such as a large-scale factory; (ii) the institutional framework for implementing the Act does not accommodate informal workers' organisations; and (iii) the enforcement machinery does not apply to workers outside the employment relationship. The analysis ends by demonstrating that the Compensation for Occupational Injuries and Diseases Act No. 130 of

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<sup>48</sup> Comaru and Werna (n 17) 6.

<sup>49</sup> *ibid* 10.

<sup>50</sup> Self Employed Women's Association, 'Street Vendors' Laws and Legal Issues in India' (2014) WIEGO Law and Informality Project <<http://www.wiego.org/sites/default/files/resources/files/Street%20Vendors%E2%80%99%99%20Laws%20and%20Legal%20Issues%20in%20India.pdf>> accessed 28 April 2018.

<sup>51</sup> Sally Roever and Caroline Skinner, 'Street Vendors and Cities' (2016) *Environment and Urbanization* 359.

<sup>52</sup> See s 9 of the OHS Act (n 21) which requires self-employed workers to take measures to protect people who are not their employees (eg. customers) against health and safety hazards. See Lund et al (n 17).

<sup>53</sup> Lund et al (n 17) 198-9; Alfors et al (n 19) 280-1.

1993 (COIDA) which is related to the OHS Act, does not cover informal workers.

First, the Act's scope is limited to workers who are in an employment relationship, and who work on property that is controlled by the employer. Employers must provide the information, instructions, training and supervision necessary to ensure employees' health and safety.<sup>54</sup> They must take the necessary precautions to safeguard their health and safety before allowing employees to perform work.<sup>55</sup>

The Act does not recognise the situation of self-employed workers such as street vendors, who do not have an employer, and who operate in public spaces. It also does not recognise the fact that the obligations on employers are not appropriate for street vendors' assistants, whose employers cannot provide the necessary infrastructure and facilities to safeguard their health and safety. The Act does not provide a basis for holding the local authorities liable for protecting the health and safety of informal workers who operate on public space.

Second, the Act's institutional framework for occupational health and safety does not recognise or provide for the participation of informal workers' organisations. At the macro-level the Act establishes the Advisory Council for Occupational Health and Safety (the Advisory Council) which advises the Ministry of Labour on policy matters relating to occupational health and safety.<sup>56</sup> In terms of the Act, the Advisory Council comprises representatives of government, employers' organisations, trade union federations and experts on occupational health and safety.<sup>57</sup> This does not accord with R 204, which calls on member states to consult with and promote the active participation of organisations that represent workers in the informal economy.<sup>58</sup>

At the micro-level, the Act provides for health and safety representatives and health and safety committees in each workplace. An employer must appoint health and safety representatives, whose role includes reviewing health and safety measures, identifying potential hazards, examining causes of accidents, investigating employee complaints and making representations to the employer.<sup>59</sup> An employer must establish a health and safety committee in a workplace where two or more health and safety representatives have been appointed.<sup>60</sup> The committee's mandate is to make recommendations to the employer or

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<sup>54</sup> OHS Act (n 21) s 8.

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid* s 3-6.

<sup>57</sup> *ibid* s 4.

<sup>58</sup> Recommendation No 204 (n 38) [34].

<sup>59</sup> OHS Act (n 21) s 18.

<sup>60</sup> *ibid* s 19(1).

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the labour inspector on any matter affecting health and safety at the workplace,<sup>61</sup> and to report on workplace incidents involving and resulting in injury, illness or death.<sup>62</sup>

The provisions governing these workplace representatives and committees are modeled on a conventional workplace where many employees are working for the same employer. They do not recognise the diversity of situations that may exist in the informal economy. For example, they do not cover workers operating independently in a public space. It does not provide for these structures to address occupational health and safety concerns in the context of another arrangement, for example, a property owner such as a local authority and the street vendors whom it sanctions to operate in the space.

