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ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

Title: Assessing the Regulation of Street Vendors in Ethiopia

**A Thesis Submitted in Partial Fulfillment of the Requirement for LLM Degree
in Business Law**

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Addis Ababa, Ethiopia

June 1, 2023

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Declarations

I, Mersha Beyensa declare that this thesis is my original work. This thesis has not been submitted for any degree in any other University and materials used in this thesis have been duly acknowledged.

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List of Acronym

- FDRE.....Federal Democratic Republic of Ethiopia
- ICCPR.....International Convention on Civil and Political Rights
- ICESCR.....International Convention on Economic, Social and Cultural Rights
- TIN.....Tax Identification Number
- UDHR.....Universal Declaration of Human Rights

Abstract

Despite overwhelming predictions as to its eventual demise, street vending remained here with all its blessings and curses. Further, street vendors are emerging under new guises and at unexpected places in Ethiopia. Currently, they have become defining picture for major cities like Addis Ababa. Street Vending hosts plenty of individuals struggling for a daily bread to those individuals intentionally engaging in street vending to use it as a platform for contraband and other proceeds of crimes. This thesis was conducted with the view to assessing the regulation of Street Vendors in Ethiopia. Examination of pertinent Commercial laws in Ethiopia and interviews held with regulatory organs, and street vendors revealed that Street Vendors have not been sufficiently regulated. Their legal status remained contentious and various consequences are ensuing therefrom. For this regulatory failure, the regulatory organs present various reasons as an excuse. Nonetheless, the time ticks that it is a time for Ethiopia to introduce a Sui Generis Regulation for Street Vendors.

Key words: Street vendors, Street Vending, Regulation, Sui Generis Regulation

CHAPTER ONE

INTRODUCTION

1.1.The General Background of the Study

The word informal sector, later modified to the informal economy remained contentious since its conception by Keith Hart in 1970's.¹ It denotes economic activities relatively small in scale and eludes certain government requirements such as registrations, taxation, and social security obligations.²

The steady growth of the informal economy with its emergence in a new guise and at an unexpected place notwithstanding a prediction of its eventual demise renewed currently an interest in studying the sector.³ Further, improving the informal economy is increasingly recognized as key to promote growth, reduce unemployment and poverty alleviations.⁴

Street vending is the most visible manifestation of the informal economy⁵. It is an ancient occupation with worldwide phenomenon common to all countries though the number of street vendors is high in developing countries.⁶ Street vendors include fixed, semi-fixed, and mobile vendors selling goods and services on the street.⁷ It is a shock absorber for unemployment, especially for uneducated ones⁸ yet, criticized for creating unfair competition to off-street traders, tax evasion, selling contrabands, fake goods and services posing major public health to their customers.⁹

¹ Caroline Skinner, 'The struggle for the streets: processes of exclusion and inclusion of street traders in Durban, South Africa' (2008) [Vol.25 No 2] Development Southern Africa,228

² Ibid.

³ Martha Alter Chen, 'Rethinking the Informal Economy: Linkages with Formal Economy and the Formal Regulatory Environment'(2007) [No.42]DESA Working Paper,2

⁴ Ibid.

⁵ Vincent Aghaegbunam Onodugo, Nkeiru Ezeadichie, Chioma Agatha Onwuneme, Adnma Ebere Anosike 'The Dilemma of Managing the Challenges of Street Vending in Public Spaces: The Case of Enugu City, Nigeria'(2016) 95

⁶ Ray Bromley, 'Street Vending and Public Policy: Global Review'(2000)[Vol.20] IJSS, 7-8

⁷ Chen (n 4) 97

⁸ Nasibu Rajabu Mramba 'The Conception of Street Vending Business(SVB)in Poverty Reduction in Tanzania' (2015) [Vol.8.No.5] IBR,123

⁹ Bromley (n 6) 8

The primary responsibilities of government to collect taxes, limit road congestion, protect consumers against fraud and public health hazards and to bring the whole population within the system of law enforcement, taxation and government support,¹⁰ compel the government employ regulatory system requiring individuals comply with proscribed behavior and other regulatory requirements.¹¹ Hence, health, safety, consumer protections, and environmental protection issues justify social regulation of the business in general¹² and street vendors particularly.

The struggle to regulate street vendors is the history of clearing them from the street.¹³ Mouhamed Bouazizi's self-emulation with fire on 17th December 2010 in Tunisia is a manifestation of such history.¹⁴ The efforts to stop street vending through repressive regulatory regime was proved futile¹⁵. However, regulatory lacuna is as costly as a draconian regulatory scheme for street vendors.¹⁶

This research examined the regulatory regime for street vendors in Ethiopia from the business regulation context revealing excesses and gaps thereof.

1.2. Statement of the Problem

Street vending is a crucial strategy for survival, reduction of unemployment, poverty alleviation, employment opportunity and provides relatively cheap and various goods.¹⁷ Equally, they are accused of tax evasion, forestalling off-street business, creating unfair competition, selling contraband, fake and goods posing major public health problems due to unwarranted exposure to the sun, air pollution, or contamination created by passersby.¹⁸ Further, by operating on the street, they escape business expenses and regulatory frameworks incurred by formal traders.¹⁹

¹⁰ Ibid 16-17

¹¹ Melese Temsegen, 'Food Standard, Food Law, and Regulation System in Ethiopia' (2015)[Vol.5.No.3] RPPAR59.

¹² Antony Ogus, 'Regulation: Legal Form and Economic Theory,'(1994) Clarendon Law Series 4

¹³ Regina Austin, 'An Honest Living Street Vendors, Municipal Regulation and the Black Public Sphere,(1994)[Vol.103.No.3]YLJ

¹⁴ Jacques J.Nyemb and Theresa Marchiori, 'Turning Law into a shield of African Cities,'(2019) [No.4] WEIGO Legal Brief 1

¹⁵ Onoduago and others,(n 5) 97

¹⁶ Chen,(n 3) 10

¹⁷ Mramba (n 8) 121

¹⁸ Bromley (n 6) 7-8.

¹⁹ Etsubdink Sibhat, 'Cause and Effects of Informal Sector: The Case of Street Vendors in Addis Ababa, Ethiopia', [2014] 22

This lead different governments ‘do something’ about street vendors for both the problems and benefits they gave are explicit.²⁰ Governments regulate street vendors to avoid road congestion, collect taxes, protect the consumers, and bring them within the system of law enforcement.²¹

The situation of street vendors in Ethiopia is similar to those of developing countries. According to the Ethiopian capital newspaper, in 2014 around 87,000 and in 2018, above 117,000 street vendors exist in Addis Ababa alone.²² Poverty and the rise in unemployment are behind an increasing number of street vendors in Ethiopia.²³

The growing concerns against street vending viewing it as a viable playground for tax evasion, contrabands and fake and sub-standard products, as a branch operation for formal traders with the emergence of street vendors in a new guise and at unexpected areas like vending from office to office and home delivery triggers to question regulation of street vendors in Ethiopia. They operate without business license; congest streets, exposing pedestrians and themselves to traffic accidents. In Ethiopia, any person undertaking commercial activities under Article 5 of the Ethiopian commercial code is a trader and at least required theoretically to comply with legal and institutional business regulatory regimes. Despite the effort in Addis Ababa to regulate Street Vendors through Non-Formal Trade Regulations and Code Enforcement Regulations, Street vendors are here to stay with all their problems.

While the government is often decried for cracking down street vendors, attention is barely given to the cost following in other direction from vacant and non-regulation of street vendors in Ethiopia. Without a proper examination of the costs from both sides, the debates over street vendors’ regulation remain unbalanced and barely grant a lasting solution.

Thus, these problems triggered author to research the legal and institutional regulatory landscape governing the operation of street vendors.

²⁰ Bromley (n 6) 16

²¹ Ibid.

²² Tesfaye Getinet, ‘The City Designates 45 Street Vending Areas,’ Capital Gazette, Addis Ababa, March 5, 2018

²³ Ibid.

1.3. Research Questions

The research addressed the following questions.

- ✓ What is the legal status of street vendors in Ethiopia?
- ✓ What are the basic legal and institutional regulatory frameworks governing street vendors?
- ✓ What are the legal and institutional regulatory loopholes and excesses in regulating street vendors?
- ✓ Has Ethiopia Sufficiently regulated Street Vendors?
- ✓ Is the national Sui Generis form of a regulatory regime and street vendors' policy required in Ethiopia?

1.4. Objectives of the Research

The research was conducted to;

- ✓ Assess the legal status of street vendors from commercial law perspectives.
- ✓ Examine the legal and institutional regulatory framework governing operation of street vendors.
- ✓ Reveal regulatory gaps and excesses in regulating street vendors.
- ✓ Expose compelling needs to introduce a sui generis form of a regulatory regime for street vendors in Ethiopia.

1.5. Research Methodology

This research is a socio-legal research type and employed data gathering tools used in doctrinal and non-doctrinal research.

1.5.1 Primary Data Sources and Collection Methods

From doctrinal sources, the FDRE Constitution, Commercial Code, Business Registration and Licensing Proclamation, Food and Drug Administration Proclamation, Addis Ababa City Informal Trade Policy, Addis Ababa City Non-Formal Trade Regulation, Code Enforcement Regulations

and Dire Dawa City Draft Law on Non-Formal Trade were used. Further, regulatory directors at the Ministry of Trade and Regional Integration, and regulatory directors of three Regional States Trade Bureaus namely Oromiya, SNNPR, Sidama regional states, and Addis Ababa, and Dire Dawa City Administrations were interviewed. These Regional states and city administrations were selected based on the information at the Federal Ministry of Trade for hosting higher number of street vendors.

Further, in Addis Ababa local areas known as Megenagna, Autobestera (Addis Ketema Sub-City), and Mexico were identified for hosting a large number of street vendors and 10(ten) street vendors selected on random sampling were interviewed for convenience. Code Enforcement Officers, Police Officers, and Federal Public Prosecutors within these localities were interviewed revealing practical and perceived regulatory gaps and excesses in regulating street vendors.

1.5.2. Secondary Data Sources and Collection Methods

Data's in previous researches, books, working papers and reports relating to street vendors were used.

1.5.3. Data Analysis and Interpretation Techniques

Data's were analyzed and interpreted qualitatively based on reasons, justifications, and rationales underlying business regulation theories.

1.6.Literature Review

The existing works of literature on street vendors are classifiable to literature assessing the role of street vending in income generation and provision of convenient and affordable goods,²⁴ Literatures on political-economic perspectives of street in economic independence and empowerment of women²⁵,Literatures on policy issues, uncertainty and unambiguity of legal status, rights, and organization of street vendors into representative associations, and literatures

²⁴ Koyoko Kusakabe, 'Policy issues on Street Vending :An overview of Studies in Thailand, Cambodia and Mongolia,'(2006) Geneva,22,Switzerland:International Labour Office .7

²⁵ Ibid

exploring the relationship between street vendors and urban authorities concerning the use of urban space.²⁶

The term street vendor is interchangeably used with the terms street traders, hawkers, and peddlers.²⁷ For Bhowmik, street vending is an informal business, offering goods for sale from an impermanent built-up structure, and for Lyons and Msoka, it is non-criminal commercial activity reliant on access to public spaces including market trade, trade from fixed locations and hawking.²⁸

Different theoretical perspectives explain the reason for engaging in street vending. For Modernization theory street vendors are residues or leftovers from the pre-modern era representing underdevelopment, traditionalism, and backwardness.²⁹ For structuralist theorists, it is a necessity-driven survival practice conducted as the last resort for livelihood.³⁰ Conversely, for neoliberal theory engagement in street vending is purely matter of rational economic choice pursued as a response to excessive regulation than lack of choice.³¹ Postmodern theorist view street vending as a voluntary chosen activity for cultural endeavors than for economic reasons.³²

Mramba argues street vending contributes to livelihood and poverty reduction provided there exist supportive policies, laws, and regulations.³³ Similarly, Mzhambe reiterates the role of street vending in employment and as a coping mechanism for low-income households.³⁴

In Ethiopia, studies conducted regarding street vendors confine themselves to assessing causes, and impact of street vendors on public space as well as their contribution in making livelihood. Tsegaye argues, street vending immensely enhance the livelihood of street vendors and provides

²⁶ Ibid.

²⁷ Mramba(n 8) 120

²⁸ Ibid.

²⁹ Colin C.Williams and Anjula Gurtoo ‘Evaluating Competing Theories of Street Entrepreneurship: Some Lessons from a Study of Street Vendors in Bangalore, India,’ (2012) IEMJ393

³⁰ Ibid 394

³¹ Ibid

³² Ibid.

