



Africa Criminal Justice Reform  
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# PUBLIC SPACES & INFORMAL WORK: Principles and approaches to law & policy-making

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## Executive Summary

Public space is the setting for a number of activities (i.e. ceremonial festivities, commercial trade, the movement of goods and people) including the setting for community life and livelihoods of the urban poor, such as street vendors or waste-pickers.<sup>1</sup> The public space providing easy access to potential customers is an essential resource to the informal economy. In many developing countries, laws and policies, particularly at a local government level, tend to restrict the access to and ability of people to earn a livelihood or perform life-sustaining activities in public spaces, and also tend to treat them as criminals. For example, urban, spatial planning and zoning legislation and policies often restrict public spaces for particular usages or activities or to certain times. There are also offences against local government laws (by-laws, municipal laws, and local ordinances) that target behaviour that is not inherently criminal, but rather a perfectly normal action such as selling or producing something, or walking or

being in a particular area or not having the necessary permit to do so.

There are competing interest on the part of the state to keep cities “clean” and “safe” and, at the other end, the right of the poor to live, work and earn a livelihood to support their families. Frequently poor and vulnerable people, relying on access to public spaces; such as the homeless, street traders, hawkers, taxi or bike operators, waste pickers and car guards are affected by the enforcement of these laws and policies. Contravention of local ordinances or by-laws is frequently treated as a criminal offence, compromising informal dwellers and workers’ livelihoods and regularly violating their human rights. They are repeatedly harassed by local law enforcement officials and are denied due process protections under the rule of law or constitutional obligations.

There is growing evidence pointing to the problematic way in which public spaces are governed and that reconceptualization is needed to shift public law from criminal to an administrative framework.<sup>2</sup> Essentially, it comes down

<sup>1</sup> UN-Habitat, ‘SDG Indicator 11.7.1 Training Module: Public Space’ (Nairobi: UN Human Settlement Program, 2018).

<sup>2</sup> M. Von Broembsen and M. Chen, ‘Eliminating Legal Barriers from the Perspective of The Informal Economy’, A Policy Brief for the UN

to the manner in which authorities formulate and implement public policy and involve the people mostly impacted by their decisions. The emphasis should be placed on public consultations with people affected by policy decisions and ensuring a good process for decision making.<sup>3</sup> Some of these principles are considered fundamental to good policy-making:

- Policies should be designed around outcomes.
- The decisions of policy-makers should be based on the best available evidence.
- The policy and the policy-making process should be inclusive. Consultations should take place with those affected by the policy and authorities should seek feedback on law or policy from the public.
- The policy-making process should consider varied influencing factors (nationally, regionally and internationally), draw on experience in other countries or localities and be assessed against a country's international and regional commitments to key human rights treaties.
- The policy-making process should be flexible and innovative.
- The policy-making process must look beyond departmental boundaries and identify inter-departmental solutions to cross cutting issues.
- The existing or established policy should constantly be reviewed to ensure it is really dealing with problems it was designed to solve.
- Systemic evaluation of the effectiveness of policy should be built into the policy-making process.
- Good policy-making learns from experience of what works and what does not.<sup>4</sup>

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Secretary-General's High-Level Panel on Women's Economic Empowerment (United Kingdom.: Women in Informal Employment: Globalizing and Organizing, September 2016), 13.

<sup>3</sup> Von Broembsen and Chen, 13–14.

<sup>4</sup> H. Bullock, J. Mountford, and R. Stanley, 'Better Policy-Making' (Centre for Management and Policy Studies, November 2001), 14.

