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THE GOVERNANCE AND REGULATION OF THE INFORMAL ECONOMY

Implications for livelihoods and decent work

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Introduction

This chapter examines the informal economy as a key site of livelihoods activities, particularly in the Global South, in the context of the deregulation of labour governance in the globalised economy, increasingly also in high-income countries. Most definitions of the informal economy characterise it in terms of the lack of state regulation. This implies, amongst other things, that those deriving their livelihoods from the informal economy do not benefit from state regulation designed to ensure their access to labour protection and decent work. In this vein, it is often assumed that formalisation, through the extension of state regulation into the informal economy, supports women and men engaged in informal livelihoods by improving their rights and protections as workers. However, a body of literature also questions the role of state regulation in ensuring decent working conditions for informal workers (Chen, 2005), and highlights the ways in which state interventions can, instead, displace livelihoods in the informal economy (Omoegun et al., 2019). In addition, research also points to the parallel importance of social regulation as a means of protecting workers in the informal economy (Song, 2016). Based on these discussions, this chapter explores the scope for synergies between state and social regulation in protecting those deriving their livelihoods from the informal economy.

Livelihoods and decent work in the informal economy

Official data suggests that 81% of enterprises globally are informal (OECD/ILO, 2019), and over 60% of the world's workers are in informal employment, representing 70% of all employment in developing and emerging countries, with significant regional disparity, ranging from 86% in Africa to 25% in Europe and Central Asia (ILO, 2018). While this demonstrates that the informal economy is far more prevalent in emerging economies, a body of research also suggests that there is increasing informality of working conditions in high income countries, resulting from policy processes promoting deregulation and labour market flexibility to increase competitivity in global markets (Standing, 1997) as well as phenomena such as the emerging 'gig economy', which eat away at employer responsibilities for labour rights (De Stefano, 2015).

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As discussed below, the informal economy is primarily defined in terms of the absence of state governance. This means that women and men deriving their livelihoods from the informal economy are outside state regulations and so more likely to lack basic labour protections and access to decent work. According to the International Labour Organization, decent work comprises of four pillars: international labour standards and fundamental principles and rights at work; employment creation; social protection; and, social dialogue and tripartism (ILO, 2013b). State actors, such as ministries of labour and employment, should take a leading role in coordinating the delivery of these pillars.

However, the ILO argues that as a result of inadequate state regulation, informal workers are often unable to realise these four pillars of decent work, stating that 'the 2 billion women and men who make their living in the informal economy are deprived of decent working conditions' (ILO, 2018: v). Research has revealed how those securing their livelihoods from the informal economy are often unable to secure key labour rights, such as a minimum wage, the right to rest, the right to employment benefits such as pensions, sick pay and maternity cover, or protection from child labour (ILO, 2018; Lund, 2009; Schlyter, 2002). Examples of industries in which informality is pervasive and where workers are routinely denied key labour rights include: the garment industry, where formal transnational companies often outsource along supply chains to informal enterprises (Merck, 2014); domestic work, where employers are private households and so often inaccessible to labour inspection (Oelz, 2014); or, agriculture, where many workers cannot access labour rights because they are either seasonal or migrant workers (Fudge and Olsson, 2014) or (unpaid) contributing family workers (ILO, 2018). In view of the inability of many informal workers to realise decent work, there has therefore been a global policy focus on strategies of 'formalisation' such as the ILO Recommendation 204 on 'Transition from the Informal to the Formal Economy' (ILO, 2015).

Defining the informal economy

The nature of specific strategies of formalisation to extend decent work to informal economy workers depend on the understanding of what 'informality' constitutes. There is ongoing debate around how to define the informal economy, with two competing schools of thought: one, which understands the informal economy in terms of the lack of state regulation, and a second, which defines it in terms of the organisation of enterprises and their processes of production (ILO, 2013a). However, of the two, the former, with its focus on lack of state regulation, is the most commonly used, both in academic literature and in terms of the working definitions used in national and international policy. In a review of more than 200 pieces of literature on formal – informal economy linkages, Meagher found that 'the prevailing definition accepted across disciplinary and ideological boundaries is that the informal economy refers to income generating activities that operate *outside the regulatory framework of the state*' (Meagher, 2013: 2, authors' italics).

Following on from such definitions, the treatment of informality in policy frequently characterises it as a problem, linked, at least in part, to the lack of state registration/regulation, for example with the policy treatment of street traders in some states in Nigeria (Godswill et al., 2016). This implies a strategy of formalisation through extending state centric systems of regulation.