³³ Mramba (n 8) 126

³⁴ AuxiliaKwara Mazhambe, ‘Assessment of the Contribution of Street vending to the Zimbabwe Economy :A case of Street Vendors in Harare CBD,’(2017) (Vol.19,Issue 9) JBM (IORS-JBM) 98

daily needs and wants at affordable prices for urban dwellers.³⁵ Likewise, Mengistu and Jibat argue street vending serves as safety-net program for the poor's in Jimma.³⁶

Conversely, Amsale revealed that in Addis Ababa, street vendors pose threat to public health by selling unhygienic food items.³⁷ Similarly, Jemal argues street vendors are a problem for Pedestrian movements; pollute the environment by littering the streets and creating social problems like pickpocketing and other crimes.³⁸

Distinctly, this research examined the regulation of street vendors in Ethiopia within the frameworks of business regulation perspectives.

1.7.Scope and Limitation of the Study

This study devotes itself to assessing the legal and institutional regulatory framework for street vendors in Ethiopia. The absence of relevant literatures, lack of interest from interviewees, and budget constraints were major limitations faced by the author.

1.8.Significance of the Study

This research explored the regulation of street vendors in Ethiopia exposing loopholes and excesses in regulatory frameworks. More, beyond revealing the insufficiency of the existing regulatory frameworks, it exposed practical reasons necessitating sui generis regulatory frameworks governing street vendors. Again by paving the way for further debates and research on the issue, it significantly contributes to the stock of knowledge regarding the conceptual underpinnings of street vendors and their regulation. Lastly, it helps all stakeholders consider the policy and regulatory frameworks toward street vendors and make them work for job creation and poverty alleviation.

³⁵ Berhanu Tsegaye, 'Street Vending as Strategy for Livelihood of Urban Poor in Addis Ababa,'(2019)[Vol.9,No.5] RHSS14-15

³⁶ Tamirat Mengistu and Nega Jibat, 'Street Vending as Safety-Net for Disadvantaged People: The Case of Jimma Town,'(2015) IJSA 135

³⁷ Amsale Alebachew Street vending and Local Authorities in Addis Ababa City: 'Challenges and the Way Forward,'(2017) AAU[unpublished],57

³⁸ Jemal Abagisa, 'Street Business in Addis Ababa: Causes, Consequences and Administrative Interventions,'(2019) IJMR 13

CHAPTER TWO

2.1. The Notion of Business Regulation by Government and Conceptual Frameworks of Street Vendors

The term regulation is common in both legal and non-legal contexts with various meanings.³⁹ Individuals define the word regulation differently⁴⁰ and a single fixed definition is absent both in economics and legal literature.⁴¹

Regulation is a wider concept whose definition shall comprise its nature, subject matter, instruments, techniques, and enforcement measures.⁴² Regulation denotes focused and sustained control exercised by government authorities against activities valued by a community.⁴³ The Focus on 'valued activities' indicates as a traditional arena of criminal law falls outside the notion of regulation.⁴⁴ This definition is comparatively the most accepted definition of regulation.⁴⁵

Regulation is "the making and enforcement of rules by governmental actors, as the direct intervention by the state in any form, or as all forms of influence targeting behavior irrespective of its source and whatsoever purposes and goals."⁴⁶ However, such an expansive definition is criticized for it derecognizes regulation carried out by private regulatory institutions.⁴⁷ Others view regulation as a form of social control by third parties seeking to harness both government and regulated businesses.⁴⁸

Generally, regulation is a politico-economic notion whose meaning varies with a system of economic organization and the legal forms marinating them.⁴⁹ In a market economy, where

³⁹ Ogus (n12)1

⁴⁰ Annemiek Stoopendaal, Martin de Bree and Paul Robben, 'Conceptualizing Regulation: Formative Evaluation of an Experiment with System-Based Regulation in Dutch Healthcare' (2016) [22 No 2] 395

⁴¹ Johan den Hertog, 'General Theories of Regulation' Economic Institute (1999) 223

⁴² Solomon Abay, 'Designing the Regulatory Roles of Government in Business: The Lesson From Theory, International Practice and Ethiopia's Policy Path' (2009) XXIII No 2 JEL 66

⁴³ P.Selenick 'Focusing Organizational Research on Regulation' cited in Ogus (n 12)1

⁴⁴ Ogus (n 12)1

⁴⁵ Stoopendaal (n 44)1

⁴⁶ Julia Black (2001) cited in Solomon (n 42) 66.

⁴⁷ Michael Moran, 'Theories of Regulation and Changes in Regulation: the Case of Financial Markets' JPS (1986)185.

⁴⁸ Solomon, (n 46) 68

⁴⁹ Majone, cited in Ogus (n 12)1

individuals have the discretion and complete liberty to pursue their own welfare goals, regulation has little significance and legal arrangement between individuals is governed by operation of private laws like contract and property laws than instrumentality of government regulation. In the collectivist form of economic organization, regulation is considered as sanctified tool for correcting market deficiencies.⁵⁰ Here, the law directs and compels individuals to behave in a particular way.⁵¹

However, no society endures without state provision of the minimum degree of order and security in the form of regulation by imposition and enforcement of obligations and in case of necessity private arrangements will be overridden.⁵² Business regulation is an inevitable process deriving from a variety of prerequisites causes and exists for some explicit purpose in any society.⁵³

Absent a universal definition, the definition of regulation can be summarized into three meanings in terms of targeted rules, all mechanisms of state intervention in the economy, and all modes of social control whoever exercises it.⁵⁴ Accordingly, firstly, regulation as governance in the general sense denotes aggregate efforts exerted by state agencies to steer the economy. Secondly, as a specific form of governance and narrowly, regulation refers to a set of authoritative rules accompanied by administrative authorities for monitoring and enforcing compliance. Finally, in the widest sense, it denotes all forms of social control.⁵⁵

In this research, admitting that the definition given to regulation must specifically reflect the concerns of discipline under the study,⁵⁶ business regulation has been defined as “sustained and focused control exercised by the government”⁵⁷ governing the operation of any commercial activities defined as such under Ethiopian commercial laws.⁵⁸

⁵⁰ Ogus (n 12) 2

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

⁵⁴ Jacint Jordana and David Levi-Faur, ‘The politics of regulation in the age of governance’ 4 https://www.researchgate.net/publication/281549725_The_Politics_of_Regulation_in_the_Age_of_Governance, March 12th 2022

⁵⁵ Ibid

⁵⁶ Levi-Faur (n 54) 3

⁵⁷ Ibid

⁵⁸ Any activities under Art 5 of commercial code carried out professionally and for gain is a business act.

2.2. Theorizing the Rationales for Business Regulation by Government

The government regulation of business is explainable by Public Interest theory, the Capture theory, and Economic theory.⁵⁹ The debates over these theories are not yet settled,⁶⁰ and hence serve as theoretical background for any research concerned with the study of government regulation of business.⁶¹

The public interest theory views government regulation of business as a response to rectifying market inefficiency and inequitable acts of actors in an unregulated market.⁶² It operates on the tenet that economic markets are fragile and apt to operate inefficiently if left to self.⁶³ Public interest varies with time, place and specific values held by the society concerned, and hence, exhaustive lists of the public interest grounds are unattainable.⁶⁴

The rationale in economic regulation by government lies in the public interest to counter monopolistic tendencies in the industry, whereas health, safety, environmental protection, and consumer protections underlay social regulation.⁶⁵ The theory is attacked for basing itself on the fluid concept of public interest and failing short of explanation on how public demands easily lend itself to regulatory action and for being empirically unsubstantiated.⁶⁶

Capture theory considers government regulation of business as a process captured by politically dominant groups to advance and promote their private interest.⁶⁷ Thus, regulation is merely a mechanism for trading interests of majorities for the interest of sub-groups.⁶⁸ However, the theory is criticized for singling out the regulated firms as particular interest group prevailing in the contest

⁵⁹ Solomon (n 42)84

⁶⁰ George L.Priest, 'The Origin of Utility Regulation and the Theories of Regulation Debates' (1993)[36 No 1] JLE 290

⁶¹These theories have been thoroughly used to justify government regulation of business form different perspectives.

⁶² M.B.Adams and G.D.Tower, 'Theories of Regulation: Some Reflections on the Statutory Supervision of Insurance Companies in Anglo American Countries' (1994)[19,No 17] Geneva Papers on Risk and Insurance

⁶³ Richard A. Posner, 'Theories of Economic Regulation' (1974) [41] NBER Working Paper Series [1]2

⁶⁴ Ogus, (n12) 29

⁶⁵ Ogus, (n 12) 3-5

⁶⁶Thimm,,B. *Regulation and Regulatory Transformation in European Insurance Markets* (1999)71-73, Cited in Solomon (n 46) 85

⁶⁷ Posner,(n 63) 341

⁶⁸ Solomon (n 42) 85

to influence the legislators and why the original purpose of regulatory programs are later thwarted through the influence of this particular group.⁶⁹

Economic theory views regulation as an economic good in itself subject to the operation of the demand and supply rule.⁷⁰ It is demand because industry groups possess more information compared to other contending groups, and corporate interests tend to prevail in the market and its supply for it is supplied by policymakers provided demands by politically effective group exceed that of oppositions.⁷¹ The theory is criticized as a “refined version of capture theory”⁷² replacing “militaristic flavor” with the more neutral language of supply and demand.⁷³

2.3. Techniques and Tools of Business Regulation

Regulators employ various policy tools to assert effective regulatory power.⁷⁴ Regulatory tools are crafted akin to the subject matters and the intended objectives of the regulation. In economic regulation, production, distribution, and consumption are targeted subject matters of regulation. Accordingly, quantity, quality, price, and information can be specifically regulated.⁷⁵ In social regulations the regulatory tools address market failures like externalities, inadequate information, scarcity, and public goods.⁷⁶

Prohibitions, licensing, price control, quantity restriction, product standards, technical production standards, subsidies, performance standards, and provision of information are commonly used regulatory tools.⁷⁷

⁶⁹Richard A. Posner, ‘Theories of Economic Regulation’ (1974) [5 No 2] BJEMS 42

⁷⁰ M.B. Adams, (n 62) 170

⁷¹ Ibid

⁷² M.B. Adams, (n 62) 170

⁷³ Posner, (n 69) 14

⁷⁴ Marc Allen Eisner, Jeff Worsham, and Evan J. Ringquist, *Contemporary Regulatory Policy*, (2nd edn LYNNE Publisher 2006) 11

⁷⁵ Paul L. Joskow and Roger C. Noll, *Regulation in Theory and Practices* (1981) [The MIT Press] 3,4,34

⁷⁶ Joseph P. Tomain; Sidney A. Shapiro, ‘Analyzing Government Regulation’ (1997) [49 No 2] ALR 407

⁷⁷ Eisner (n 74) 11.

2.3.1. Legal Prohibitions

It is the strongest regulatory instrument at the disposal of regulators.⁷⁸ It is the means to ban the possession of certain goods harmful to the society or for any public policy reasons.⁷⁹ Prohibition is also used as a regulatory tool during scarcity to determine those entitled to purchase scarce goods and services.⁸⁰

2.3.2. Licensing

Denotes system used to control entry and ensure attainment of the standard sought by the desired regulator.⁸¹ License is required before the regulated activity commences operation to prevent the occurrence of socially undesirable or the potential quality of performance desired by regulatory objective is met.⁸² It differs from “registration”-a system that requires the firm concerned registered with regulatory organ without any precondition of competency or quality, and is conducted solely for traceability.⁸³

2.3.3. Price and Quantity Control

These are regulatory instruments to determine the price of the goods offered for sale and control the quantity of specific goods and services.⁸⁴ It operates on the assumption that a business firm’s failure to take safety precautions to save money or charging prices greater than they could in a more competitive market generally harms the society.⁸⁵ Further, regulators set the price believing that lack of market competition ensue excessive profit and leads to suboptimal level of production or the excessive competition would lead the regulated to “trade safety” in market share.⁸⁶

⁷⁸ Ibid

⁷⁹ Tomain (n 76) 409

⁸⁰ Ibid

⁸¹ Eisner(99)12

⁸² Ogus, (n 12) 214

⁸³ Ibid 215

⁸⁴ Eisner (n 74) 12

⁸⁵ Tomain (n 76) 405

⁸⁶ Eisner (n 74) 12

2.3.4. Quality Standard Setting

This is the way to impose certain behavioral control regarding the quality of the goods backed by sanctions on suppliers of goods and services.⁸⁷ It lies between the low interventionist regulatory tool of information measure and highly interventionist tool of prior approval.⁸⁸ The standard setting can be target standard, performance standard or specification standard.⁸⁹ In target standard, simply a general criminal responsibility ensue instead of setting specific standards which the supplier must observe in the process or product for harmful consequences.⁹⁰ In performance standard, certain conditions of quality are required to be met at the point of supply, but the supplier has the discretion to choose on how to meet the conditions.⁹¹ Specific standard require the supplier employ specific production procedure or material or prevent the use of certain production method or material.⁹²

2.3.5. Information Disclosure

It requires firms to disclose information to their customers regarding goods and services offered for sale.⁹³ It saves customers from making regrettable decisions⁹⁴ by generating direct welfare gains for consumers whose decision will be at stake by the inadequacy of information.⁹⁵ It can be obligatory one, requiring the supplier to provide information on price, identity, composition, quality, or quality of his product or permissive disclosure requiring the supplier controlling false and misleading information regarding his/her product.⁹⁶

⁸⁷ Ogus (n 12) 150

⁸⁸ Ibid

⁸⁹ Ogus (n 12) 151

⁹⁰ Ibid

⁹¹ Ibid

⁹² Ibid

⁹³ Tomain (n 76) 408

⁹⁴ Joskow (n 75) 24

⁹⁵ Ogus, (n 12) 121

⁹⁶ Ibid

2.4. The Choice of Appropriate Regulatory Tools

This concern the effectiveness of the regulatory tool picked by regulator.⁹⁷The rationales of regulation and the appropriateness of regulatory instruments are inextricably connected.⁹⁸That is the diagnosed problem seeking government intervention, and the regulatory tool applied must be favorably congruent.⁹⁹ Failing this, mismatch leading to regulatory failure would occur.