## 1. Introduction

Poverty embodies a range of interrelated and mutually reinforcing deprivations, and is associated with stigma, discrimination, insecurity and social exclusion.<sup>5</sup> In many developing countries, laws and policies governing economic and social interactions do not afford equal opportunity and protection to a large segment of society, who are mostly poor, minorities, women and other marginalised groups.<sup>6</sup> Instead of fostering inclusive and equitable growth and development, some laws and policies tend to impose barriers and biases against the poor.<sup>7</sup> Examples of these are laws or policies, particularly at a local government level, which restrict people (mostly the poor and vulnerable) from operating in public spaces. Furthermore, there are laws, that are vague or ambiguous, that criminalise the socio-economic status of people, even where Constitutions or national laws contain provisions upholding the rights of the poor. Frequently public authorities fail to consider the impact of their laws and policies on the well-being of people relying on access to public space. Balanced approaches to policy and law-making that are fair and inclusive of the interests of poor and marginalised people can safeguard their livelihoods, improve their wellbeing and contribute to poverty alleviation. This is not the case in many African jurisdictions. Below we contextualise how laws and policies result in the penalisation and criminalisation of poor and vulnerable people and highlight the need for governments to consider better public policy and law-making approaches that protect the rights and well-being of all people.

## 2. Challenges with policy & law, who is impacted, what is the impact?

### *What is the problem ?*

Generally, legislative competencies in government are typically spread across two to three tiers of government (e.g., national, provincial, and local, or counties). It is especially at a local government level where legislation and policy regulate how people ought to behave and interact with the environment, public spaces; as well as interact with others. For example, urban or spatial planning legislation and policies depict how public space can be used for, what that use may or may not entail, and even at what times it may or may not be done (e.g., restricting areas for particular usages or activities or to certain times.) Moreover, zoning legislation often determines how land can be used (e.g., residential, commercial, industrial, etc). Another example is offences against local government laws (by-laws, municipal laws, and local ordinances). Often these offences target behaviour that is not inherently criminal, such as theft or robbery, but rather a perfectly normal action such as selling or producing something, or walking or being in a particular area.

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<sup>5</sup> United Nations Secretary-General, 'Legal Empowerment of the Poor and Eradication of Poverty: Report of the Secretary-General' (United Nations, 13 July 2009), para. 7, <https://digitallibrary.un.org/record/662166>.

<sup>6</sup> United Nations Secretary-General, para. 2.

<sup>7</sup> United Nations Secretary-General, para. 2; UK Department for International Development, 'Realising Human Rights for Poor People: Strategies for Achieving the International Development Targets' (UK Department for International Development, October 2000), 7.

What seems to be at issue here is not the act itself, but rather the context: where it is done, when it is done, how it is done and by whom. To this should be added that the offence may not be any of these, but rather not having the necessary permit to do so. The contravention of these by-laws, municipal laws, or local ordinances is often treated as a crime or results in a fine or a combination of both. This has serious ramifications for people relying on public spaces to perform life sustaining activities or earn a livelihood.

### **Who is impacted? What is the impact ?**

There is no closed list of people impacted by these laws and policies however, they include people who rely on access to public spaces and the informal economy for survival. Often the most vulnerable and marginalised are impacted. This includes, but is not limited to poor and homeless people, people in informal settlements, informal traders, persons with disabilities, migrants, minority groups.

#### **Examples**

Street vendors: trading in streets, pedestrian malls; markets; transport interchanges; public open spaces; mobile facilities.

Road-side shops, 'spaza' shops, newspaper vendors, hawkers, stalls, kiosks.

Home based workers or informal, unregistered, small business near one's place of living.

Wind-screen washers

Taxi or bike operators

Waste pickers or informal recyclers

Beggars

Car guards

Charcoal burners

Liquor brewers

High poverty and unemployment rates around the world and especially in Africa, result in people relying on the informal economy and street living for survival.<sup>8</sup> Urbanisation has resulted in an increase in street trading, hawking, recycling, begging and other activities as there are more economic opportunities in cities. The use of public spaces is a key asset in the livelihood strategies of the urban poor, but it is also a highly contested commodity.<sup>9</sup> There is ample evidence that, especially in African cities, law enforcement officials often perform so-called 'sweeping exercises' or 'clean up operations' targeting "undesirables" such as people living and working in the street (i.e., homeless persons, street vendors, waste pickers, migrants, motorbike operators, sex workers, etc.).<sup>10</sup> This results in them being arrested or relocated to 'clean the city'.