Third, the legal framework for promoting compliance does not recognise work outside the employment relationship. The Act empowers inspectors to conduct searches, inspections, investigations and formal enquiries into actual or potential situations that threaten the health and safety of employees. Their primary means of securing compliance is to issue orders requiring employers to take specific action or prohibiting them from taking specific actions.<sup>63</sup>

The provisions presuppose that the only (natural or legal) person that has a duty to promote and protect workers' health and safety at work is an employer who has a formal employment contract with the workers involved. The Act does not allow inspectors to exercise their statutory powers in other situations, including a local authority managing property where informal traders are operating. This is at odds with the provisions of R 204, which requires member states to adopt adequate and appropriate labour inspection systems that cover workplaces in the informal economy.<sup>64</sup>

### *B. Recommendations for the Extension of OHS Protection to Informal Workers*

The foregoing analysis demonstrates the Act's failure to recognise and accommodate workers who are outside the employment relationship, but nevertheless encounter occupational risks and safety hazards at work. This position does not accord with South Africa's obligations under

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<sup>61</sup> *ibid* s 20(1).

<sup>62</sup> *ibid*.

<sup>63</sup> *ibid* ss 27-35 govern the designation and functions of inspectors responsible for enforcing occupational health and safety provisions.

<sup>64</sup> Recommendation No 204 (n 38) [27].

international law.<sup>65</sup> South Africa has ratified the ICESCR, CEDAW and the ILO Occupational Health and Safety Convention, which require member states to extend OHS protection to informal workers. In addition, the UDHR and the Decent Work Agenda arguably form part of customary international law,<sup>66</sup> which is also binding on South Africa.<sup>67</sup>

It is recommended that as a point of departure, the Act must be amended to expressly include workers in the informal economy. Thus, its scope should be extended beyond ‘employees’ to cover ‘workers’. In addition, the references to employers should be amended to cover persons who own or otherwise control the workplace and who sanction workers to conduct their work in the workplace.

Recommendation 204 exhorts member states to develop tailored approaches to addressing ‘the diversity of characteristics, circumstances and needs of workers and economic units in the informal economy’.<sup>68</sup> The legal framework must therefore accommodate the specific occupational health and safety needs of diverse groups of informal workers. Street vendors, for example, require access to clean water; access to clean toilets; provision of lighting and access to electricity; protection against fire hazards and access to fire extinguishers; regular cleaning of trading areas and collection of refuse.<sup>69</sup> In addition, street vendors should be entitled to periodic health assessments and training on good hygiene and safety practices.

It is submitted that the OHS Act already provides a framework to address the specific risks and hazards that various categories of informal workers encounter. The OHS Act empowers the Minister of Labour to issue regulations on matters related to occupational health and safety.<sup>70</sup> The Minister of Labour has issued several such regulations, some of

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<sup>65</sup> International agreements become binding upon ratification by the country’s legislature; Constitution of the Republic of South Africa Act No. 108 of 1996, s 231.

<sup>66</sup> Customary law comprises two elements: the practice of states and states’ acceptance that the practice is binding on them. See Tullio Treves, ‘Customary International Law’ in the *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law, 2006) <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1393?prd=EPIL>> accessed 20 February 2017.

<sup>67</sup> Constitution (n 65) s 232.

<sup>68</sup> Recommendation No 204 (n 38) [7(a)].

<sup>69</sup> Francie Lund, ‘Women Street Traders in Urban South Africa: A Synthesis of Selected Research Findings’ (1998) CSDS Research Report No. 15 <<http://www.wiego.org/sites/default/files/publications/files/Lund-women-street-traders.pdf>> accessed 28 April 2018; Roever, ‘WIEGO Informal Economy Monitoring Study’ (n 41) 32-6. See Pamhi Bamu, ‘Lessons Learned from the WIEGO Law Project: The Case of Street Vendors’ (Forthcoming) WIEGO Law Resource 15 for a summary of street vendors’ demands identified during the WIEGO Law Project between 2009 and 2014.

<sup>70</sup> OHS Act (n 21) s 43.

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which outline the rules to promote occupational health and safety of workers who operate specific equipment and machinery or who engage in specific occupations and activities. Arguably, the absence of regulations that specifically cover workers in the informal economy is due to the Act's narrow focus on employees. Amending the Act to cover all workers would therefore provide the foundation for activity- or sector-specific regulations to address the specific health and safety of workers in the informal economy.