Mismatch ensues either when the problem is fairly diagnosed but the wrong regulatory apparatus is applied¹⁰⁰ or perfect regulatory tool is applied for the inexistent problem.¹⁰¹Consequently in either ways regulatory failure will definitely happen. Certain regulatory tools are best suited to tackle the task at hand than others.¹⁰²

More, the rationale for regulation and the appropriateness of regulatory tools fluctuates with technological and social change.¹⁰³ Further, the alleged problem may call for joint application of more than one regulatory tool at a time.¹⁰⁴Hence, all these factors must be considered in choosing regulatory tools to meet the intended regulatory objectives.

2.5. Conceptual Frameworks of Street Vendors and Their Business: Setting the Context

Street vendors are ubiquitously¹⁰⁵ known in developed and developing countries.¹⁰⁶Street vending is universal,¹⁰⁷a subset of informal economy, and a crucial source of livelihood for millions.¹⁰⁸ It is the most visible expression of informal sector.¹⁰⁹ Street trader, street commerce, hawkers and peddlers are terminologies used interchangeably with term street vendors.¹¹⁰ Other literatures use

⁹⁷ Tomain (n 76) 401

⁹⁸ Eisener (n 74) 14

⁹⁹ Tomain(n 76) 401.

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Eisener (n 74) 14

¹⁰³ Ibid

¹⁰⁴ Tomain (n 76) 400

¹⁰⁵ Abhayraj Naik, 'Wizards at Making Virtue of Necessity: Street Vendors in India' (2015)11No 2 SLR 28

¹⁰⁶ Bromley (n 6)7-8

¹⁰⁷ Mazhambe (n 34)91

¹⁰⁸Nixon Sifuna, 'The Need to Reform Kenya's Law on Street Vending: From Policing to Facilitation' (2008)24(1) SAJHR 57-58.

¹⁰⁹ Lissette Aliaga Linares, 'The Paradoxes of formalizing Street Trade in the Latin America' IJS P(2018)38(7/8)

¹¹⁰ Mramba (n 8)120

the word 'street entrepreneur' to refer to street vendors¹¹¹ for its role in creating entrepreneurship opportunity for poor and marginalized people.¹¹²

Conceptually, street vending is approached from sociological, economic, human rights, and legal perspectives. Street vending is as ancient as a society, practiced in all modern society, is here to stay and must be frankly and realistically embraced according to the Sociologist view.¹¹³ For the Economist, it is one form of economic activity constituting livelihood strategy to earn income for basic human need.¹¹⁴ Viewed from commercial enterprise point, it is the manifestation of the person's entrepreneurial spirit.¹¹⁵ In human rights context, street vending is inextricably linked with livelihood right to meet basic needs to food, clean water, clothing, and shelter.¹¹⁶ For the Legalist, they are transgressors of law contributing to congestion, obstruction, and traffic jams.¹¹⁷

The term street vending is far extended beyond describing a given economic activity setting.¹¹⁸ Typically it's an informal businesses in which goods and services are offered for sale from impermanent built up structure¹¹⁹ or on mobility.¹²⁰ It is 'non-criminal commercial activities' dependent on public spaces and not necessarily limited to street, market trade, and includes trade from fixed locations and hawking or conducted on mobility.¹²¹ For other scholars street vending is entrepreneurial activity with all distinct features of entrepreneurship namely-activity that effectively contribute to renewal and changes in the economy by creating economic opportunities, undertaken on private motive and volition and result in high return.¹²² Accordingly, street vending contributes to the creation of economic activity, individually owned and conducted out of one's business motive and volition, and will likely result in a high return.¹²³

¹¹¹ *Infra* 112

¹¹² Mario Giraldo, Luis Garcia-Tello, Steven William Rayburn, 'Street Vending: Transformative Entrepreneurship for Individual and Collective Well-Being,' *JSM*(2020)34(6)758

¹¹³ Sifuna (108)158

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid*

¹¹⁶ *Ibid* 159

¹¹⁷ *Ibid* 161

¹¹⁸ Joseph Pileri, 'Who Gets to Make a Living? Street Vending in America' (2021) 36 *GILJ* 220

¹¹⁹ Mramba(n 8)121

¹²⁰ Pileri (n 118)

¹²¹ Mramba (n 8)121

¹²² Pileri (n 118)221-222

¹²³ *Ibid*

Different legislations have also defined street vendors. Kericho Municipality legislation defines hawker as:

Any person who either as agent, principal or employee carrying on trade by sell or exchange of goods, wares, merchandise, or refreshments puts himself in any street or public spaces or unenclosed land (other than in shop premises approved as such by a local authority) or goes about in street or public places or from premises to premises for resale or by any of these means, carries on the business of offering or exposing goods for sale, barter or exchange elsewhere than in a building.¹²⁴

Closely, Indian law define street vendor as

A person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering service to the general public, in street, lane, sidewalk, foot path, pavement, public park or any other public place or private area, from temporary built up structure or by moving from place to place and includes hawkers, peddler, squatter and all other synonymous terms which may be local or region specific and the word street vending with its grammatical variations and cognate expression, shall be construed accordingly.¹²⁵

Thus, from the above conceptual analysis it can be drawn that street vendor refers to any person who engages in selling of goods and services from impermanent business stalls or from temporary business structure or by moving from place to and isn't necessarily confined to street. Hawkers, peddlers, street traders or other synonymous cognate expression specific to a given locality or region referring to the same can be employed. Defining street vending as the business conducted solely on the street is not only outdated definition at standing contrast with contemporary definition of street vending, it also ignores the fact that street vendors are emerging under new guises and at unexpected places. The era of defining street vending as business conducted exclusively on the

¹²⁴ The Local Government Act(2010) Chapter 265,Section 2

¹²⁵ Street Vendors(Protection of Livelihood and Regulation of Street Vending)Act 2014,Act (2) Chapter 1(2)(l)

street is definitely over and it must be frankly accepted that street vending is far beyond business conducted on street. This is the definitional approach adopted by the author throughout this thesis.

2.6. Defining the Indefinable-Street Vending business under the Ethiopian Legal System

In Ethiopia, the word street vending was originally introduced in the Addis Ababa City Government Code Enforcement Regulation No.54/2012. However, in spite of defining it positively, the Code opted to define 'Illegal Street vending' from illegality view point as, 'A trading activity undertaken on any street or place except the street or business permitted by the city government for limited days.'¹²⁶

The regulation defined the illegality aspect of street vendors than defining it positively from a business context. It seems the Amharic version of the same that reads “ከንግድ መደብሮች በስተቀር በሌላ ማንኛውም መንገድ ወይም ቦታ የሚካሄድ ንግድ ነው።”¹²⁷ is more positive and nearly defines street vending as a commercial activity carried outside business structure on any street or at any place.

Later, Addis Ababa City Regulation on Non-Formal Trade introduced the concept of street vendors within the framework of Non-Formal Trade. Defining Street vending on the dichotomy of formality and informality nature of the business is an outdated and extremely traditional approach that blatantly ignored causes leading to street vending.¹²⁸ The regulation defines a Non-Formal Trader as,

A person who is not registered under Commercial Registration and Business Licensing Proclamation and does not have license and involves in non-formal trade or willing to engage in the sector having a capital of 10,000 birr and willing to work obeying regulation and relevant laws.¹²⁹

¹²⁶Addis Ababa City Government Code Enforcement Services Regulation, Addis Negarit Gazetta 2012 Fifth Year No 54 Article 2(9)

¹²⁷ Ibid

¹²⁸ Sara Rechi, 'Informal Street Vending: Comparative Literature Review' IJSP (2021)41(7/8)807

¹²⁹ Addis Ababa City Government Regulation to Lead and Regulate Informal Trade, Addis Negerit Gazetta, 26th Year No 88/2017 Article 2(7)

From the activity point of view, it defines Non-Formal Trade as,

Simple trade activity not governed by the existing commercial code and proclamation and is carried out by small capital up to 10,000(ten thousand) on the street, roundabouts, in small kiosk on road side without proper registration under Trade Licensing Proclamation and not having a business license or not have a permanent business place.¹³⁰

The expression ‘ኢ-መደበኛ ነጋዴ and ኢ-መደበኛ ንግድ’ originally used in Informal Trade policy laying the foundation for the promulgation of Non-formal Trade Regulation¹³¹ to refer to ‘informal trader and informal trade’ was replaced by Amharic expressions ‘መደበኛ ያልሆነ ነገዴ and መደበኛ ያልሆነ ንግድ’ under the regulation ‘to make the word positive to the public.’¹³² The policy defines informal trade as,

A commercial activity not governed by existing business regulating laws, undertaken without a business license, without permanent address or structure, undertaken registered according to the regulation and holding a transitional license or Identity card on street, at permitted places or partially in the house with less capital knowledge and skill.¹³³

It is unclear why the notion of street vending under code enforcement regulation was not capitalized instead of introducing new terminology under the regulation. Further, the definition only refers to a fixed type of street vendor by overlooking other forms of street vendors. The inclusion of the duty to bind by the regulation and the duty to hold a license is irrelevant in defining street vendors.

The concept of street vendor as it stands now is an indefinable state under the Ethiopian legal system. An interview conducted with the deputy head of Addis Ababa Trade Bureau to overcome this definitional deadlock revealed any acts of commerce outside formal business without having a permanent business stall including operations on public streets but not limited to, is street

¹³⁰ Ibid 2(8)

¹³¹ የአድስ አበባ ከተማ አስተዳደር የኢ-መደበኛ ንግድ ፖሊሲ ሀምሌ (2009)

¹³² Interview with Asaye Nedhi , Regulatory Affairs Head at Yeka Subcity Trade Burea, 18th of April 2022

¹³³ የኢ-መደበኛ ንግድ ፖሊሲ(n 131)7

vending, except those hawking from office to office and sell on Small Cabins.¹³⁴ Federal Ministry of Trade Legal Affairs Director,¹³⁵ Dire Dawa City Administration Trade Bureau Regulatory Affairs Director,¹³⁶ Sidama Regional State Trade Bureau Regulatory Affairs Director,¹³⁷ and Oromiya Trade Bureau deputy head share the view.¹³⁸

The definition given to street vendors must take into account how the term is being defined under contemporary literatures in the area and should define it from view point of commercial activity than sticking to what renders them formal or informal. Accordingly in this thesis, street vending refers to any commercial activity conducted from impermanent business, from temporary business structures, as peddlers or on mobility by hawking from one place to place and includes fixed, semi-fixed and mobile street vendors including those emerging under new guises and at unexpected places.

2.7. Defining Features of Street Vendors

Street vending possess its own distinguishing features though vary in scale, types of goods and services, time, location, and workforce involved according to country's concrete circumstances.¹³⁹ Though there is no single accepted theory on characteristics of street vending,¹⁴⁰ there are commonly shared defining features among street vendors in terms of identity, mode of their operation, merchandise offered for sale, and their relationship with law agencies.