However, the idea of a clear formal/informal economy dichotomy bounded by activities and spaces in which the state is, or is not, present does not respond well to empirical scrutiny. It is now generally accepted that, rather than being one half of a formal/informal binary, the informal sector is part of a continuum, ranging through economic activities with more or less regulatory

inputs, across a variety of arrangements with different levels and types of state, and social, regulation (Boananda-Fuchs and Boananda-Fuchs, 2018; Bunnell and Harris, 2012). Economic sectors, sites of economic activity and enterprises tend to be managed by state actors to a greater or lesser extent, and for a variety of different purposes.

Another blurring of the boundaries between the formal and the informal is in the institutional and spatial 'sites' of informal economic activities. Institutionally, much informal employment now takes place in formal enterprises (Williams and Lansky, 2013), while, spatially, informal economic activities can be pervasive in 'formal' areas of the city (Rigon et al., 2020). Furthermore, in many cities in the Global South, while informality is often the norm, value chains and services contain both formal (state regulated) and informal elements that are interdependent (Myers, 2010). At the same time, the informal sector, rather than being characterised by the absence of the state, is frequently in practice an 'assemblage' of state and non-state actors and their associated processes (Dovey, 2012).

In view of such research, which problematises the boundaries of informality, institutions working to support those who depend on informal livelihoods, such as the NGO WIEGO (Women in Informal Employment: Globalizing and Organizing) highlight the multiple forms of regulation that 'formality' can encompass, and the different outcomes for livelihoods in relation to workers' wellbeing and rights (Chen, 2012). This implies that (a) increasing state regulation of the informal economy does not necessarily result in better labour protection for informal sector workers, and (b) that state regulation is not the only means of extending decent work arrangements for workers in the informal economy.

Informality and the role of state regulation of livelihoods

Even if the definitional boundaries of informality are understood as blurred, a strong normative analysis of this continuum persists in many policy circles – that formalisation (i.e. moving towards formality understood as increased regulation by the state) is the preferred trajectory. In this view, the problems of informal economic activities and employment are defined by their lack of regulation and social protection, and the implied solution is the extension of state regulation, and policy–makers therefore envisage a leading role for state bodies in strategies of formalisation (Chen, 2005; ILO, 2015).

However, at the same time, a range of authors have questioned the scope of the state for ensuring that those carrying out their livelihoods in the informal sector have access to decent work in many contexts. Firstly, an immediate pragmatic concern relates to the ability of poorly resourced states to deliver formality. Even where economic activities or urban spaces are officially regulated by the state, this may not be applied in practice, meaning that there are often overlaps between formal regulation and de facto informality. As Meagher notes in her analysis of informality in Africa, 'even states have become informalised as public officials govern in ways that contravene formal relations, and downsizing public sectors concede an increasing range of governance activities to community organizations' (Meagher, 2007: 406).

Secondly, even where the state does have the capacity to extend its regulation of the informal economy, this begs the question of what exactly the state constitutes, and the capacity of its various branches to regulate economic processes and support livelihoods. The idea of the state as monolithic and consensual is problematic and empirical scrutiny of the state as a regulatory actor reveals complexity and contradictions (Corbridge et al., 2005). If, instead, the state is understood as a 'collection of heterogeneous administrative and bureaucratic fields, together with governmental and non-governmental institutions within which social actors struggle over authority, rules, legislation and discourses' (Bourdieu and Wacquant, 1992: 111), heterogeneity

and conflict within the state can be recognised. In this vein, state actors involved in the regulation of livelihoods range from the police, labour inspectors, environmental inspectors, to courts at different levels and with different purposes. Each of these have different priorities for what to regulate, how and at what scale, and some of these may be in contradiction with each other. As Chen points out (2005: 26), 'in the past, the management or regulation of informal activities has often been relegated to social policy departments or, in urban areas, to those departments (such as the police or traffic) that deal with law and order issues', thereby treating the informal economy as a social concern or a law and order issue, rather than a focus for economic policy-makers or ministries of labour concerned with the governance of livelihoods.

In addition to the question of 'what state' should be involved in formalisation is the question of 'what regulations' are prioritised. Economic activities may be regulated in some ways but not in others (Benjamin et al., 2014) meaning, for example, that an enterprise might be regulated vis-à-vis taxation or quality control of output, but not in terms of minimum wage legislation or social protection of workers. Advocacy organisations such as WIEGO have therefore highlighted the need to de-bundle the diversity of forms of regulation by the state and their different purposes (e.g. tax collection, the protection of private property and intellectual property, or the promotion of decent work) with reference to their impact on workers' wellbeing. In this vein, Chen argues that 'it is important to ensure that formalisation offers the benefits and protections that come with being formal and does not simply impose the cost of being formal' (Chen, 2012: 15).