It is also recommended that section 3 of the Act be amended to state that the functions of the Advisory Council expressly include advising the Department of Labour on health and safety issues concerning the informal economy. It is further recommended that the Advisory Council should include representatives nominated by informal workers' member-based organisations (MBOs) and experts on the informal economy. In addition, the Advisory Council should establish a technical committee to advise it on occupational health and safety in the informal economy.<sup>71</sup> Furthermore, the composition of the technical committee should include MBOs and experts working in the informal economy. These changes would give effect to the provisions of R 204, which exhorts member states to create an enabling environment for the consultation and active participation of MBOs that represent workers informal workers.<sup>72</sup>

South Africa's social dialogue structures already include informal workers, albeit to a limited extent. The National Economic Development and Labour Council (NEDLAC) operates on a 'tripartite plus' basis, whereby the community constituency participates in some of NEDLAC's structures.<sup>73</sup> StreetNet South Africa is an umbrella body of street vendors' organisations in the country and represents the informal economy in the community constituency. Arguably, including informal workers' MBOs in the Advisory Council on OHS would be in line with the position relating to NEDLAC and would strengthen informal workers' voices on issues affecting them.

A reconstituted Advisory Council, which includes representatives of informal workers and experts on informal work, and a technical committee responsible for the informal economy could advise the Minister on developing regulations to cover the informal economy. The

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<sup>71</sup> *ibid* s 6. It allows the Council to establish technical committees to advise the Council on any matter. The Council can appoint members of technical committees based on their knowledge on the relevant matter for which the committee is established. Members of technical committees need not be members of the Council.

<sup>72</sup> Recommendation No 204 (n 38) [32], [34].

<sup>73</sup> The community constituency is not represented in the Labour Market Chamber but is represented in the Development Chamber. See National Economic Development and Labour Council <[www.nedlac.org.za](http://www.nedlac.org.za)> accessed 7 July 2017.

membership of the technical committee could be adjusted according to the specific groups of informal workers or occupational health and safety issues under discussion. The selection of appropriate representatives for informal workers could be controversial, given the diversity of informal workers MBOs that organise in different sectors. It would therefore be prudent to adopt transparent selection criteria and processes to ensure the selection of legitimate and representative MBOs.

It is further recommended that the Act be amended to allow the Minister to issue regulations to establish appropriate measures to secure the representation and participation of informal workers in efforts to promote occupational health and safety in their workplaces. These measures should take account of the workers' employment status, the nature of the workplace, and the nature and extent of organising amongst the workers.

Finally, it is recommended that the scope of the Act's provisions on inspections should be amended to expressly cover informal workers, including those who are not employees and those who work in unconventional workplaces. This would give effect to R 204's call for a policy framework to address efficient and effective labour inspection in the informal economy and for member states to guide the labour inspectorate on how to address the OHS challenges that informal workers encounter.<sup>74</sup> In order to achieve this, the Minister could issue regulations that elaborate the modalities of inspections and enforcement in relation to specific workers or activities.

While this article focuses on OHS protection, it would be remiss not to mention workers' compensation. The latter seeks to provide redress to workers who are injured or who contract diseases during the course of, or because of, their work. The scope of South Africa's Compensation for Occupational Injuries and Diseases Act (COIDA) is limited to employees, and therefore does not cover informal economy workers.<sup>75</sup> It would be necessary to complement OHS reforms with legal and practical measures to extend the scope of the COIDA to workers in the informal economy. This would entail the adaptation of administrative procedures, benefits and contributions and due consideration of the workers' capacity to contribute.<sup>76</sup>

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<sup>74</sup> Recommendation No 204 (n 38) [11(q)], [27].

<sup>75</sup> Taylor Commission on a Social Security System for South Africa Report, 'Committee Report No. 11: Coverage Against Employment Injuries and Diseases' (2002) 452 <<https://sarpn.org/CountryPovertyPapers/SouthAfrica/taylor>> accessed 1 March 2017.

<sup>76</sup> See Recommendation No 204 (n 38) [20] which refers to the extension of social security to informal workers.

#### ***4. The Implications of Imposing Liability for Street Vendors' OHS on Local Governments***

The discussion in Section 3 used street vending to illustrate the OHS Act's limitations in relation to informal workers. It ended with recommendations for legal reforms to extend OHS protection to workers in the informal economy. These recommendations give effect to South Africa's obligations under international law and the guidelines under ILO Recommendation 204. In considering how to tailor OHS protections to specific groups of workers, this section proposes how to realise the OHS protections for workers who do not have an employment relationship with the owner of the workplace and who work on public space.

The point of departure is the proposal that the obligation to provide for these rights should rest with the local authorities that own the public spaces on which street vendors operate. Local authorities own and control public space and are responsible for policies and actions governing the urban environment and infrastructure.<sup>77</sup> This becomes more significant where local authorities designate the space for a specific work-related purpose and are (or should be) aware of the health and safety risks that arise therein.