It is primarily a business of the poor and marginalized people, ¹⁴¹operating in the shadow of a formal economy unlicensed and without taxation or with little taxation.¹⁴²It is everything from

¹³⁴ Interview with Mesfin Asefa, Deputy Head of Addis Ababa City Trade Bureau, April 5, 2022, Addis Ababa

¹³⁵ Interview with Firew Mamo, Legal Affairs Director at Federal Ministry of Trade, May 18, 2022, Addis Ababa

¹³⁶ Interview with Hasan Ali, Regulatory Affairs Director at Dire Dawa Trade Bureau, Via Phone, 13th of April 2022

¹³⁷ Interview with Beyene Bunene, Trade Inspection and Regulatory Affairs Director of Sidama Region, via phone, 4th May 2022

¹³⁸ Interview with Tesfaye Gasho Deputy Head of Oromiya Trade Bureau, Via Phone, 16th of April 2022

¹³⁹ Sangeeta Roy, 'Street Vending in India: A Review of Existing Laws, Rights and Regulations Indian Journal of Law and Justice (2014) 5(1)139

¹⁴⁰ Rechi (n 128)806

¹⁴¹ Austin (n 13)2119-2131

¹⁴² Naik (n 105)33

subsistence income generation to diversification of big business boosting demand and higher turnover achievement.¹⁴³ Women, youth and children dominate street vending.¹⁴⁴

They provide articles of affordable prices and convenient services to the needy¹⁴⁵, always seek strategic locations for accessibility, and sell lighter goods¹⁴⁶ from impermanent structure.¹⁴⁷ Street vendors are prone to eviction, harassment, confiscation, and pays bribes for survival of their business and are “compelled to live looking over their shoulder”¹⁴⁸ and in “running battles with the law enforcement.”¹⁴⁹ Hence, they swung between the lighter side of legality and illegality.¹⁵⁰

Absent reliable national statistical data, the number of street vendors is increasing in Ethiopia.¹⁵¹ In 2009 E.C, Addis Ababa City Informal Policy estimated the number of street vendors to have been more than 80,000(eighty thousand).¹⁵² Currently there are around 20,000(twenty thousand) registered and over 100,000(hundred thousand) unregistered street vendors in Addis Ababa according to rough estimation.¹⁵³ In Oromiya, absent official statistical data over 50,000(fifty thousand) street vendors operate in the region.¹⁵⁴ In Dire Dawa, the number is roughly estimated to be over 5000(five thousand).¹⁵⁵ The trade bureau regulatory directors of Sidama and SNNPR refrained from giving rough estimations and put it simply as the number of street vendors is tremendously increasing.

¹⁴³ Bromley(n 6)3

¹⁴⁴ Winnie V. Mitullah, ‘Street Vending in African Cities, A Synthesis of Empirical Findings From Kenya ,Cote d’Ivoire, Ghana, Zimbabwe, Uganda and South Africa’ Background Paper for the 2005 World Development Report(2003)6

¹⁴⁵ Rohan J. Alva, 'The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2013: Is the Curse Worse than the Disease' (2014) 35 StLR(2)182

¹⁴⁶ Mramba(n 8)124

¹⁴⁷ Sifuna(n 108)

¹⁴⁸ Alva(n 145)

¹⁴⁹ Sifuna(n 108)

¹⁵⁰ Rodrigo Meneses-Reyes, '(Un)Authorized: A Study on the Regulation of Street Vending in Latin America'(2018) Law & Policy 40(3)309

¹⁵¹ Firew Mamo (n 135)

¹⁵² የኢ-መደበኛ ንግድ ፖሊሲ (n 131)8

¹⁵³ Mesfin Aseffa (n134)

¹⁵⁴ Tesfaye Gasho (n 138)

¹⁵⁵ Hasan Ali,(n136)

Street vending is mainly a business of the poor, engaged in for subsistence, dominated by youth, women, and children.¹⁵⁶ It requires less startup capital and skill.¹⁵⁷ Street vendors operate mainly on roadside, in front of formal business stalls, within fixed vending locations and on mobile.¹⁵⁸ Clothes, shoes, cosmetics, electronic appliance, foods and vegetables are for sale. Street vendors are ‘on constant run’ with code enforcement officers, daily confiscated their merchandise,¹⁵⁹ pay bribes for their business survival¹⁶⁰ and are traffic accident vulnerable.¹⁶¹ Undeniably, street vending in Ethiopia is an avenue for contrabands and proceeds of crime, favored for tax evasion and for sale of sub-standard products by formal business persons.¹⁶² Some are branch operations or backdoor for formal businesses.¹⁶³

2.8. Forms of Street Vendors in Ethiopia

Three categories of street vendors’ namely fixed, semi-fixed and mobile form of vendors exist based on their working strategy.¹⁶⁴

Fixed street vendors also known as stationary street vendors,¹⁶⁵ are fixed in one location, and use a kiosk or heavy stall remaining at one place.¹⁶⁶ They undertake their business at the stable place¹⁶⁷ regularly.¹⁶⁸ Semi-fixed street vendors sell merchandise momentarily along the street.¹⁶⁹ They undertake their businesses irregularly and without fixed locations.¹⁷⁰ Goods are laid on the ground and vend occasionally.¹⁷¹ Mobile vendors encompass street vendors moving along

¹⁵⁶ የኢ-መደበኛ ንግድ ፖሊሲ (n 131)8

¹⁵⁷ Ibid 5

¹⁵⁸ Observation made by the Author In Addis Ababa around Autobestera, Piasa, and Megenagna, from 13/07/2014 E.C to 20/7/2014 E.C

¹⁵⁹ Ibid

¹⁶⁰ Interview with Ahmed. K, Street Vendor at Autobestera, Addis Ketema Subcity on 5th of April 2022

¹⁶¹ Asaye Nadhi(n132)

¹⁶² Interview with Kasahun, Mulatu, Informal Trade Department Team Leader at Addis Ababa Trade Bureau on 5th of April 2022

¹⁶³ የኢ-መደበኛ ንግድ ፖሊሲ (n 131)5

¹⁶⁴ Rechi(n 128)814

¹⁶⁵ Ibid

¹⁶⁶ Bromley(n 6)2

¹⁶⁷ Rechi(n 128)814

¹⁶⁸ Roy(n 140)141

¹⁶⁹ Rechi(n 128)814

¹⁷⁰ Roy(n 140)141

¹⁷¹ Bromley(n 6)2

the street, squares, passage and public places not originally designed for commerce.¹⁷²They sell goods to passerby, door to door and hawk from building to building.¹⁷³Ethiopia is home to these all.¹⁷⁴

Registered fixed street vendors are given permanent business places for operation in Addis Ababa,¹⁷⁵Dire Dawa,¹⁷⁶ Oromiya,¹⁷⁷ and Sidama. They are mostly known forms of street vendors in Ethiopia. Semi-fixed vendors operate occasionally at specific vending times, places, and days allowed by city administrations.¹⁷⁸

Further, mobile vendors in Ethiopia operate on the street, at traffic lights, squares, public places, and hawks from building to building.¹⁷⁹ Despite their fame, they are less known for their legal status. They sell goods on foot, by pushing carts, on vehicles, or shouldering.

2.9.Are Street Vendors Emerging Under New Guise In Ethiopia?

The potential emergence of the informal sector in a new guise and at unexpected areas¹⁸⁰ was foretold by Chen. Currently in Ethiopia, a new form of business locally known as ‘የሻንጣ ሥራ’ equivalent of ‘Business in Luggage’ is the business for many. It is conducted by importing and distributing various goods mainly from Dubai, Turkey, and Thailand as personal goods.¹⁸¹

It has become a livelihood strategy for people from all walks of life, including for formal traders flying abroad to import goods 2-3 days a week.¹⁸² It is a business to which formal business persons

¹⁷² Reyes(n 150)292

¹⁷³ Bromley(n 6)2

¹⁷⁴ Firew Mamo (n 135)

¹⁷⁵ Mesfin Asefa,(n 134)

¹⁷⁶ Hasan Ali (n136)

¹⁷⁷ Tesfaye Geshe(n 138)

¹⁷⁸ Kasahun Mulatu(n 162)

¹⁷⁹Asaye Dadhi (n 132) and Kasahun Mulatu (n162)

¹⁸⁰ Chen(n 3)1

¹⁸¹ Interview with Firdie Cheru, Economy Crimes Directorate Director ,at Federal Ministry of Justice, 13th of April 2022 Addis Ababa

¹⁸²Interview with Demise Asefa,Contraband Related Crimes Team Leader at Economic Crimes Division, Federal Ministry of Justice Prosecutor,13th of April 2022,Addis Ababa

turned their faces.¹⁸³ They are nothing less of ‘petty importers guest to the regulators’. The goods are either wholesaled to formal shops or hawked door to door including offices.

These are street vendors in ‘new suits’ irrespective of their euphemistic name decorated with flavor to avoid regulatory arms. They are street vendors who emerged under new guises and at unexpected places for two reasons. First, they operate under the guise of importing ‘personal goods’ on the lighter side of legality exploiting the legal loopholes. Second, they use digital marketing system as well as cars to deliver their goods and this makes them different from ordinary vendors. Thirdly, they sell every kind of good ranging from simple to luxurious goods.¹⁸⁴ Clothes, cosmetics, expensive electronics, beverages, packed foods, security devices, and medicines are offered for sale.¹⁸⁵ Shortly, they are ‘invisible and disguised’ street vendors operating on the lighter side of legality.

Currently, the Ethiopian Custom Authority halted their operation and begun levying taxes contesting their legality. However, the business has continued in new formats, this time a little bit expensive. Their customers from abroad send goods through cargo paying all expenses and here they receive paying taxes.¹⁸⁶ Though criminal investigation was initiated against such individuals, 61(sixty-one) criminal files were closed by Federal Public Prosecutors alleging there were no case to answer.¹⁸⁷

The so-called “Delivery”¹⁸⁸, locally known as, ‘አየር በአየር’¹⁸⁹ or ‘mid-air business’ is another guise under which street vendors are flourishing. It is conducted without a trade license, from the impermanent stall, vouchers, and free of taxation and using small cabins locally known as ‘Damas’ or ‘Dolphins.’¹⁹⁰ This form of business differs from licensed wholesalers or distributors and is conducted outside regulatory system. Goods are sold on mobility via cars around residential areas

¹⁸³ Interview with Hawa Jemal, Vendor in Business in Luggage, 6th of April 2022, Addis Ababa

¹⁸⁴ Interview with Yoseph Getahun, Vendor in Business in Luggage 6th of April 2022, Addis Ababa

¹⁸⁵ Ibid

¹⁸⁶ Hawa(n183)

¹⁸⁷ Demise Asefa(n 182)

¹⁸⁸ Interview with Thedros Melake , Street Vendor engaged in vending using Cabins, April 6, 2022, Addis Ababa

¹⁸⁹ Interview with Mohammed Abubeker ,Street Vendor engaged in vending using Cabins, March 23, 2022, Addis Ababa

¹⁹⁰ Thedros(n188) and Mohammed(n 189)

and to shops.¹⁹¹ They also stand behind congested streets and sell electronics, cosmetics, detergents, diapers, oils, and foods.¹⁹² Formal businesses and owners of business in luggage are main actors in this trade.¹⁹³

Generally, despite the notoriety of these businesses and mode of their operation, they are yet conceptualized as street vendors and remained with blurred legal status.¹⁹⁴ However, the aforementioned form of business is nothing than the realization of a dream told by Chen regarding emergency of street vendors in a new guise and at unexpected places. They are merely ‘new variants’ of mobile street vendors in Ethiopia.

2.10. Theorizing the Rationales for Engaging in Street vending

Poverty, unemployment, absence of inclusive social security, cumbersome business licensing procedure, and avoiding regulatory frameworks are often cited rationales for engagement in street vending.¹⁹⁵ These reasons are rooted in theoretical explanations of Modernization, Structuralist, Neoliberal and Cultural theory.¹⁹⁶ They are theories used to validate regulatory approach towards street vendors.¹⁹⁷

For Modernization theory street vendors are leftovers of pre-modern era, signaling under-development, traditionalism, and backwardness.¹⁹⁸ Accordingly, under-development and backwardness of the economy drive street vendors to street vending.¹⁹⁹ The ubiquitous nature of street vendors²⁰⁰ puts the validity of this theory into question.

¹⁹¹ Ibid

¹⁹² Observed by the Author at Piasa and Meksiko area 15/5/2014- 18/5/2014 E.C

¹⁹³ Theodoros (n 188)

¹⁹⁴ Interview with Yoseph Assefa, Formal Business Regulatory Affairs Director at Addis Ababa Trade Bureau, 5th April 2022

¹⁹⁵ Sifuna (n 108)166

¹⁹⁶ Williams (n 29)393

¹⁹⁷ Linares(n 109)652

¹⁹⁸ Williams (n 29)393

¹⁹⁹ Mubita Aurick, et'al ‘Urban Informality and Small Scale Enterprise (SME) Development in Zambia: An Exploration of Theory and Practice,’ JBEFEAT, (2017)5(1)20.

²⁰⁰ Naik(n 105)28

The structuralist view street vending as a business conducted out of necessity for survival purposes.²⁰¹ Accordingly it is the only survival strategy available for the economically marginalized societies²⁰² as the ‘last resort survival means.’²⁰³ The validity of this theory was refuted for thousands engages in street vending to avoid regulatory frameworks.

For Neo-liberal theorists, street vendor engagement in street vending is a rational choice against the shackles of burdensome regulations.²⁰⁴ This corresponds to Hernando De Soto’s legalist approach viewing operation in the informal sector as the act to avoid costs, time, and formal registration and other unreasonable regulation.²⁰⁵ Thus, street vendors are rational entrepreneurs whose spirit is stifled by overregulation.²⁰⁶ For Post-Modernist theorist, Street vending is rationally and voluntarily chosen act for cultural reasons than economic purpose.²⁰⁷

Neither of these theories holistically captures all motives for engaging in street vending nor offers a substantive guideline for the formulation of an adequate regulatory frameworks.²⁰⁸ Thus, they must be comprehensively employed in framing rationales for engaging in street vending.