<sup>8</sup> International Labour Organization, 'Economic Slowdown Likely to Force Workers to Accept Lower Quality Jobs', Press release, World Employment & Social Trends, 2023, 16 January 2023, [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_865256/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_865256/lang-en/index.htm).

<sup>9</sup> W. Tsoriyo and E. Ingwani, 'Exploring the Dynamics of Street Trading as Street Spatial (In) Justice in Musina Town', *Journal of Inclusive Cities and Built Environment*, 2, no. 1 (2022): 61–64; M. Von Broembsen, 'The New Urban Agenda's and Social Inclusion: Street Vendors' Participation in Decision-Making about the Use of Public Space' (Marlese Von Broembsen, 2019), 8.

<sup>10</sup> Southern Africa Litigation Centre (SALC), Centre for Human Rights Education, Advice and Assistance (CHREAA), 'No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi' (Blantyre, Malawi, 2013), 61; A.

The contravention of local ordinances or by-laws is frequently treated as a criminal offence, compromising informal dwellers and workers' livelihoods and often violating their human rights.<sup>11</sup> They are often harassed by local law enforcement officials and are denied due process protections under the rule of law or constitutional obligations.<sup>12</sup> Offences against local government laws are victimless offences, in the sense that only the state is the injured party, yet the enforcement thereof can have dire consequences for individuals and can be disproportionate.

Here are some examples of the impact on informal workers:

### **Waste pickers/informal recyclers**

Many people living in poverty, including poor and vulnerable children, in developing cities rely on recycled waste for their livelihoods.<sup>13</sup> They are commonly known in the informal sector as 'waste pickers,' 'informal recyclers' and in other parts of the world are called derogatory terms such as 'scavengers.'<sup>14</sup> Local government policies often discriminate against 'waste pickers' and exclude them from participating in the formal waste management system in comparison to formal recyclers, where waste management is contracted to private or public companies.<sup>15</sup> Waste pickers are often harassed by local authorities, penalised, arrested and sometimes assaulted by law enforcement officials for participating in such activities.<sup>16</sup> This continues to occur, despite the fact that it has been shown that they can make a valuable contribution to dealing with issues surrounding waste management, environmental pollution and play a vital role in reducing poverty.<sup>17</sup> If local authorities allow for more inclusive policies on waste management, (e.g., allowing access to recyclable waste, involve them in political dialogue over waste management) this could improve their working conditions, secure livelihoods, improve social security and contribute to keeping cities and towns clean.<sup>18</sup>

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Meerkotter, 'Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces', *University of Miami Law Review Caveat* 74, no. 1 (2020); Muntingh and Petersen, 'Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences' (Dullah Omar Institute, 2015), 17.

<sup>11</sup> Women in Informal Employment: Globalizing and Organizing, 'Law Programme WIEGO', accessed 20 June 2023, <https://www.wiego.org/law-programme>.

<sup>12</sup> Women in Informal Employment: Globalizing and Organizing.

<sup>13</sup> T. Ogwueleka and B.P Naveen, 'Activities of Informal Recycling Sector in North-Central, Nigeria', *Energy Nexus* 1 (1 November 2021): 100003, <https://doi.org/10.1016/j.nexus.2021.100003>; 'Scavengers: Loathed by Authorities, Valued by Recyclers - Daily Trust', *Daily Trust*, 24 April 2022, <https://dailytrust.com/scavengers-loathed-by-authorities-valued-by-recyclers/>; O. Adama, 'Marginalisation and Integration within the Informal Urban Economy: The Case of Child Waste Pickers in Kaduna, Nigeria', *International Development Planning Review* 36, no. 2 (1 April 2014): 155–81.

<sup>14</sup> Ogwueleka and Naveen, 'Activities of Informal Recycling Sector in North-Central, Nigeria'.