The discussion considers the legal and practical implications of holding local authorities responsible for extending OHS protections to street vendors. What are the implications of the proposed legal changes for the interplay between different levels of government and different policy spheres? Should the enforcement provisions applicable to employers in terms of the OHS Act be extended to local authorities? How are the costs of providing OHS-related services justified? Should unregistered street vendors receive OHS protections? I discuss these issues in turn to highlight the questions that need further consideration and make some recommendations on how these can be addressed by extending legislation to the informal economy. Sections A to D explore how these issues can be addressed in the South African context.

##### *A. Implications of the Interplay between Different Jurisdictional Levels and Policy Spheres*

The proposed imposition of OHS liability on local authorities raises questions about the interaction between different levels of government

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<sup>77</sup> Comaru and Werna (n 17) 17-8.

and different policy spheres. First, the proposals raise constitutional issues about the interplay between local and national spheres of government where national law requires local authorities to implement national imperatives. Second, the protections required, and the involvement of local authorities necessitates interplay between labour law and other spheres of regulation, namely urban planning, economic development and health.

Recommendation 204 underscores that the integrated policy framework to facilitate formalisation must recognise the role of different levels of government and must promote cooperation between them.<sup>78</sup> It also stresses the need for ‘coherence and coordination across a broad range of policy areas’ and for cooperation between the relevant bodies.<sup>79</sup> It is therefore necessary to explore the possibilities for giving effect to R 204’s provisions within the context of South Africa’s constitutional and institutional framework.

The Constitution of South Africa established a system of cooperative governance, comprising three distinctive spheres of government, namely, national, provincial and local government.<sup>80</sup> Significantly, local government is not a subordinate ‘level’ of government, but constitutes a sphere of government with executive and legislative powers to govern specific issues stipulated in the Constitution. The Constitution prohibits national and provincial government from ‘compromis[ing] or imped[ing] a municipality’s power to exercise its powers or perform its functions’.<sup>81</sup> Nevertheless, the three spheres of government are ‘interdependent and interrelated’,<sup>82</sup> and the Constitution provides that municipal by-laws that are inconsistent with provincial and national legislation are invalid.<sup>83</sup>

South Africa’s Constitution empowers local government to regulate inter alia cleansing, local amenities, markets, public places, refuse collection and solid waste disposal, trading regulations, municipal planning, street trading and municipal health services.<sup>84</sup> These issues relate to the provision of OHS-related facilities and services for street vendors. Municipalities in South Africa typically regulate street vendors’ issues under informal trading or street vending policies.

An analysis of a sample of fifteen South African municipalities’ policies on informal trade or street vending reflect divergent positions on

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<sup>78</sup> Recommendation No 204 (n 38) [7(d)], [12].

<sup>79</sup> *ibid* [10], [12].

<sup>80</sup> Constitution (n 65) s 41(1).

<sup>81</sup> *ibid* s 165(3) read with 151(4).

<sup>82</sup> *ibid* 41(1).

<sup>83</sup> *ibid* s 165(3) read with 151(4).

<sup>84</sup> *ibid* s 156(1) read with Part B of Schedule 4 and Part B of Schedule 5.

the provision of infrastructure. On one end of the spectrum are policies that mention physical infrastructure as a benefit for vendors who pay trading fees. These municipalities charge differentiated fees based on the level of service provision in the different trading spaces.<sup>85</sup> Most of the policies analysed for this article adopt this approach. On another end of the spectrum, Durban's Informal Economy Policy (2001) expressly recognises that a clean and healthy working environment is a basic need for all, including workers in the informal economy.

The local authorities' divergent approaches to street vendors' OHS has disparate impacts on the working conditions of street vendors operating under different authorities. Given that the extension of OHS to workers in the informal economy is an important national imperative, it is necessary to promote the harmonisation of local policies. One way of harmonising local policies is enacting or amending national legislation or policies that require local authorities to recognise and fulfill street vendors' basic need for a healthy and safe environment. In this light, it is recommended that the Minister issue regulations in terms of the OHS Act. These regulations would cover street vendors and include the above suggested protections to street vendors.