In Ethiopia, each of these theories can justify street vending. Poverty and unemployment play a leading role for engaging in street vending.²⁰⁹ Majority of street vendors in Addis Ababa are poor persons engaging in this business for survival.²¹⁰ Empirical finding by Etsub reveals 67(sixty seven) percent of street vendors interviewed engage in the informal sector owing to difficulty to fulfill minimum licensing criteria.²¹¹ This is indicia that cumbersome licensing procedure is pushing factor for engaging in street vending while 1(one) percent were engaged in the act to avoid taxation and registration fees.²¹²

²⁰¹ Williams (n 29)393

²⁰² Ibid 394

²⁰³ But Empirical researches have debunked this theory on different accounts.

²⁰⁴ Williams (n 29)394

²⁰⁵ Aurick,(n 199)21

²⁰⁶ Williams (n 29)395

²⁰⁷ Ibid.

²⁰⁸ Linares(n 109)652

²⁰⁹ Firew Mamo(n 135)

²¹⁰ Amsale Alebachew (n 37)41-43

²¹¹ Etsub(n 19)40

²¹² Ibid

Assessments by Addis Ababa Trade Bureau revealed the number of persons engaging in street vending to evade taxation and other regulatory framework is growing, “it is everything from survival strategy to platform for contraband.”²¹³ More, Formal Traders invisibly engage in street vending by commissioning street vendors to sale contraband and illegal goods.²¹⁴ Similar position was reflected in an interview with Regulatory Directors and heads of trade Bureau of Dire Dawa,²¹⁵ Oromiya²¹⁶, Sidama²¹⁷ and SNNPR.²¹⁸

Interviews with street vendors in Addis Ababa specifically at local areas known as Autobestera (Addis Ketema Sub-city), Megenagna, (Yeka Sub-City) and Piasa (Arada Sub-City) reveal cumbersome licensing procedures is the basic reason for street vending.²¹⁹ Some of them are admittedly branch operations of formal business paid on commission.²²⁰

Generally, the structuralist and neoliberal theories mostly explain the rationales for engagement in street vending in Ethiopia. Thus, street vending is everything from a livelihood strategy to a platform for contraband and criminal proceeds.

2.11. Framing Rationales for Regulating Street Vendors in the Eyes of Business Regulation Theories

The issue of regulation and policy response to street vending is central to contemporary writings and debates.²²¹ Any regulatory analysis commences by examining the existence of regulatory justifications requiring interventions.²²²

²¹³ Yoseph Asefa(194)

²¹⁴የኢ.ሜ.ደበረኛ ንግድ ፖሊሲ (n 131)6

²¹⁵ Hasan Ali(n 167)

²¹⁶ Interview With Lema Ajema, Trade Inspection and Regulatory Director at Oromiya Trade Bureau, 16th of April 2022

²¹⁷ Beyene Bunune(n137)

²¹⁸ Interview with Cherinet Fikadu Trade Inspection and Regulatory Director of SNNPR, May 4th 2022, Via Phone

²¹⁹ Interview with Mukamil Ahmed and Adisu Zeberga, on April 7, 2022, Addis Ababa

²²⁰ Interview with Alemayehu Belay and Getachew Feye, around Awutobestera, March 10, 2022

²²¹ Christian M. Rogerson, ‘Policy Response to Informality in Urban Africa: The Example of Maputo, Mozambique,’ GJ 1(2017)82(6)1182

²²² Tomain(n 76)400

Street vendors are blamed for selling contraband, fake and unhealthy goods posing public health problems.²²³They contribute to the underground economy of undocumented cash through sales and payment of bribes to Police and Municipal Inspectors.²²⁴Pedestrian congestion, tax evasion and other regulations, and unfair competition to formal traders are critic against street vendors.²²⁵Further, obstruction of view and blockage of entry and exit from formal traders store are reasons underlying their accusation.²²⁶Goods and services prohibited for sale in the formal business are easily sold to passerby on street vending.²²⁷

Governmental responsibility to limit congestion, collect taxes, and protect consumers against fraud and public health hazards obliges “to do something about street vending.”²²⁸The role of government in promoting economic opportunity, encouraging entrepreneurship, competition, and the need to bring street vending business under law enforcement and government governance²²⁹underlay social regulations of street vendors.

Hence, such economic and non-economic rationales underlay government regulation of street vendors like any business.

2.11.1. Rationales in the Social Regulation of Street Vendors

Government regulation of business from social regulation aims at improving qualities of the environment, protecting health, consumer products safety and health,²³⁰ labor-related affairs.²³¹Consequently, market failures like externalities, inadequate information, scarcity, and public goods will be addressed.²³²

Generally, government regulation of street vendors is justified on two grounds. First, the inadequacy of information supplied and fraud made by street vendors regarding the quality of

²²³ Bromlye(n 6)8

²²⁴ Ibid 9

²²⁵ Ibid 7

²²⁶ Ibid 13

²²⁷ Yoseph Assefa(n 230)

²²⁸ Bromley(n 6)16

²²⁹ Ibid 17

²³⁰ Joskow(n 75)2

²³¹ Ogus (n 12) 4

²³² Tomain(n 76)407

goods curtails customers from fulfilling their preferences.²³³ Second, the operation of street vendors produces unwarranted spillover effects against the public.²³⁴

The problems with which street vendors are accused- congesting pedestrians, selling contraband, contribution to the underground economy, blocking entry and exit from off-street trader's stores²³⁵, evading tax, market fees, illegal use of public services and spaces,²³⁶ creating environmental problems by exacerbating waste disposal problems and carrying unhygienic practices,²³⁷ generation of excess litter,²³⁸ selling unhygienic foods, fake products, and deceiving consumers²³⁹ broadly falls within social regulation rationales.

Similarly, in Ethiopia, street vendors evade taxation and other regulatory frameworks,²⁴⁰ congest public streets,²⁴¹ sell contrabands,²⁴² unhygienic and contaminated foods,²⁴³ deceive consumers,²⁴⁴ and contribute to the underground economy by selling criminal proceeds and paying bribes to Code Enforcement Officers,²⁴⁵ excess litter of waste on the street cleaned by the public expenses.²⁴⁶ These externalities call for responsive regulatory frameworks by the government towards regulation of street vendors in Ethiopia.

2.11.2. Rationales in Economic Regulation of Street Vendors

Rationales in economic regulation of street vendors denote administrative and legislative control related to rates, entry, and other facets of economic activities²⁴⁷ of street vendors. As economic

²³³ Ogus (n 12) 4

²³⁴ Ibid

²³⁵ Bromley(n6)8-13

²³⁶ Ignasio Malizani Jimu, 'Negotiated Economic Opportunity and Power: Perspectives and Perceptions of Street Vending in Urban Malawi,' *Africa Development* (2005[30]4)37

²³⁷ Ibid

²³⁸ Ibid

²³⁹ Bromlye(n 6)16

²⁴⁰ Kasahun Mulatu(n 162)

²⁴¹ Interview with Girum W/Meskel Code Enforcement Team Leader of Addis Ketema Subcity, on 12th of April 2022

²⁴² Chief Constable Belayne B, Investigation Police At Addis Ketema Sub-city, May 3, 2022

²⁴³ Interview with Theodros Getachew, Yeka Sub-city Food and Medical Health Control Office, Team Leader, 18th of April 2022

²⁴⁴ Interview with Getinet Ashenafi, Director of Complaint Investigation and Prosecution Affairs, on Trade Competition and Consumer Protection, Federal Ministry of Trade, 12nd of May 2022

²⁴⁵ Interview with Mesfin Yadesa, Inspection and Regulatory Affairs Director at Bole Sub-City Trade Office, 22nd of April 2022

²⁴⁶ Mesfin Asefa(n134)

²⁴⁷ Posner(n 63)1

markets are fragile and susceptible to inefficiency if left to self,²⁴⁸ regulation of street vending is essential to curb the problem. Further, it requires the government to dictate street vendor's conduct in the market concerning taxation, quality, and types of goods for sale, advertisement, and price control.²⁴⁹ The structural regulation aspect requires government to regulate the market structure of street vending like entry, operation, and exit from the business.²⁵⁰

2.12. Public Interest and Economic Theories of Regulation vis-à-vis Street Vending Regulation

The rationales in government regulations of street vending are explainable by public interest theory, capture, and economic theory in business regulation. They are useful in analyzing rationales for regulation business,²⁵¹ and to understanding the nature, form, and beneficiary of the regulation.²⁵² Without these theories, attempt to answer general questions about the behavior of regulatory organ will be incomplete and futile.²⁵³

Public interest theory-wise, regulation of street vending is based on public interest to rectify the palpable and remediable inefficiencies and inequalities²⁵⁴ posed by street vendors in market operation. Public demand for rectifying market inefficiency²⁵⁵ created by unfair competition, to protect consumers against unhealthy and substandard goods, taxation, environmental protection, and pedestrian congestion, and the need to bring the street vendors under the rule of law underlay public interest for regulating street vendors in Ethiopia.

Economic theory, view regulation as an economic good subject to the operation of demand and supply rule.²⁵⁶ Regulation is supplied by policymakers provided demands by politically effective

²⁴⁸ Ibid 2

²⁴⁹ Hertog, (n 41) 224

²⁵⁰ Ibid

²⁵¹ Priest(n 60)290

²⁵² Moran(n 47)186

²⁵³ Joskow (n75)3

²⁵⁴ Posner, (n 63)2

²⁵⁵ Kabir, in Solomon(n 42)84

²⁵⁶ M.B.Adams, (n 62)170

group exceed that of opposition to it.²⁵⁷ Given this, regulation of street vendors is supplied when demanded by politically effective groups competing against street vendors.

The assertion of this theory is not tenable in Ethiopia. First, defining a politically dominant group in Ethiopia is by itself contentious. Second, why public interest undelaying regulation of street vendors lends itself for private interest of contending groups is unjustifiable as in other jurisdictions where lobbying influences public policy.

Thus, from business regulation theories, it is only public interest theory that can convincingly justify the regulation of street vendors in Ethiopia.

2.13. The Interface between Regulatory Mandate and the Rights to Livelihood of Street Vendors

The interface between government regulatory power and the livelihood rights of street vendors was judicially scrutinized on different occasions. Assertion of street vending as the human right to livelihood is aged and the demand for legal status and protection against extortion and exploitation by state authorities under the guise of regulation is firm.²⁵⁸ Mouhamed Bouazizi- Street Vendor, who self-emulated in Tunisia resisting confiscation of his goods,²⁵⁹ is indicia of the interface between livelihood right of street vendors and constitutional power of governments to regulate street vending. The message is the government that cannot provide food, clothing, and shelter lacks moral and legal right to ban the right to earn a livelihood through street vending.²⁶⁰

Some sources of income are mandatory to meet basic needs and earn living.²⁶¹ The right to life and livelihood is inextricably linked.²⁶² Hence, street vendors protest regulation unfair to them.²⁶³

²⁵⁷ Ibid

²⁵⁸ Vijay M. Gawas, 'Socio-Economic Exclusions of Vendors: An Emerging Issue of Livelihood and Rights,' SRJIS[2015](3/21)1164

²⁵⁹ .Nyemb(n14)1

²⁶⁰ M. Gawas(n 305)1167

²⁶¹ Ibid

²⁶² Ibid 159

²⁶³ Ibid 161

The right to livelihood implicated under UDHR²⁶⁴, ICCPR²⁶⁵, ICESCR²⁶⁶, and National laws²⁶⁷ require states work for it's the realization progressively.²⁶⁸ Stipulation of livelihood right under Constitutions sanctifies the right and provides standing to seek redress for infringement.²⁶⁹

The need to protect public health, public security, and order and achievement of developmental goals makes regulation imperative.²⁷⁰ Regarding the limitability of street vendor's livelihood right, Sangeeta Roy posited,

This right is, however, subject to existing or new laws that impose in the interests of the general public, reasonable restrictions on the exercise of the right or that specify the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.²⁷¹

Regarding how regulatory power should work akin to the livelihood right of street vendors, the Constitutional Court in Bogota ruled against street vendor's eviction and confiscation under the 'right to work and earn livelihood.'²⁷² In India, *Sodan Singh V New Delhi*, the Supreme Court upheld the street vending as 'a livelihood right owing to conditions of poverty that lead vendors to the street.'²⁷³ Similarly, in *Gainda Ram V MCD* the court ruled the right could be reasonably restricted only through a law enacted by the national government and not through municipal schemes.²⁷⁴

In Ethiopia, the right to freely engage in economic activities and to pursue the livelihood of one's choice is constitutionally protected²⁷⁵ and one can choose his/her means of Livelihood.²⁷⁶ Street

²⁶⁴ United Nations Declarations of Human Rights(1948)23

²⁶⁵ International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI)(1966)1(2) and 6(1)

²⁶⁶ International Covenant on Economic, Social and Cultural Rights, General Assembly resolution 2200A (XXI)(1966)6

²⁶⁷ Constitution of Federal Democratic Republic of Ethiopia, Fed,Negarit Gazeta 1st Year No 1(1995)41(1),(2)

²⁶⁸ ICESCR(n 314)6(2)

²⁶⁹ Sifuna (n 108)171

²⁷⁰ Ibid 163

²⁷¹ Roy(n 150)144

²⁷² Linares(n 109)663

²⁷³ *SODAN SINGH ETC V NEW DELHI MUNICIPAL COMMITTEE & ANR. ETC*, 1989 AIR 1988, 1989 SCR (3)1038, available on, <https://indiankanoon.org/doc/165273/>, 26th of Jan, 2022

²⁷⁴ *Gainda Ram and Ors. V M.C.D. and Ors*,2010, <https://indiankanoon.org/doc/703738761/>, 26th of January ,2022

²⁷⁵ FDRE Constitution (n 315)41(1)

²⁷⁶ Ibid 41(2)

vending is livelihood for urban poor and unemployed. But the exercise of this right is subject to limitations on public interest grounds warranting government regulation of street vending within the frameworks business regulation based on accepted and well justified principles of rule of law in open democratic society.