A final question concerns whether it should be assumed that, even if it is feasible, the extension of the power of the state over the informal economy is necessarily desirable. A substantial body of literature argues that states and their regulatory practices typically serve the interests of economic and social elites and have historically not represented the interests of other groups, such as women, ethnic minorities or the poor (Dagnino, 2007; Lister, 2007). Others highlight that the growing purview of the state can imply the growing reach of systems of coercion and exploitation (Ferguson, 1994) rather than the protection of the social contract. In this view, informality, rather than a condition of those who cannot reach the state, can be viewed as a deliberate withdrawal from the state, as implied in Holston's work on insurgent citizenship (Holston, 1999, 2009) or the work on the everyday encroachment by slum-dwellers (Bayat, 2000). In terms of livelihoods, there are a number of authors who see state regulatory intervention as inimical to the livelihoods of the poor. On the one hand, authors such as de Soto argue that many entrepreneurs choose to remain informal to avoid the burdens of state bureaucracy (de Soto, 2000). On the other hand, it has been argued that many state interventions actively displace informal livelihoods. For example, state-led evictions to support urban planning or environmental protection result in the large-scale destruction of informal livelihoods through the eviction of informal markets or street traders (Brown et al., 2015; Omoegun et al., 2019). Furthermore, the stated public interest rationale for such interventions (e.g. environmental protection or improving the city aesthetic) are often a pretext for an underlying interest in releasing land values and supporting commercial interests (Walker et al., 2020; Penz et al., 2011; Bhan, 2016).

Social governance of informal livelihoods

The other side of the coin from questioning the central role of the state is considering the role of other actors or relations in the governance of livelihoods. If 'governance is ultimately concerned with creating the conditions for ordered rule and collective action' (Stoker, 1998: 17) then it is about the negotiation of collective norms that guide group interactions, and thus the rights and duties of citizens. In practice, the actions of the state describe only part of these processes. Governance can be undertaken by and with a number of actors. This has been recognised by a

range of authors, in particular those who have emphasised the importance of societal or community centred forms of governance. This has been key in developing an understanding of how common property regimes work (Ostrom, 2010), as well as the regulation of private property through 'informal' land markets (Hornby et al., 2017). The concept of governmentality, which constitutes the 'organised practices through which we are governed and through which we (consciously and unconsciously) govern ourselves' (Cleaver, 2007: 228), also highlights the ways in which governance can be structured through a range of institutional forms, including through internalised social norms. As pointed out by McFarlane and Waibel (2012: 2),

informal institutions can replace . . . formal ones in contexts where the state is unable or unwilling to implement its formal rules. In this sense, informality contributes to formal institutions by organising social interaction in the absence of the state, for example, during periods of rapidly changing socio-economic contexts, rapid urban development.

However, as a caution, other authors note that social and insurgent processes of governance are not necessarily benign (see for example Meth (2010), or Monson (2015).

Broadening the understanding of informality to validate social governance of livelihoods therefore implies that it should not be assumed that the extension of state governance is the only means of regulating informal livelihoods to ensure workers' access to income and the protection of their labour. However, it should be emphasised that social governance, like state governance, is not intrinsically benign, and therefore both social and state modes of regulation should be interrogated vis-à-vis their normative purpose, and whether this is worker wellbeing or other purposes (such as extraction of rent).

The collective management of the informal livelihoods in Freetown (see Box 22.1) highlights the role that locally organised self-regulation can play in governing livelihood practices, and their social and environmental outcomes. At the same time, however, they show that state regulation is nonetheless needed to address some aspects of labour protection, and reveal the potential for cooperative regulation between state and non-state actors.

Box 22.1 Social governance of informal livelihoods in Freetown, Sierra Leone

The majority of women and men in Sierra Leone derive their livelihoods from the informal economy and the capacity for state regulation of livelihoods in the country is limited. According to the 2015 census, 92.9% of the economically active population in Sierra Leone were in informal employment, as opposed to 7.1% in paid employment (Statistics Sierra Leone, 2015) and, at the same time, state capacity to govern the economy is low, characterised by what the African Development Bank refer to as 'persistent challenges in the governance environment' (AfDB, 2020: 24).

In the context of post–civil war Sierra Leone, with the state slowly developing its capacity, different types of collective action emerged as autonomous processes of self-governance, filling state governance gaps. Research in four informal settlements in Freetown looking at livelihood practices in typical sectors in which low-income women and men work (fishing, quarrying, sand–mining or trading) revealed that state interventions affecting livelihoods practices in the communities were very limited. The only direct involvement of state officials in livelihoods activities discussed by

research respondents was the role of the police (in dealing with disputes around land ownership and other disputes related to the work in the sectors) and the practice of the National Protected Area Authority (NPAA) of fining people engaged in sand mining in the protected area around tidal mangrove swamps next to one of the settlements. It should be further noted that sand miners argue that the purpose of the NPAA officers is extraction of rent through fining, rather than the stated purpose of environmental protection, as if they pay the fine, the NPAA officers allow them to continue sand mining.