<sup>15</sup> Adama, 'Marginalisation and Integration within the Informal Urban Economy'; D. Kuria and R. Muasya, 'Mapping of Waste Pickers and Organisations Supporting Waste Pickers in Kenya' (Women in Informal Employment: Globalizing and Organizing, 2010); EJAtlas, 'Waste Pickers of Nakuru Face Harassment, Exclusion and Toxic Conditions, Kenya', 27 May 2020, <https://ejatlas.org/print/waste-pickers-of-nakuru-suffer-from-harassment-exclusion-and-hazardous-conditions-kenya>.

<sup>16</sup> Kuria and Muasya, 'Mapping of Waste Pickers and Organisations Supporting Waste Pickers in Kenya'; EJAtlas, 'Waste Pickers of Nakuru Face Harassment, Exclusion and Toxic Conditions, Kenya'.

<sup>17</sup> Ogwueleka and Naveen, 'Activities of Informal Recycling Sector in North-Central, Nigeria'.

<sup>18</sup> Kuria and Muasya, 'Mapping of Waste Pickers and Organisations Supporting Waste Pickers in Kenya'.

### **Street traders**

Street vendors also known as ‘hawkers,’ ‘street traders,’ ‘road side shops,’ ‘stalls’ trade in streets, pedestrian malls; markets; transport interchanges; public open spaces; and mobile facilities such as from caravans. Many street vendors are poor, selling their products and produce in public spaces to earn a livelihood.<sup>19</sup> Street vendors find it extremely difficult to access public spaces due to a set of local ordinances or by-laws emanating from different local authority departments (i.e. urban development, zoning, traffic, health, sanitation, environment, etc).<sup>20</sup> These laws and policies regulating public spaces often require street traders to be in possession of a permit to operate at a particular geographical area or restrict their operations to certain times or days or to certain types of goods or services.<sup>21</sup> Furthermore, they often face significant challenges with applying for permits either due to a lack of information on how to apply, the bureaucracy of the system or applying for one is too expensive or onerous. Even where they have legal entitlement to trade, the regulatory matrix is complex, inaccessible and often contradictory.<sup>22</sup> Street trade accounts for a significant proportion of informal employment in Africa, and contribute significantly to economies, yet traders are often subjected to harassment, arbitrary arrests and treated as criminals for non-compliance with laws or policies.<sup>23</sup> Their challenges, such as lack of access to housing, access to informal trading permits, sanitation issues, selective zoning of certain areas, are frequently ignored and local authorities fail to recognise their vital contribution to reducing poverty and securing livelihoods.

### **Informal transport operators**

Informal transportation services have taken advantage of inefficient, deteriorating, unorganised and unaffordable state of public and private transport systems.<sup>24</sup> The use of unconventional, and in most cases unregulated transport, such as bicycles and motorbikes, is used as a mode of public transport in many countries (e.g., Malawi, Nigeria, Ghana, Sierra Leone, Liberia).<sup>25</sup> These transport options provide cost-effective options and serve transport routes not served

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<sup>19</sup> Von Broembsen, ‘The New Urban Agenda’s and Social Inclusion: Street Vendors’ Participation in Decision-Making about the Use of Public Space’, 6.

<sup>20</sup> Von Broembsen, 3.

<sup>21</sup> Von Broembsen, 6.

<sup>22</sup> Von Broembsen, 6.

<sup>23</sup> Von Broembsen, 3; Muntingh and Petersen, ‘Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences’, 28.

<sup>24</sup> A. Al-Hasan, S. Momoh, and L. Eboeime, ‘Urban Poverty and Informal Motorcycle Transport Services in a Nigerian Intermediate Settlement: A Synthesis of Operative Motives and Satisfaction’, *Urban, Planning and Transport Research* 3, no. 1 (2015), <https://www.tandfonline.com/doi/full/10.1080/21650020.2014.978950>; R. Cervero, ‘Informal Transport in the Developing World’ (Nairobi, Kenya: United Nations Centre for Human Settlements (Habitat), 2000), <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://unhabitat.org/sites/default/files/download-manager-files/Informal%20Transport%20in%20the%20Developing%20World.pdf>.