National policy documents also encourage local governments to take measures to provide infrastructure for street vendors. This includes the Integrated Urban Development Framework (2014), which exhorts local governments to implement national policies for the informal economy, including street vendors. It urges local governments to consider the informal economy in urban planning, infrastructure development, spatial planning and land use regulation. These examples show that it may be permissible, and sometimes necessary, for national government to guide local government on how to regulate issues that it is primarily responsible for.

Having established that national government may (and sometimes should) regulate issues for which local government is primarily responsible, it is necessary to consider how to promote policy coherence amongst local authorities. The South African Local Government Association (SALGA) is a voluntary and autonomous national association of all 257 local governments in the country.<sup>86</sup> SALGA is a platform for local authorities to share information and experiences and to promote good practice on policy issues. SALGA's mandate is to develop common policy positions and to represent local governments in policy dialogue at

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<sup>85</sup> See the City of Cape Town Informal Trading Policy No. 1264 (2013).

<sup>86</sup> It comprises one national office and nine provincial offices. Membership of the association is voluntary. SALGA is a statutory public entity. See South African Local Government Association <[www.salga.org.za](http://www.salga.org.za)> accessed 1 July 2017.

national level. At the time of writing, SALGA had held a meeting to consider the possibility of developing guidelines on providing infrastructure for street vendors.<sup>87</sup> The discussions in this regard provide an opportunity for progressive municipalities to promote the recognition of OHS as a basic need for street vendors.

A good practice example is Durban's Informal Economy Policy (The Policy), which provides that street vendors fall under City's Department of Environmental Health.<sup>88</sup> The Policy mentions the Department of Environmental Health's role in training street vendors<sup>89</sup> and its contribution to area-based management.<sup>90</sup> The Policy calls for an integrated approach to OHS for street vendors, to ensure that 'environmental health considerations are built into all aspects of changing policy and management regarding the informal economy, and especially the siting and development of built markets and sites for street trading'.<sup>91</sup>

It is necessary to promote dialogue between national government and local government on issues relating to OHS for street vendors. It is therefore recommended that the OHS Act be amended to include representatives of SALGA in the membership of the OHS Advisory Council to ensure its participation in discussions involving work in public spaces. SALGA's participation in the Council would foster an appreciation of the national imperative to promote OHS in the informal economy and an understanding of the benefits of doing so at the local level.<sup>92</sup> In addition to promoting dialogue amongst the different levels of government, it would also be necessary to promote national level dialogue across different policy spheres. These would include workers' compensation and health care, both of which are related to occupational health and safety.

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<sup>87</sup> Email from Caroline Skinner to author (24 June 2017).

<sup>88</sup> Durban's Informal Trading Policy (2001) 22-3.

<sup>89</sup> Thailand adopted a similar approach, with the Ministry of Public Health extending OHS services to informal workers through primary care units. See Tsuyoshi Kawakami 'Participatory Approaches to Improving Safety, Health and Working Conditions in Informal Economy Workplaces – Experiences of Cambodia, Thailand and Vietnam' (Interregional Informal Economy: Enabling Transition to Formalisation Symposium, Geneva, November 2007) 3-4.

<sup>90</sup> Durban's Informal Trading Policy (n 88) 22-3.

<sup>91</sup> *ibid.*

<sup>92</sup> See Pat Horn, 'Street Vendor Licenses and Permits' (Forthcoming) WIEGO Technical Brief 6. She highlights the need to address the challenges that arise where local government lack political will to implement national imperatives.

*B. Should Existing Enforcement Provisions be Extended to Local Authorities?*

The OHS Act makes it an offence for an employer to do or to fail to do an act, if the act or omission results in a person being injured at a workplace.<sup>93</sup> It also mandates an inspector to enforce the Act by ordering non-compliant employers to comply with the relevant provisions of the Act or its regulations that apply to them.<sup>94</sup> It also empowers an inspector to order an employer to take measures to protect the health and safety of any person whose health and safety is threatened by the employer's failure to take reasonable OHS measures.<sup>95</sup> The OHS Act makes failure to comply with such an order or notice an offence.<sup>96</sup> An inspector may investigate or conduct a formal enquiry into any OHS-related incident, report on their findings<sup>97</sup> and, if necessary, submit the report to the Attorney-General for further action.<sup>98</sup>

In principle, these provisions could be extended to cover local authorities in relation to street vendors operating under their authority. It would, however, be worth re-considering the extent of local authorities' liability, given that their role in street vending involves regulation and facilitation, as opposed to profit-making enterprise. Law-makers could, for example, consider alternatives to the threat of imprisonment and heavy fines to secure compliance.