In contrast to the lack of state regulation, all of the settlements had highly complex self-organised social regulation processes, which were used to structure behaviour and relations of those involved in the livelihood sectors. These include occupational associations (e.g. for fishers, or porters in the stone quarrying sector), nominally registered with Freetown City Council but in practice self-organised. Research respondents explained to us that these associations play a role in managing disputes across the sector, drawing on locally developed informal community 'bylaws' that regulate work in the sector and disputes over payment, and appropriate behaviour. Such norms are crucial in managing property relations and economic transactions which are central to people's livelihoods. Penalties for breaking such bylaws are fines, which are used by the community to fund infrastructure projects such as road maintenance which are crucial for the operation of the livelihood sectors. Local associations also play a social protection function, through practices of advance payment, and loans, amongst different actors across sectoral value chains and also through norms which ensure open access to livelihood resources (e.g. stone and sand quarries, or cockle picking sites) for poor residents who lack any other form of basic income.

While these practices of social regulation have more impact on the governance of the livelihood sectors than state regulation, they have their own weaknesses in terms of labour protection (for example, in all of the sectors examined, the pragmatic acceptance of child labour). In addition, it is noteworthy that such social regulation does not always operate in isolation from state regulation. One example of co-production of regulation between state bodies and local social actors was a 2008 policy from the Ministry of Fisheries and Marine Resources banning fishing of immature fish. There was no state capacity for enforcement of this ban, but through their associations, fishermen had adopted the requirement to stop using fine nets which catch immature fish ('fingerlings'), despite the costs implied in replacing nets. Furthermore, this had become normalised across the sector so that, for example, net menders refuse to mend fine grade nets.

Source: This case study draws on the findings of the project 'Urban Livelihoods in Freetown's Informal Settlements' funded by Comic Relief and its outputs (Rigon et al., 2020; Walker et al., 2021).

Governance of informal livelihoods through co-production

Building on the example of co-production from Freetown, one fruitful avenue to extend protection to workers who derive their livelihoods form the informal sector is the co-production of livelihoods governance between formal and informal/social actors (Lindell, 2019; Song, 2016), rather than pursuing strategies of formalisation in which the extension of state regulation displaces the existing social regulation of livelihoods. Such co-production can result in what Song (2016) refers to as 'positive hybridity' between formal and informal processes of governance.

For example, the ILO's campaign to promote the labour rights of domestic workers (a notoriously informal and hard to govern area of employment) in line with ILO convention 189, has, in addition to promoting regulation and policy development by the state, also promoted non-state

regulatory arrangements. It has done this by influencing social norms around the employment of domestic workers and changing relations between employers and employees through means such as 'the development of model contracts, assistance to domestic workers in understanding their terms and conditions and, more generally, information and outreach activities to inform workers and employers of applicable laws' (Oelz, 2014: 164–165).

In this vein, despite widespread discourses that characterise informal economies as unregulated and ungoverned, they are often highly regulated through complex and hybrid governance systems which play a fundamental social and economic function, particular where the state has limited capacity to intervene. While there tends to be a state-centric logic of many processes of 'formalisation', non-state governance arrangements can also provide social protection, employment and livelihoods which are critical for the wellbeing of women and men deriving their livelihoods from the informal economy.

Key points

This chapter has examined the literature defining the informal economy, to question the relevance of a formal/informal dichotomy, and argue for the need to interrogate the role of the state and other actors in collective governance, unpacking their normative aims and what they are able to achieve in practice. This has been argued along the following lines:

- The informal economy is largely defined in the literature as the parts of the economy which operate outside the regulatory purview of the state.
- A large proportion of workers in the Global South (70%) derive their livelihoods from the informal economy, and policies promoting economic competition through deregulation mean that work in high-income economies is also increasingly informal.
- Women and men deriving their livelihoods from the informal economy are more likely
 to experience unprotected and exploitative labour conditions. Policy approaches to the
 informal economy such as the ILO Recommendation 204 therefore recommend strategies
 of formalisation.
- State actors play a crucial role in formalisation to extend protection to workers in the informal economy. However, the state may lack the capacity to regulate the informal economy in some contexts, and some state actions may have a negative impact on the livelihoods of informal sector workers.
- Social regulation can also have an important role to play in protecting the livelihoods and labour rights of informal sector workers.
- It is therefore argued that state and social governance intending to promote the livelihoods of informal economy workers should be co-produced, rather than state regulation displacing social regulation.

Recommended reading

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