<sup>25</sup> Al-Hasan, Momoh, and Eboeime, ‘Urban Poverty and Informal Motorcycle Transport Services in a Nigerian Intermediate Settlement: A Synthesis of Operative Motives and Satisfaction’.

by other operators.<sup>26</sup> Despite this, some informal transport operators are often excluded in policy, and frequently face arrest and detention for driving with ‘unregistered’ or ‘unlicensed’ vehicles or driving in prohibited parts of the city.<sup>27</sup> Sometimes, their motorbikes are confiscated, and auctioned off by the state, taking away their source of income.<sup>28</sup>

The arbitrary enforcement of these laws and policies infringes on fundamental rights,<sup>29</sup> such as the right not to be discriminated against, the right to human dignity, equal protection of the law, the right to liberty, freedom of movement, freedom against torture or cruel, inhuman or degrading treatment or punishment, and security of person, including the right not to be subjected to arbitrary arrest or detention.<sup>30</sup> Furthermore, laws and policies which impose bans, onerous licences or strict restrictions on street vendors undermine the rights of persons living in poverty to earn a living as protected under Article 6 of the International Covenant on Economic, Social and Cultural Rights.<sup>31</sup> Regionally, the most recent soft law instrument to call upon states to address the criminalisation of people performing activities in public spaces is the Principles on the Decriminalisation of Petty Offences in Africa, which was promulgated in 2017.<sup>32</sup> Moreover, in 2020, the African Court on Human and Peoples’ Rights issued an Advisory Opinion on the extent to which laws and by-laws that criminalize individuals’ status as poor, homeless, or unemployed violate their human rights and declared these offences contrary to the rights enshrined in the African Charter and other key regional human rights Charters on the rights of the child and women.<sup>33</sup> Despite this, the use of public spaces is still arbitrarily regulated in most jurisdictions in Africa.

There is growing evidence pointing to the problematic way in which public space is governed and that reconceptualization is needed to shift public law from criminal to an administrative framework.<sup>34</sup> The emphasis should be placed on public consultations with people affected by policy decisions and ensuring a good process for decision

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<sup>26</sup> Cervero, ‘Informal Transport in the Developing World’.

<sup>27</sup> Nii Ayi Ayitey, ‘Okada Drivers without License to Be Arrested and Jailed from September’, *Yen.Com.Gh - Ghana News.*, 31 July 2021, sec. Main page, <https://yen.com.gh/191224-okada-drivers-license-arrested-jailed-september.html>; Francis Murray, ‘Police Resumes Enforcement of Okada Movement Restrictions’, *Politico SL*, 21 September 2020, <https://www.politicosl.com/articles/police-resumes-enforcement-okada-movement-restrictions>.

<sup>28</sup> Francis Murray, ‘Police Resumes Enforcement of Okada Movement Restrictions’.

<sup>29</sup> K Petersen, ‘Law and Policy: Barriers to Accessing Justice for Sustainable Development’, *ESR Review : Economic and Social Rights in South Africa* 21, no. 4 (1 December 2020), <https://journals.co.za/doi/abs/10.10520/ejc-esrrev-v21-n4-a5>.

<sup>30</sup> UN General Assembly, ‘International Covenant on Civil and Political Rights’, Pub. L. No. Resolution 2200A (XXI) (1976), arts. 2, 3, 6, 7, 9, 10, 12 and 26; Organization of African Unity, ‘African Charter on Human and Peoples Rights’, Pub. L. No. OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), arts. 2, 3, 5, 6, 12 and 18.

<sup>31</sup> UN General Assembly, ‘Report of the Special Rapporteur on the Question of Human Rights and Extreme Poverty, Magdalena Carmona’ (New York, USA: UN General Assembly, 4 August 2011), para. 39.

<sup>32</sup> African Commission on Human & Peoples’ Rights, ‘Principles on the Decriminalisation of Petty Offences in Africa’, Pub. L. No. ACHPR/Res. 366 (EXT.OS/XX1) (2017).