Equally concerning, the government regulatory power must not be exercised in a way that renders the constitutionally guaranteed street vendor's livelihood right futile and meaningless. It must be justified, reasonable, affordable, and promulgated by the Federal Government based on well accepted principles common in the society ruled by rule of law.

CHAPTER THREE

3. Legal and Institutional Regulatory Frameworks for Street Vendors in Ethiopia

The second issue worth considering in the regulatory analysis is the option available to the government to obtain economic and non-economic results sought through regulation.²⁷⁷ This necessitates assessing the legal and institutional regulatory framework in place.

3.1. The Legal Status of Street Vendors in Ethiopia

By legal status, the author refers to the treatment of street vendors under commercial laws and how regulatory organs view them. Bellagio International declaration requires governments to give clear legal status to street vendors.²⁷⁸ Unfortunately, the legal status of street vendors mostly remained unclear and ambiguous throughout the world²⁷⁹ and this renders it contested between street vendors and law enforcement.

In Ethiopia, the legal status of street vendors remained unclear and ambiguous among regulators- often traditionally labeling them as ‘Illegals’²⁸⁰ merely for operating unlicensed.²⁸¹ But, a business license is not by itself defining pattern of legal status, but a single regulatory tool for engaging in street vending. For others, it is simply ambiguous and the status of street vendors is yet to be defined as it stands now.

However, one must note existence of distinction between illegal processes or arrangements and illegal goods and services²⁸² whenever attempts to define legal status of street vendors. The street vendors may produce or sell legal goods,²⁸³ while the mode of their operation is illegal. Vendor’s

²⁷⁷ Tomain(76)401

²⁷⁸ Bellagio International Declaration on Street Vendors, <https://europa.eu/capacity4dev/file/25587/download?token=99j8-iVK>, 23rd of November 1995

²⁷⁹ Ana Maria Vargas Falla, *Formalizing Street Vendors: Formulating to Improve Well Being or To Gain Control*(2017) Edward Elgar Publishing 201

²⁸⁰ Firew(n166), Hasan (n 167), Beyene (n168), Tesfaye(n169), Cherinet,(n 211)

²⁸¹ Ibid

²⁸² Chen(n 3)4

²⁸³ Ibid

mode of operation can be legal nevertheless they might engage in sale of illegal goods and services that renders their business status of criminal economy.²⁸⁴

Hence, the legal status of street vendors can be defined based on their activities, mode of operation, and kinds of goods offered for sale. Owing to activity, street vending is a persistent form of commercial activity.²⁸⁵In Ethiopian, any person who professionally and for gain, undertakes the purchase of movables and immovable properties with the view to reselling as they are or upon alteration in the retail or whole is a trader.²⁸⁶ Similarly, commercial registration and business licensing proclamation defines any person who professionally and for gain undertakes any of activities specified under commercial code as a business person.²⁸⁷The same has been provided by Trade Competition and Consumer Protection Proclamation.²⁸⁸

Street vendors in Ethiopia sell a variety of goods and services professionally and for gain that squarely falls within the definition given under Ethiopian Commercial Laws. These goods and services are mostly legal. Consequently, from an activity viewpoint, street vendors are traders and their activity unquestionably falls within the ambit of commercial acts as defined under Commercial Code, Business Licensing Proclamation, and Trade Competition and Consumer Protection Law.

The approach of defining street vending based on the mode of operation relates to business licensing and registration. This approach was pursued under Addis Ababa City Informal Trade Policy and Regulation,²⁸⁹ and Dire Dawa City Administration draft law on Informal Trade.²⁹⁰

Accordingly, a Non-formal trader has been defined as,

²⁸⁴ Ibid

²⁸⁵ Bromley(n 6)22

²⁸⁶Commercial Code of the Federal Democratic Republic of Ethiopia, Proclamation No 1243,Federal Negarit Gazeta, Year 27th ,No.23,12th of April,2021,Article 5

²⁸⁷Commercial Registration and Licensing Proclamation, Proclamation No 980,Federal Negarit Gazeta, Year 22nd ,No,101, August 2016,Article 2(2)(3)

²⁸⁸ Trade Competition and Consumer Protection Proclamation, Proclamation No 813, Federal Negarit Gazeta, Year 20th ,No,28, March 2014,Article 2(5)(6)

²⁸⁹የኢ-መደበኛ ንግድ ፖሊሲ (n 131)

²⁹⁰ ድሬዳዋ አስተዳደር መደበኛ ያልሆኑ የንግድ ሥራዎችን ሥርዓት ለማስያዝ እና ለመምራት የወጣ ረቅቅ ደንብ፣2014

A person who is not registered and licensed under commercial registration and business licensing proclamation and lacks a business license and involves in informal trade activity or willing to engage in the sector having a capital of birr 10,000(ten thousand) and willing to work under the regulation and other relevant laws.²⁹¹

Non-Formal Trade has also been defined as,

Simple trade activity ungoverned by commercial code and business licensing proclamation, undergone by capital up to 10,000(ten thousand), on the street, roundabouts, partly in a small kiosk without registration under the proclamation, without a business license or not having a permanent business place.²⁹²

The same was reiterated under Diredawa's draft law on Non-Formal Trade Regulation.²⁹³

But, the definition confused what renders the operation of trade crime with an ingredient that confers status of the trader. First, the possession of trade license is irrelevant in defining the status hood of the trader and commercial acts. Second, the regulation cannot legalize act criminalized under commercial registration and licensing proclamation.²⁹⁴ Third, the dichotomization of commercial act as 'simple trading activity not governed by commercial code and proclamation' by itself is unfounded and irrelevant in conferring the status of trader hood and no such exception is provided under commercial code.

The possession of a license and the simplicity of the trade concerned can be a parameter to engage in street vending, but not, a defining ingredient for a street vendor's legal status. Hence, these definitions left the status of street vendors in ambiguity and blur.

Finally, the Criminal economy part of street vending refers to situations when street vendors engage in the sale of illegal goods and services prohibited by laws.²⁹⁵ Selling of contraband,²⁹⁶

²⁹¹ Informal Trade Regulation(n 159)2(7)

²⁹² Ibid 2(8)

²⁹³ ድራግዋ አስተዳደር መደበኛ ያልሆኑ የንግድ ረቂቅ ደንብ(n 290) 2(4)(5)

²⁹⁴ Commercial Registration and Licensing Proclamation(n 287)49(2)

²⁹⁵ Chen(n 3)4

²⁹⁶ Customs Proclamation, Proclamation No.859,Federal Negarit Gazeta, Year 20th ,No,82,9th December 2014,168(2)

drugs,²⁹⁷ and prohibited goods, render street vending crime and punishable under relevant criminal laws.

Thus, street vendors retain the status of trader by the operation of the Commercial Code and Commercial Registration and Licensing Proclamation. The street vending act by itself is not a criminal act rendering the status of street vendor illegal. Yet, engaging in street vending without a business license or in the sale of legally prohibited goods will render street vending illegal and street vendors criminal.

Though the legal status of street vendors remained unclear, ambiguous, and contested between street vendors and regulators in Ethiopia, the legal status of street vendors must always be defined from activities point of view as a traders based on Article 5 of Ethiopian Commercial Code and not from what renders them legal or illegal, formal or informal. For all legal and practical purposes street vendors are traders and their acts constitute commercial acts as defined as such under Article 5 of Commercial Code.

Once the legal status of street vendors is established, the specific legal and institutional regulatory frameworks applicable to street vendors following their legal status are discussed as follows.

3.1.1. Commercial Code

The Commercial Code is general substantive law regulating commercial activities. It is relevant in two ways to the regulation of street vendors. First, it is useful in defining the legal status of street vendors within the realm of a trader and commercial activities.²⁹⁸ Second, it provides respective rights and obligations street vendors have as a traders. Absent, special laws limiting the operation of the Commercial Code, the status of any commercial activity, respective rights, and obligations of any trader are settled as per the Commercial Code. This is for three main reasons. First, any activity listed under Article 5 of the Commercial Code so long as professionally and for gain undertaken, to which no exception is laid is regulated under the Code.²⁹⁹ Second, the principle of equal protection before the law demands street vendors subject to the regulatory framework under

²⁹⁷ Criminal Code of Federal Democratic Republic of Ethiopia, Proclamation No 414(2005)525

²⁹⁸ Commercial Code(n 286)5

²⁹⁹ Ibid 1

the code.³⁰⁰Thirdly, considering street vendors as free from regulation of commercial code threatens the social, economic, and political welfare of the entire community. Further, the general purpose of the commercial law to maintain law and order within its sphere will be defeated, and law-abiding business persons will incur loss merely for observing the dicta of laws.

All the three business life of street vending namely, entrance, operation, and termination stages are at least ideally subject to the regulatory framework as a trade. Accordingly, the law requires registration as one basic regulatory framework for any trader.³⁰¹ Accordingly, street vendors are duty-bound to get commercial registration.³⁰² This is notwithstanding registration requirement under other laws.³⁰³Thus, registration for taxation, certificate of competency, and standard compliance required for any trader under other laws equally work for street vendors. Upon cessation of the trade, one must get a cancellation from commercial registration within sixty consecutive days following the cessation of the trade.³⁰⁴The failure to observe this regulatory framework entails criminal responsibility.³⁰⁵Street vendor's failure to get register as a trader could not be invoked against the third party in their dealing.³⁰⁶

Thus, the commercial code regulates street vendors within specific regulatory apparatus laid there by defining their legal status as a trader and their commercial activity.

3.1.2. Trade Licensing and Commercial Registration Law

This law binds street vendors based on the definition given to trade³⁰⁷and commercial activity.³⁰⁸Registration and Licensing is a known regulatory framework governing street vendors in many jurisdictions including Kenya.³⁰⁹

³⁰⁰ FDRE Constitution(n267)25

³⁰¹ Commercial Code (n286)82(1)2(a)

³⁰² Ibid

³⁰³ Ibid

³⁰⁴ Ibid 94(1)

³⁰⁵ Ibid 97

³⁰⁶ Ibid 100(1)

³⁰⁷ Commercial Licensing Proclamation(n 287)2(2)

³⁰⁸ Ibid 2(3)

³⁰⁹ Street Vendors (Protection of Livelihood) Bill, 2019,Kenya Gazette Supplement, Senate Bills No.10,Part IV,(15,16)

It regulates street vendors by requiring commercial registration and business license to operate. Commercial registration is a prior condition to a business license.³¹⁰ It is prohibited to engage in any business without having business license.³¹¹ To that effect, one shall apply for business license.³¹² A business license accords the right to engage in a business activity within the scope of the license and not to be compelled for additional license for the same operation, right to obtain information on commercial registration and licensing services, to alter or amend commercial registration, trade name and business, and other similar activities specified under the law.³¹³

Among others, the licensee has the obligation to undertake business activities for which the business license is issued in separate places provided undertaking such activities at the same place or premises endangers public health and safety or property.³¹⁴ Further, it requires fulfillment and compliance with other obligations that the nature of the business activity requires.³¹⁵

These requirements bind street vendors. First, street vendors qualifies to be called commercial traders under the Commercial Code. Second, the inapplicability of the aforementioned requirements to street vendors has not been qualified by the way of exception under the commercial code.³¹⁶The enforcement of these regulatory frameworks has been qualified by sanctioning under pertinent criminal provisions.³¹⁷

3.1.3. The Trade Competition and Consumer Protection Law

The applicability of this law to street vendors emerges from normative values in the law itself. First, any commercial activity must be conducted per established practices in the market policy of the country.³¹⁸ Second, there must be a system protecting the business community and consumers against anticompetitive and unfair market practices and from misleading market practices respectively.³¹⁹ Thirdly, the proliferation of goods and services endangering health and wellbeing

³¹⁰Commercial Licensing Proclamation(n 287)5

³¹¹ Ibid 22(1)

³¹² Ibid 23

³¹³ Ibid

³¹⁴ Ibid 26(1)

³¹⁵ Ibid 26(3)

³¹⁶ Ibid 3

³¹⁷ Ibid 49(2)

³¹⁸ Trade competition and Consumer Protection Proclamation(n 288)the Preamble

³¹⁹ Ibid

of consumers and ensuring safeness and suitability to human health and to create a conducive environment enabling customers to get goods and services equivalent to the price they pay³²⁰ justifies the applicability of the law to street vendors owing to their legal status as traders.³²¹ Further, the applicability of the law to any person is unequivocally and unambiguously stated.³²²

Owing to the definition given to traders, commercial activity, and the broader nature of the scope of application of the proclamation, the regulatory framework under the Trade Competition and Consumer Protection Proclamation regulating anti-competitive trade practices³²³ and unfair competition practices³²⁴ and Protection of consumer rights³²⁵ governs street vendors as well.