Stakeholders should also consider the practical challenges that the inspectorate experiences even in the context of conventional workplaces. These primarily relate to financial, technical and human resource constraints to carry out its functions in relation to formal employees, who are currently covered by the OHS Act.<sup>99</sup> This suggests the need for campaigns and advocacy to secure the allocation of additional resources to reach workers in the informal economy such as street vendors.

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<sup>93</sup> OHS Act (n 21) s 38(2).

<sup>94</sup> *ibid* 30(4).

<sup>95</sup> *ibid* 30(3).

<sup>96</sup> *ibid* s 38(1)(b).

<sup>97</sup> *ibid* s 31-32.

<sup>98</sup> *Ibid*.

<sup>99</sup> Department of Labour, 'Strategic Plan for the Department of Labour 2012-2017' 28-9 <<http://www.labour.gov.za/DOL/documents/annual-reports/departement-of-labour-strategic-plan/2012-2017/departement-of-labour-strategic-plan-2012-2017>> accessed 7 July 2017.

### *C. How are the Costs of Providing OHS-related Services Justified?*

One could question why local authorities should bear responsibility for the costs of occupational health and safety for street vendors where the local authority is not engaged in the business of street vending and does not employ street vendors.<sup>100</sup> One obvious justification is street vendors' contribution towards local and national revenue through various taxes, and levies.<sup>101</sup> Research shows that street vendors' fees make a significant contribution towards local revenue in many African countries.<sup>102</sup> The revenues so generated contribute towards local economic development and help to strengthen the city economy.<sup>103</sup>

In addition to revenue, street vendors make other contributions towards the local economy. Street vendors operate on public spaces such as streets and sidewalks, and thus provide consumers with convenient and accessible retail options.<sup>104</sup> They also bring economic diversity to local economies, and make public spaces and city life more vibrant.<sup>105</sup> Their various commercial activities can transform public spaces into 'multi-use destinations' where commercial activity attracts people to a locality. Through their long-term establishment in a location, vendors maintain enduring relationships with those living and working in that locality.<sup>106</sup> In this way, they contribute to 'residents' and business' social ties, [local] character, commercial attractions and a sense of ... safety'.<sup>107</sup> Street vendors also contribute towards direct employment, as well as indirect employment through ancillary services, including security guards, market porters, and transport services.<sup>108</sup>

Street vendors' economic contribution provides sound justification for requiring local authorities to cover the costs of protecting their OHS. Furthermore, providing health and safety facilities contributes to a safe and hygienic environment in public spaces where street vendors operate. The availability of these facilities enables street vendors to provide goods and services in a clean and hygienic manner and enhances customers'

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<sup>100</sup> OHS Act (n 21) s 8.

<sup>101</sup> WIEGO 'Why Should Occupational Health be a Concern of Local Government?' (2016) <[www.wiego.org/resources/why-should-occupational-health-be-concern-local-government](http://www.wiego.org/resources/why-should-occupational-health-be-concern-local-government)> accessed 1 March 2017.

<sup>102</sup> Horn (n 92) 4-5.

<sup>103</sup> WIEGO 'Key Messages on Public Space: Inclusive Public Spaces Create Vibrant Cities' <[www.wiego.org/sites/wiego.org/files/resources/files/WIEGO-Key-Messages-on-Public-Spaces.pdf](http://www.wiego.org/sites/wiego.org/files/resources/files/WIEGO-Key-Messages-on-Public-Spaces.pdf)> accessed 1 March 2017.

<sup>104</sup> *ibid.*

<sup>105</sup> *ibid.*

<sup>106</sup> *ibid.*

<sup>107</sup> *ibid.*

<sup>108</sup> Roever, 'Informal Economy Monitoring Study' (n 41) 3.

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experience and safety. This in turn makes it possible for street vendors to contribute more meaningfully to the economy.

### *D. Should Unregistered Street Vendors Receive OHS Protection?*

The issue of unregistered vendors has two dimensions. One is whether local authorities have obligations towards (unregistered) traders operating on space that is not designated for street vending. It is recommended that the obligations of local authorities should only arise in relation to spaces that they have specifically designated for trading. This would mean that a local authority would not be responsible for the health and safety of street vendors operating on land that it did not designate for vending.