<sup>33</sup> African Court on Human and Peoples’ Rights, ‘Advisory Opinion Following Request for an Advisory Opinion by the Pan African Lawyers Union on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa’, Pub. L. No. No. 001/2018 (2020).

<sup>34</sup> Von Broembsen and Chen, ‘Eliminating Legal Barriers from the Perspective of The Informal Economy’, 13.

making.<sup>35</sup> Firstly, this requires a participatory governance system, meaning that all persons should actively participate in policy decisions affecting them.<sup>36</sup> Second, governance regimes should be administered within a progressive and dynamic administrative law frame to protect citizens from authorities exercising their power in an arbitrary way by ensuring a good process for decision-making.<sup>37</sup> Essentially, it comes down to the manner in which authorities formulate and implement public policy and involve the people mostly impacted their decisions.

### 3. Principles and approaches to policy-making

As previously noted, the state will be more responsive to the poor, if local governments implement policies that are efficient and responsive and allow for broad participation in policy-making.<sup>38</sup> A rethink is needed on how poor and marginalised people are considered, included and involved in law and policy-making impacting them since they are often excluded. The process by which policy is developed has an important impact on the quality of the policy. In short, the process is important and this is even more so when the well-being of those perceived to have less power is at stake.

#### 3.1 Policies should be designed around outcomes.

The policy-making process should clearly define the desired outcomes that the policy is designed to achieve.<sup>39</sup> The process must consider statistical data and trends and informed predictions of social, political, economic and cultural trends into the future of the likely effect and impact of the policy.<sup>40</sup>

#### 3.2 Evidence-Based Policy Decisions

The decisions of policy-makers should be based on the best available evidence.<sup>41</sup> This can be done by looking at commissioned research or reviewing existing research on the issue or problem.<sup>42</sup> All relevant evidence, including that from experts or consultants or specialists, should be available and accessible to policy makers. For example, with regards to vagrancy and other nuisance related by-law offences, there seems to be an over-eagerness to resort to criminalisation and law enforcement to deal with issues associated with people performing life sustaining activities in

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<sup>35</sup> Von Broembsen and Chen, 13–14.

<sup>36</sup> Von Broembsen and Chen, 13.

<sup>37</sup> Von Broembsen and Chen, 14.

<sup>38</sup> Oxford University Press, 'World Development Report 2000/2001: Attacking Poverty' (Washington D.C, USA: World Bank, 2001), 99; Von Broembsen and Chen, 'Eliminating Legal Barriers from the Perspective of The Informal Economy', 13.

<sup>39</sup> Bullock, Mountford, and Stanley, 'Better Policy-Making', 14.

<sup>40</sup> Bullock, Mountford, and Stanley, 14.

<sup>41</sup> Bullock, Mountford, and Stanley, 14.

<sup>42</sup> Bullock, Mountford, and Stanley, 14.



public. While certain behaviours may indeed be problematic, this needs to be unpacked with regard to: What is the problem? What is the purpose of these laws and their enforcement?<sup>43</sup> How does it contribute to making society safer and what is the evidence for this?<sup>44</sup> If there is no evidence that the outcome of having such law enforcement policies result in public safety, then it cannot be sustained.

### 3.3 Inclusive, Public Participation

The policy and the policy-making process should be inclusive.<sup>45</sup> Consultations should take place with those affected by the policy and authorities should seek feedback on law or policy from the public.<sup>46</sup> The process should also involve key stakeholders directly.<sup>47</sup> The policy-making process must take account of the impact on and/or meets the needs of all people directly or indirectly affected by the policy; especially the poor and marginalised.

For example, in the case of street traders, authorities should recognise that their use of urban spaces contributes to employment, accessible affordable products (e.g., food) and poverty reduction and therefore they should be allowed to partner with authorities in deciding on the rules for use of public spaces (i.e., licensing fees, hours of operation, sanitisation services, establishing representative committees that engage with local government on policy affecting vendors, procedures for transgression, etc).<sup>48</sup>

Opportunities for participation also include calls for written comments within reasonable timeframes, public hearing opportunities, stakeholder engagements, and de-briefing sessions after the implementation of laws or policies.