3.1.4. The Food and Drug Administration Law

Regulatory rationale in this law lies in the need to protect and ensure public health by regulating food, medicine, and drugs. Particularly, to prevent and control public health against hazards caused by food, to prevent and control public health from unsafe, inefficacious, and poor quality medicine, to control and prevent illegal distribution and use of narcotic drugs, psychotropic substances, and precursor chemicals, overall demand for the establishment of national legal framework for coordinated food, medicine, medical device, cosmetics, and tobacco products under lie the regulatory frameworks.³²⁶

The specific regulatory framework under the law applies to food, medicine, medical device, cosmetics, and tobacco offered for market or public use.³²⁷ The mere offer of these goods and services for sale or public use trigger application of the regulatory frameworks stated under the alleged proclamation. Accordingly, street vendors are subject to these regulatory frameworks,

³²⁰ Ibid

³²¹ Ibid 2(5)(6)

³²² Ibid 4

³²³ Ibid 5

³²⁴ Ibid 8

³²⁵ Ibid 14

³²⁶ Food and Medicine Administration Proclamation, No. 1112, Federal Negarit Gazeta, Year 25th, No. 39, 28th February 2019, Preamble

³²⁷ Ibid 3, 31, 41, 43, 45(2)

provided they engage in the sale of food, medicine, and drugs. As mentioned earlier, street vendors engage in the sale of various commodities including foods and cosmetics.

To achieve the intended regulatory objectives the law requires registration,³²⁸ disclosure of information,³²⁹ issuance of a certificate of competence, and compliance with product standards, and safety requirements³³⁰ for any person selling food, medicine, and drugs. The products under regulation must be properly labeled and packed.³³¹ The enforcement of these regulatory frameworks is backed by administrative³³² and criminal sanctions.³³³

3.1.5. The Cities Non-Formal Trade Regulatory Frameworks

Addis Ababa is the only city in Ethiopia having a distinct regulatory framework for street vendors. The city has already enacted a trade policy³³⁴ and a law governing street vendors.³³⁵ Non-formal regulatory directorate constituted under the Trade Bureau distinctly regulates street vendors. Further, Code Enforcement of the city has been vested with the power to prevent the operation of street vendors on the street.

3.1.5.1. The Addis Ababa City Non-Formal Trade Regulation

The regulation was effective since August 2017. The ever-expanding nature of street vending, its role in job creation, and harmonizing it with formal traders are regulatory rationales for its issuance.³³⁶ The law failed to clearly and sufficiently to articulate consumer's rights, safety, and public health, pedestrian congestion, taxation revenue, unfair competition, and from being platform for contraband, and tax evasions in the preamble as a regulatory justifications.

It regulates street vendors by requiring registration, transitional period permit licenses, and by restricting the types of activities open to street vendors. Accordingly, any street vendor must be

³²⁸ Ibid 6,20,23, 31,41,43,45(2)

³²⁹ Ibid 7(6)

³³⁰ Ibid 7(1),22

³³¹ Ibid 53

³³² Ibid 65

³³³ Ibid 67

³³⁴ የኢ-መደቦች ንግድ ፖሊሲ. (n 131)

³³⁵ Informal Trade Regulation(n129)

³³⁶ Ibid, Preamble

registered to engage in any non-formal trade.³³⁷ A person registered and granted authorization will obtain a transitional period permit licenses.³³⁸ Transitional period permit is a kind of license issued for a person engaging in non-formal trade.³³⁹ It confers the right to engage in street vending in the permitted area,³⁴⁰ and activities under the law.³⁴¹

From an activity point of view, street vendors can engage only in the sale of Clothes, Simple Electronic and Accessories, Fast Foods, and Packed Beverages like Soft Drinks and Juice.³⁴² Additional types of activities open to street vending can be allowed in the future.³⁴³ Street vendors engaging in the sale of foods and packed beverages are required to comply with standard and safety conditions set for food, medicine, and drug.³⁴⁴ The regulation provides activities in which street vendors engage should not in the first place require professional competence assurance and criterion.³⁴⁵ Otherwise, standards and safety requirements for these goods are equally applicable as in formal trade.

Street vendors are obliged not to alter or reduce the quality and amount of the goods offered for sale, not to harass consumers and show proper respect, and not to sell false or fake products.³⁴⁶ Further, they must conduct their trade at the place, on the day, time and engage in type of business permitted by the concerned woreda,³⁴⁷ pay tax³⁴⁸ and hold receipt for industrial products they purchase.³⁴⁹

Compliance with these regulatory frameworks is backed by administrative and criminal sanctions under relevant penal law.³⁵⁰

³³⁷ Ibid 6

³³⁸ Ibid 8(2)

³³⁹ Ibid 2(15)

³⁴⁰ Ibid 10,17(1)

³⁴¹ Ibid 15

³⁴² Addis Ababa City Government Directive to Direct and Regulate Non-formal Trade, Directive No 5(2010)10

³⁴³ Ibid

³⁴⁴ Ibid 10(2)

³⁴⁵ Informal Trade Regulation(n129)15

³⁴⁶ Ibid 17(2)c,e,f

³⁴⁷ Ibid 2(b)

³⁴⁸ Ibid 12(1)

³⁴⁹ Ibid 17(2)d

³⁵⁰ Ibid 21

3.1.5.2. The Dire Dawa City Administration Draft Regulation on Non-Formal Trade

Dire Dawa City hosts street vendors selling electronics, cosmetics, clothes, watches, foods, and vegetables.³⁵¹

The expanding nature of street vending, its role in job creation, and harmonizing it with formal traders are regulatory justifications behind the issuance of the draft Non-Formal Trade Regulation of the Dire Dawa City.³⁵² It is a textual copy of Addis Ababa City Regulation on Non-Formal Trade.

Street vendors are required to have registration and license, not to alter, reduce the quality and amount of the goods, not to harass consumers and show proper respect, and not to sell false or fake products.³⁵³ Competence and compliance with safety requirements is required for street vendors engaging in the sale of fast foods and packed beverages.³⁵⁴

The sale of clothes, electronic equipment, packed drinks, fast foods, fruit and vegetables, and products of handcrafts are activities open to street vending.³⁵⁵ Administrative measures under the regulation and pertinent penal laws redress the violation of the regulation.

3.2. The Institutional Regulatory Frameworks for Street Vendors in Ethiopia

In Ethiopia, engaging in commercial acts defined as such under Commercial Code and the legal status accorded to the traders' subject street vendors to the institutional regulatory mandate of the Ministry of Trade, Trade Competition and Consumer Protection Directorate, Food and Drug

³⁵¹ Interview with Hasan Ali(n 136)

³⁵² የድራግ መደበኛ ያልሆኑ የንግድ ረቂቅ ደንብ(n 290)preamble

³⁵³ Ibid 6(1),8(1)

³⁵⁴ Ibid 15(2)

³⁵⁵ Ibid 15

Administration Authority, Trade Bureau, Non-formal Trade Directorate, and Code Enforcement Service Office.

3.2.1. The Ministry of Trade and Regional Integration

The regulatory power of this institution emanates from its power to initiate policies, strategies, and laws on trade.³⁵⁶It exercises general regulatory powers concerning trade. Street vending is a commercial activity and street vendors are traders under Article 5 of the Commercial Code. This subjects street vendors to the institutional regulatory mandate of the Ministry of Trade.

Through Federal Proclamations³⁵⁷and directives it initiates,³⁵⁸ the Ministry asserts regulatory Power over street vendors via business registration and licensing requirements.³⁵⁹Further, in consultation with other sectorial offices, it may determine those business categories for which a certificate of competence is required.³⁶⁰

Further, it may asserts regulatory power by controlling the quality of goods imported,³⁶¹ prohibiting goods not conforming to the required standard, and controlling the compliance of goods with mandatory Ethiopian standards.³⁶² The new variant of street vendors in Ethiopia, business in luggage and Delivery engage in the importation and sell of goods to which standard requirements apply. Thus, street vendors are subject to these regulatory frameworks set by the Ministry of Trade.

³⁵⁶ Definition of Powers and Duties of Executive Organs, Proclamation No.1263, Federal Negarit Gazeta, Year 28th No.4 ,25th January 2022,Article 22(1)a

³⁵⁷ Ibid 19(3)

³⁵⁸ Commercial Code (n 286)5 and Commercial Licensing Proclamation(n 287)52(2)

³⁵⁹ Proclamation to define Executive Organs Powers(n410)22(1)and Business Licensing Proclamation(n 337)4,(2)(7)

³⁶⁰ Commercial Licensing Proclamation(n 287)4 (10)

³⁶¹ Executive Organs Proclamation Powers(356)22,(1)(f)

³⁶² Ibid 22(1)(l)

3.2.2. The Trade Competition and Consumer Protection Directorate

Trade Competition and Consumer Protection Directorate has been constituted within the Ministry of Trade and Regional Integration to regulate trade competition and consumers protection affairs.³⁶³

It exercises regulatory powers vested in the Trade Competition and Consumer Protection Law³⁶⁴ on trade competition, unfair competition, and matters related to consumer protection. For two reasons, street vendors are subject to the regulatory power of the Directorate. First, given the objective of the Trade Competition and Consumer Protection Law to protect the business community against anti-competitive and unfair market practices, street vendors are squarely subjected to regulatory power of the Directorate. Second, the law aims to protect consumers against misleading market practices, and ensure consumers get goods safe and suitable to their health and equivalent to the price they pay.³⁶⁵ These objectives will be achieved only if street vendors are also brought under their coverage.

Generally, the overall intended objectives of the law will be pragmatic only if any segment of traders and all commercial acts are brought under the coverage of the Proclamation No 813/2013. Accordingly, the law claims to be applicable on any commercial activity and any trader, leading them³⁶⁶ to the regulatory mandate of the Trade Competition and Consumer Protection Directorate.

3.2.3. The Ethiopian Food and Drug Administration Authority

This authority is established as an autonomous organ,³⁶⁷ pending its duties and authority defined in a regulation be issued by the Council of Ministers.³⁶⁸ However, the regulation has not been issued so far.

³⁶³ Ibid 22(1)(o)

³⁶⁴ Ibid 22(1)(q)

³⁶⁵ Trade Competition and Consumer Protection Proclamation(288)3

³⁶⁶ Ibid 4(1)

³⁶⁷ Executive Organs Proclamation(356)66

³⁶⁸ Ibid 66(2)

The Authority exercises regulatory power concerning Food, Medicine, and Cosmetics having a countrywide application.³⁶⁹Product registration, market authorization, licensing of premises, market surveillance and inspection, quality control testing, and clinical trial are the applicable regulatory tools.³⁷⁰

Traders engaging in trade activities falling under the jurisdiction of the Authority must adhere to registration,³⁷¹ disclosure of information obligation,³⁷² obtain a certificate of competence, fulfil product standard, and safety requirements.³⁷³ The products under regulation need to be properly labeled and packed.³⁷⁴

Owing to their nature street vendors, they would be under the regulatory mandate of Food and Drug Administration or its regional counterparts.

3.2.4. Non-formal Trade Regulatory Directorate

Currently, only Addis Ababa City has a distinct regulatory department for street vendors. Dire Dawa has drafted a regulation similar to that of Addis Ababa City regulation on Non-Formal Trade and will expectedly establish a similar directorate.

3.2.4.1. The Addis Ababa City Informal Trade Regulatory Directorate

It is established within Trade Bureau for the regulation of street vendors.³⁷⁵The Directorate exercises regulatory power by requiring street vendors get registered³⁷⁶ and licensed for their operation.³⁷⁷ Citywide record is established for this purpose.³⁷⁸

³⁶⁹ Interview with Iskendir Ketema Legal Affairs Director at Federal Food and Drug Administration Authority, on 20th of April 2022

³⁷⁰ <http://www.fmhaca.gov.et/?lang=amh>, 15th of January 2022

³⁷¹ Food and Medicine Proclamation(n326) 6,20,23, 31,41,43,45(2)

³⁷² Ibid 7(6)

³⁷³ Ibid 7(1),22

³⁷⁴ Ibid 53

³⁷⁵ Non-Formal Trade Regulation(n 129)

³⁷⁶ Ibid 6

³⁷⁷ Ibid 8(2)

³⁷⁸ Ibid 5

Further, the directorate exercises regulatory mandate by limiting types of activities open to street vendors to clothes, simple electronics and accessories, fast foods, and packed beverages like soft drinks and Juice,³⁷⁹ a places and time³⁸⁰ permitted for street vending.