Another dimension is whether local authorities have obligations towards unregistered<sup>109</sup> street vendors operating on space that has been designated for street vending. On the one extreme, one could argue that the local authorities should provide health and safety facilities and services (see section 3B) to all street vendors operating on designated space. While this would accord with the unqualified expression of the right of ‘everyone’ or ‘every worker’ to a safe and healthy workplace, it would make it difficult to determine the extent of the local authorities’ liability at the outset.

The other extreme would be to deny unregistered vendors access to any of the services and facilities. This would limit local authorities’ liability in advance. However, it would raise the cost and administrative burden of policing access to certain necessary public facilities, such as clean water and toilets. Consequently, a compromise that acknowledges the need to extend basic services to all traders and reserves access to services such as training to registered street vendors may be apposite.

## ***5. Additional Measures to Promote OHS Protection for Informal Workers***

This article has thus far argued for legal reforms to reframe certain established concepts, rights and responsibilities as they relate to informal workers. This section aims to show that extending occupational health and safety to informal workers will require more than legal reforms. It discusses the importance of organising, advocacy, research, training and

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<sup>109</sup> The reference to registered vendors refers to vendors who are generally allowed to operate without a license, and have a permit to trade on a particular space. See Horn (n 92) 1.

sensitisation to promote the enactment and implementation of legal measures. The discussion builds on the lessons about street vendors to make recommendations about the extension of OHS protection to informal workers more broadly.

The extension of OHS to informal workers requires the involvement of strong MBOs representing informal workers. This requires systematic efforts to organise them around OHS by engendering and reinforcing a consciousness of their identity as workers and an appreciation that the place where they work is a workplace with associated rights and responsibilities.<sup>110</sup> This is especially significant for street vendors, who are largely self-employed, and who work in unconventional workplaces.

Effective organising should include efforts to build workers' capacity to understand the shortcomings of existing laws and demand legal change. MBOs have a crucial role to play in demanding legal and other measures to promote the extension of occupational health and safety to street vendors. MBOs should present their members' views and experiential knowledge in dialogues on laws and policies that affect them.<sup>111</sup> MBOs should represent street vendors on the Advisory Council on OHS and the proposed technical committee addressing OHS in the informal economy.<sup>112</sup> In addition, they must appoint health and safety representatives and health and safety committees to represent street vendors in dialogue with local authorities on health and safety matters.

Raising street vendors' consciousness about their status as workers will also enable them to demand the allocation of state resources and support for OHS in accordance with their economic contribution.<sup>113</sup> Wherever possible, MBOs must engage in participatory budgetary processes to influence national and local government budgets that potentially affect OHS-related allocations.<sup>114</sup> MBOs could use their collective strength to demand that political parties and candidates undertake to allocate resources to provide OHS related services.<sup>115</sup> MBO

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<sup>110</sup> Alfery et al (n 19) 275.

<sup>111</sup> UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 'Annual Report' (2015) A/HRC/29/33, 9-10.

<sup>112</sup> This recommendation is also discussed in Section 3 of this article.

<sup>113</sup> Poorima Chikarmane, 'Public Space, Public Waste and the Right to the City' (2006) 26(2) *New Solutions: A Journal of Environmental and Occupational Health and Policy* 296, 300.

<sup>114</sup> Debbie Budlender, 'How to Analyse Government Budgets from an Informal Economy Perspective' (2009) WIEGO Technical Brief No. 1.

<sup>115</sup> In 2015 and 2016, WIEGO partnered with organisations of street vendors and market head load porters to develop a platform of demands which they presented to political parties and candidates. The National Patriotic Party included commitments to address head loaders' concerns, and honoured this commitment when it came into power. Email from Dorcas Anshah to the author (1 January 2017).

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leaders and members would need the capacity to understand and articulate their economic contribution and to participate fully in budgetary processes.