Based on lessons, the following challenges should be borne in mind when engaging the poor in policy-making at the local and national level:

- Establishing the conditions for dialogue (which requires both time and commitment);
- Coping with diversity (as the poor are not a homogeneous group);
- Raising the capacity of the poor to participate (e.g., by encouraging self-organisation by the poor and ensuring that the issues and conditions of dialogue are explained and understood).<sup>49</sup>

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<sup>43</sup> Muntingh and Petersen, 'Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences', 5.

<sup>44</sup> Muntingh and Petersen, 5.

<sup>45</sup> Bullock, Mountford, and Stanley, 'Better Policy-Making', 14.

<sup>46</sup> Bullock, Mountford, and Stanley, 14.

<sup>47</sup> Bullock, Mountford, and Stanley, 14; Von Broembsen and Chen, 'Eliminating Legal Barriers from the Perspective of The Informal Economy', 13.

<sup>48</sup> Von Broembsen and Chen, 'Eliminating Legal Barriers from the Perspective of The Informal Economy', 14.

<sup>49</sup> A. Claey's et al., *Engaging the Poor in Policy-Making on Poverty and Social Exclusion in Flanders (Belgium), Citizens as Partners. OECD Handbook on Information, Consultation and Public Participation in Policy-Making*, vol. OECD Report Background Document (Paris: OECD, 2001), 125–26,

People living in poverty experience social exclusion more strongly, are met with greater barriers to participation than other citizens.<sup>50</sup>

There must be policy transparency, providing clear and accessible information for all, and account for people that cannot be fully reached through commonly used information channels.<sup>51</sup> Moreover, opportunities for participation in all phases of policy development and implementation must be included.<sup>52</sup> There must be systematic and formalised participation channels instead of an ad hoc approach and one must allow for enough time, room and support to conduct a full social and political dialogue with the poor.<sup>53</sup> Lastly, local authorities should ensure that the policy-making process include the following general principles of administrative justice:

- Rules must be clear and transparent;
- The right to be heard before a state decision that may adversely affect the person is made;
- The state official who made the decision must be authorised by the law to make this;
- The decision must be reasonable; and
- Persons may be entitled to reasons for decisions, and access to information that was used in reaching a decision.<sup>54</sup>

### 3.4 The Policy-Making Process Is Outward Looking.

The policy-making process should take account of varied influencing factors (nationally, regionally and internationally) and draws on experience in other countries or localities.<sup>55</sup> For example, this approach looks at how other countries dealt with a problem the law or policy wants to address.<sup>56</sup> It must be emphasised that there will always be variations between geographical areas. For example, cities differ from each other in many dimensions.<sup>57</sup> By comparing the contexts in different countries and learning lessons from their successes and failures, local laws and policies need to be tailored to the circumstances of each locality in order to be effective.<sup>58</sup>

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<http://hdl.handle.net/1854/LU-146632>. This case study identified several major challenges to engaging the poor in policy-making at the local and national level.

<sup>50</sup> Claeys et al., OECD Report Background Document:125.

<sup>51</sup> Claeys et al., OECD Report Background Document:126.

<sup>52</sup> Claeys et al., OECD Report Background Document:126.

<sup>53</sup> Claeys et al., OECD Report Background Document:126.

<sup>54</sup> Von Broembsen and Chen, 'Eliminating Legal Barriers from the Perspective of The Informal Economy', 14.

<sup>55</sup> Bullock, Mountford, and Stanley, 'Better Policy-Making', 14.

<sup>56</sup> Bullock, Mountford, and Stanley, 14.

<sup>57</sup> Organisation for Economic Co-operation and Development, United Nations Economic Commission for Africa, and African Development Bank, 'Africa's Urbanisation Dynamics 2022: The Economic Power of Africa's Cities', 26 April 2022, <https://www.oecd-ilibrary.org/sites/c4fa35e5-en/index.html?itemId=/content/component/c4fa35e5-en#>.

<sup>58</sup> Organisation for Economic Co-operation and Development, United Nations Economic Commission for Africa, and African Development Bank.

Furthermore, policy decisions must be assessed against a country's international and regional commitments to key human rights treaties and conventions.<sup>59</sup>

### 3.5 Innovative, Flexible and Creative Policy-Making Process

The policy-making process should be flexible and innovative.<sup>60</sup> The process should consider new methods in which the poor is accommodated and included in the policy-making process. New and creative ideas to the process and policy-making in itself should be encouraged. For example, there may be scope for innovation and creativity in considering challenges with getting information to people that cannot be fully reached through commonly used information channels or support to conduct a full social and political dialogue with the poor.<sup>61</sup> People should be able to provide their inputs and suggestions.<sup>62</sup>

### 3.6 Interdepartmental Communication Links

It may be the case that policy is developed with policy makers in different government departments (working in isolation of each other) or units and often even if they work in different areas, the policy is supposed to address similar issues or the same group of people.<sup>63</sup> Moreover, policy-making is often taken to a sophisticated level before others are consulted and rarely takes account of operational issues.<sup>64</sup> It is important to consider a policy-making process that look beyond departmental boundaries and identify inter-departmental solutions to cross cutting issues. Further, communication links between departments are essential and it may be beneficial to consult those responsible for policy implementation. An example of this would be street-traders being impacted by more than one by-law or policy at the same time (i.e.; urban or zoning, traffic, health, sanitation, environment).

### 3.7 Policy review and evaluation is key.

The existing or established policy should constantly be periodically reviewed to ensure it is really dealing with problems it was designed to solve.<sup>65</sup> For instance, the people (especially the poor, informal workers such as street traders, waste pickers, taxi operators, etc) should be consulted to provide feedback on the policy implementation to determine if it

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<sup>59</sup> Muntingh and Petersen, 'Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences', 5.

<sup>60</sup> Bullock, Mountford, and Stanley, 'Better Policy-Making', 14.

<sup>61</sup> Claeys et al., *Engaging the Poor in Policy-Making on Poverty and Social Exclusion in Flanders (Belgium)*, OECD Report Background Document:126.

<sup>62</sup> Bullock, Mountford, and Stanley, 'Better Policy-Making', 14.

<sup>63</sup> Bullock, Mountford, and Stanley, 34–38.

<sup>64</sup> Bullock, Mountford, and Stanley, 34–38.

<sup>65</sup> Bullock, Mountford, and Stanley, 14.

works or if it is rather creating more barriers for them. Their feedback should be vital and action needs to be taken to remove redundant, failing policies or policies that are barriers to them. To this end, systemic evaluation of the effectiveness of policy should be built into the policymaking process.<sup>66</sup> Good policy-making learns from experience of what works and what does not.<sup>67</sup>

## 4. Conclusion

The poor and vulnerable are often unable to adequately voice their needs, to seek redress against injustice, participate in public life, and influence policies that will ultimately shape their lives.<sup>68</sup> Not only does participation of people living in poverty in policy-making imply their recognition as fully-fledged citizens, it also contributes to designing more effective policies against poverty and social exclusion.<sup>69</sup> There is a need for legal and policy reforms to end the arrest and detention of people for minor infractions of the law that do not have any effect on public safety.<sup>70</sup> Moreover, there is a duty on states to remove barriers that exclude informal dwellers and workers relying on public spaces from decisions that impact their lives and restrict their freedoms.

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<sup>66</sup> Bullock, Mountford, and Stanley, 14.

<sup>67</sup> Bullock, Mountford, and Stanley, 14.

<sup>68</sup> United Nations Secretary-General, 'Legal Empowerment of the Poor and Eradication of Poverty', para. 8.

<sup>69</sup> Claeys et al., *Engaging the Poor in Policy-Making on Poverty and Social Exclusion in Flanders (Belgium)*, OECD Report Background Document:125.

<sup>70</sup> Muntingh and Petersen, 'Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences', 66.

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