It is further necessary to train and sensitise professional communities that can promote informal workers' health and safety at work. The protection of street vendors' health and safety extends beyond labour law and requires a multi-disciplinary approach that covers issues such as urban planning, health services, and local economic development. Critics argue that an inter-disciplinary approach may result in the loss of the 'worker-focus' of OHS, arguing that health professionals, for example, see street vendors as citizens, as opposed to workers.<sup>116</sup> Similarly, urban planners do not 'see' them when planning the urban environment.<sup>117</sup>

Relevant training institutions such as medical schools and environmental health training institutions, should revise their curricula to incorporate the different groups of workers in informal economy.<sup>118</sup> This will sensitise aspiring professionals about informal workers' significance and their OHS needs. In addition, organisations working in the informal economy can influence qualified professionals by engaging with the relevant professional bodies and through exposure dialogue programmes. The latter expose professionals to informal workers' daily experiences at work and provide a platform to reflect on their learnings and to engage in a technical dialogue.<sup>119</sup>

The introduction to this article highlighted the limited availability of research on the occupational health and safety challenges of workers in the informal economy. It further pointed to the dearth of research on specific national legal interventions to extend occupational health and safety laws to informal workers. This points to the need to promote research in this area to inform legal and policy formulation, budgetary processes, and the monitoring and evaluation of OHS laws.<sup>120</sup> This suggests the need to engage with institutions and researchers to pay attention to occupational health and safety for informal workers.

Researchers in different disciplines including social sciences, economics and law should collaborate to promote the holistic analysis of the challenges and possible solution. As far as possible, researchers must

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<sup>116</sup> Email from Francie Lund to the author (14 June 2017).

<sup>117</sup> Lund et al (n 17) 202; Alfors et al (n 19) 283-5.

<sup>118</sup> Lund et al (n 17) 205.

<sup>119</sup> See Namrata Bali, Martha Chen and Ravi Kanbur, 'Bridging Perspectives: The Cornell SEWA-WIEGO Exposure Dialogue Programme on Labour, Informal Employment and Poverty' (2012) SEWA Academy Report <[http://www.wiego.org/sites/default/files/publications/files/Cornell-SEWA-WIEGO\\_EDP\\_Bridging\\_Perspectives.pdf](http://www.wiego.org/sites/default/files/publications/files/Cornell-SEWA-WIEGO_EDP_Bridging_Perspectives.pdf)> accessed 17 July 2018.

<sup>120</sup> UN Special Rapporteur on the right to health (n 111) 11.

adopt participatory research methods, where the community (informal workers) collaborates with the researchers.<sup>121</sup> Such research approaches build the capacity of the community and affirms the value of the community's experiential knowledge.<sup>122</sup>

An example of such an approach was the Phephanathi (Be safe with us) Project, which involved street vendors in Durban, South Africa. The research incorporated training courses, policy engagements, health screenings, urban design work, and hazard mapping work.<sup>123</sup> The project was led by a local and a global NGO, Asiye eTafuleni (AeT) and Women in Informal Employment Globalising and Organising (WIEGO) respectively, in partnership with street vendors' MBOs and local government.

The above discussion underscores the need for other initiatives to protect workers in the informal economy. It also shows the role that a range of actors – especially MBOs – can play in promoting these measures. Resource and capacity constraints may hamper the implementation of these measures. This calls for stakeholders to adopt collaborative strategies to incrementally extend OHS protection to the informal economy.<sup>124</sup>

## 6. Conclusion

International law has long recognised that OHS protection is a human right for both formal and informal workers. More recently R 204 has provided an impetus for governments to strive to provide for informal workers' OHS. These developments are significant for women, who dominate amongst the poorest and most vulnerable informal workers. The article explored how national law in South Africa can give effect to the international right to OHS and recommended that the OHS Act be amended to expressly include informal workers within its scope and adapt the provisions in line with informal workers' circumstances and needs. It also recommended that informal workers' MBOs and their allies should participate in law- and policy- making processes that affect them.

Recognising that the OHS needs of informal workers differ according to sector or occupational group, the article focused on street vendors and recommended specific reforms to extend OHS protection to street vendors. In arguing that local authorities should be responsible for the

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<sup>121</sup> *ibid.*

<sup>122</sup> *ibid.*

<sup>123</sup> Alfors et al (n 19) 272.

<sup>124</sup> See Lund et al (n 17) 202.

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recommended measures, the article pointed *inter alia* to the need for coordination across the different levels of government and across different policy spheres, including workers' compensation.

Other jurisdictions whose OHS laws exclude informal workers may draw inspiration from this article's recommendations to extend OHS protection to the informal economy. It is worth noting two caveats in this regard. First, the reforms to extend OHS protection to the informal economy should be shaped by the national context and the constitutional and legal landscape of the relevant jurisdiction. Second, extending OHS protection to the informal economy requires organising, advocacy, training, sensitisation and research in addition to legal reform.