3.2.4.2. The Addis Ababa City Code Enforcement Office

This office was established through Addis Ababa City Proclamation No, 37/2013 to prevent, control, and take appropriate measures against code violations and other illegal means. Particularly, it is mandated to prevent and control illegal street vendors.³⁸¹ Further, the Office prohibits the operation of vendors without Transitional Period Permit and prevents trade in unpermitted areas.³⁸²

3.3. The Modes and Tools Regulating Commercial Operation of Street Vendors

Regulatory organs have a variety of regulatory arsenals in their possession regulating the subject of regulations.³⁸³ Street vendors are theoretically subjected to a regulatory framework at entry, operation, and exit from street vending.

3.3.1. Regulating Entry into Street Vending

Street vendors are by definition traders. In the absence of a special regulatory regime, legal and institutional regulatory frameworks applicable to traders by the operation of article 5 of the Commercial Code subject street vendors to regulatory tools set for any trader. Accordingly, entry into street vending is regulated through different regulatory tools.

³⁷⁹ Directive on Non-Formal Trade(n 342)10

³⁸⁰ Non-Formal Trade Regulation(n 129) 17(2)b

³⁸¹Code Enforcement Regulation (n 126)7(1),13(3)

³⁸² Non-Formal Trade Regulation(n 129)6

³⁸³ Eisner(n 74)11

3.3.1.1. Registration and Licensing Requirement

Commercial registration and licensing mechanism is the principal mode of regulating entry into the business. In Ethiopia, a person willing to engage in any commercial activity must get registration and license.³⁸⁴

Commercial registration requirement under the Commercial Code does not, bar registration requirements by other regulatory organs.³⁸⁵ Registration of this kind does not require competence, quality, and meeting standards as a precondition³⁸⁶and is held primarily to make the address of the regulated known to regulatory bodies for subsequent regulation.³⁸⁷

Addis Ababa Non-Formal Regulation requires one to present his photo, renewed ID card, Tax Identification Number, and written testimony from woreda of his residence proving he is not currently involved in formal trade or any other work to get registration for non-formal trade.³⁸⁸

License is issued following commercial registration. It is prohibited to engage in commercial activity without a valid business license.³⁸⁹ Licensing is a regulatory tool to control entry and ensure the regulatory standard sought by the regulator is met.³⁹⁰It confers the right to engage in alleged trade.³⁹¹Sectorial regulatory organs authorized under their establishment laws retain the power to issue business license regarding matters falling under their jurisdiction.³⁹²

Street vendor operating in Addis Ababa needs to secure a transitional period permit or ID, hung on the neck.³⁹³It confers the right to engage in street vending for a registered street vendor.³⁹⁴

³⁸⁴ Commercial Code (n 286)82

³⁸⁵ Ibid 82(1)

³⁸⁶ Ogus, (n 12)215

³⁸⁷ Ibid

³⁸⁸ Non-Formal Trade Regulation(n 129)7

³⁸⁹ Commercial Licensing Proclamation(n 287)22(1)

³⁹⁰ Eisner(n 74)12

³⁹¹ Ibid 25(1)

³⁹² Ibid 21(1)

³⁹³ Non-Formal Trade Regulation(n 129)10

³⁹⁴ Ibid17(1)a

3.3.1.2. Regulating the Required Capital Ceiling for Street Vending

The right to engage in street vending is not available to everybody. By defining who can engage in street vending, the regulators limited the entry to street vending. The capacity is defined by fixing the capital ceiling of street vendors.³⁹⁵In Addis Ababa, a person whose capital is over 10,000(ten thousand) is excluded from street vending. However, this is the case only for registered street vendors and known to the regulatory eyes of the Addis Ababa Trade Bureau.

3.3.1.3.Certification for Competency

Engaging in some businesses may primarily require possession of a certificate of competence. Certification for compliance with health and safety regulatory standards is the prior condition to obtain a business license for the businesses for which the relevant laws clearly requires competence.³⁹⁶

It is a certificate issued by the concerned sectorial government authority verifying the required competence and standards under the applicable regulatory law are fulfilled for a given product.³⁹⁷ Regulatory organs responsible for the regulation of food and drugs commonly employ a certificate of competence as a regulatory tool.

Absent clear law exempting street vendors from the requirement of a competence certificate, Food and Medicine-related business of street vendors must conform to certification requirements nevertheless the existing practice tells the otherwise.

3.3.1.4.Taxation

It is a regulatory tool to control entry into street vending. In Ethiopia, Tax Identification Number is a precondition to get commercial registration.³⁹⁸In Addis Ababa, street vendors are required to

³⁹⁵ Ibid 2(8)

³⁹⁶ Horn,Pat, Street Vendor Licensing and Permits-Reflection From Street Net International WEIGO Resource Document(2018) No 10,11

³⁹⁷ Commercial Licensing Proclamation (n 286)2(30)

³⁹⁸ Ibid 9(1)

obtain TIN registration and licensing.³⁹⁹Addis Ababa Revenue Authority is mandated to decide the amount of tax due, collect and issue a clearance certificate for street vendors.⁴⁰⁰

Thus, compliance with registration for taxation requirement at the entry level of business is met by requiring street vendors to obtain TIN.

3.4. Substantive Operational Regulatory Tool for Street Vendors

At their operational stage, street vendors are regulated through variety of substantive regulatory tools discussed as follows.

3.4.1. Regulating the Source of their Merchandise

This regulatory tool prevents street vending from being a platform for contrabands and as a backdoor for evading regulators. In Ethiopia, street vending is everything from means of survival to platform for contrabands.⁴⁰¹ Currently, street vendors have become branch operations through which formal traders sell their products.⁴⁰²These concerns are unambiguously and unequivocally stressed under Addis Ababa City Policy on Non-Formal Trade while stating the need to issue the policy and accordingly require the source of merchandise for street vending be legal traders and meet the required quality.⁴⁰³

Consequently, in Addis Ababa Street vendors are required to furnish a receipt for industrial products.⁴⁰⁴Further, possession of contraband and goods belonging to a person in formal trade exposes to revocation of commercial registration and criminal liability.⁴⁰⁵

³⁹⁹ Informal Trade Regulation(n129)7(3)

⁴⁰⁰ Ibid 12(A)

⁴⁰¹ Mesfin (n134),Hasan (n 136),Beyene (n137),Tesfaye(n138)Cherinet,(n 218)

⁴⁰² Ibid

⁴⁰³ የኢ-መደበኛ ንግድ ፖሊሲ. (n 131) 15

⁴⁰⁴ Informal Trade Regulation(n159) 17(2)d

⁴⁰⁵ Ibid 13(6)

3.4.2. Regulating Types, Quality, and Healthiness of Goods and Services

Street vending is a platform for goods from unknown sources, sub-standard, and goods threatening consumer's health.⁴⁰⁶Hence, the types, quality, and standards of the goods offered for sale must meet be regulated to achieve the regulatory objectives set under laws discussed above. Specifically, Addis Ababa Non-Formal Trade Regulation limits street vending to selling clothes, simple electronic equipment, fast foods, and packed beverages.⁴⁰⁷

Further, goods and services requiring professional competence should meet the required standards⁴⁰⁸and inspection by Food, Pharmaceutical, and Health Protection Administration and Inspection Authority.⁴⁰⁹Altering or reducing the quality or amount, or content of goods offered for sale, and⁴¹⁰sale of fake or false good are prohibited.⁴¹¹

3.4.3. Regulating Vending Place

Street vendors are allowed to sell only at a vending place and time allowed under their permit license.⁴¹² In Addis Ababa, different vending sites including Sunday markets have been established.⁴¹³ Despite similar experiences in some regional states, they are yet backed by legal and institutional frameworks.⁴¹⁴

3.5. Regulating Exit from Street Vending

The time for which one will stay in street vending is often strictly regulated. The time within which to graduate from street vending to formal business is often set as a regulatory tool. A Street vendor quitting the business for any reason must apply for cancellation of commercial registration within

⁴⁰⁶የኢ-መደበኛ ንግድ ፖሊሲ. (n 131) 15

⁴⁰⁷ Directive on Non-Formal Trade(n 342)10

⁴⁰⁸ Informal Trade Regulation(n129)15

⁴⁰⁹ Ibid 20 (11)

⁴¹⁰ Ibid 17(2)c

⁴¹¹ Ibid 17(2)f

⁴¹² Ibid(n159)17(2)b

⁴¹³ Kasahun Mulatu (n 162)

⁴¹⁴ Hasan (n 136),Beyene (n137),Tesfaye(n138),Cherinet,(n 218)

sixty days of ceasing.⁴¹⁵ Correspondingly, the business license of such person will also be canceled.⁴¹⁶ Such obligations emanate from the legal status accorded to any trader.

A Tax clearance certificate attached to the application must be presented to get cancellation of the business license.⁴¹⁷ Failure to get cancellation may result in civil liabilities for any debt incurred under the status enjoyed.⁴¹⁸

Similarly, in Addis Ababa street vendor quitting the business, must get a cancellation from commercial registration.⁴¹⁹ To that effect, one must furnish tax clearance and return a transitional permit license.⁴²⁰

Theoretically, street vendors need to make a transition to formal trade within five years in Addis Ababa.⁴²¹ However, such regulatory framework has not been clearly stated and backed by enforcement mechanism under Addis Ababa non-formal regulation.

3.6. Legal and Institutional Regulatory Loopholes and Excesses

In regulatory analysis loopholes and excesses in regulation will be drawn from the analysis of regulatory justifications, regulatory tools employed and by inferring if the chosen regulatory instrument is effective in addressing the intended regulatory objectives.⁴²² Regulatory justifications provide the existence of compelling economic and social rationales warranting regulation.⁴²³ The second issue deals with options regarding the regulatory arsenal in the hands of the government. And the last one tests appropriateness and effectiveness of regulatory tool chosen to achieve the intended objective of the regulation.⁴²⁴

⁴¹⁵ Commercial Code(n 286)94(1)

⁴¹⁶ Commercial Licensing Proclamation (n 287)30(1)

⁴¹⁷ Commercial Registration and Licensing Council of Ministers Regulation, ,No 392, Federal Negarit Gazeta, Year 28th No.3 ,28th January 2016,35(1)

⁴¹⁸ Commercial Code(n286)101

⁴¹⁹ Directive on Non-Formal Trade(n 342)14(1)

⁴²⁰ Ibid17(4)

⁴²¹ Kasahun (n162)

⁴²² Tomain(n 76)400-403

⁴²³ Ibid 400

⁴²⁴ Ibid 401

Accordingly, regulatory rationales and tools employed for the regulation of street vendors were analyzed in the preceding part. Consequently, the following legal and institutional regulatory loopholes and excess are identified

3.7. The Legal Loopholes and Excesses

Currently, Ethiopia lacks a national policy and clear legal framework peculiar to street vendor's regulation. Ministry of Trade and Regional Integration believes that currently there are no compelling rationales justifying the issuance of a separate regulatory framework for street vendors in Ethiopia exist.⁴²⁵ Contrarily, Addis Ababa City and other regional states argue the need to issue National Street Vendors Regulation is long overdue.⁴²⁶ In fact, the mismatch between the current regulatory framework and the lived realities of street vendors is apparently seen.⁴²⁷ The followings are the legal loopholes observed in this regard.

3.7.1. Failure to State the Legal Status of Street Vendors

In Ethiopia, the legal status of street vendors swing between Legality and Illegality, Formality and Informality. The failure to clearly state the legal status of street vendors is rooted in the absence of law defining street vendors with their corresponding legal status. Bellagio International Declaration on Street Vendors urges governments to develop National Policy for Street Vendors as the broader part of structural policies aiming to improve their living standards, according them with clear legal status.⁴²⁸ The declaration provides insight for Ethiopia too, on how to regulate the status of street vendors, notwithstanding that it lacks binding power.

The shadow over the legal status of street vendors compels to define legal status of street vendors by constructing the provisions of the Commercial Code and other business regulating laws akin to trade. The legal status is everything to street vendors, from exercising the right to trade to governing interaction with the government.⁴²⁹ In the face of the increasing unemployment rate, leaving the street vendor's legal status undefined forces the state to shoulder unwarranted burdens.

⁴²⁵ Frew Mamo(n 135)

⁴²⁶ Hasan (n 136),Beyene (n137),Tesfaye(n138),Cherinet,(n 218)

⁴²⁷ Ibid

⁴²⁸ Bellagio Declaration(n 278)

⁴²⁹ Reyes(n150)301

Further, failure to recognize street vendors, results in loss of potential revenues from registration fees, hawking license, and taxes, for street vendors continues to operate without license.⁴³⁰

The ambiguity in the legal status of street vendors has left law enforcement agencies in dilemma between a legalist and moralist approach. 'It is not fair to prosecute vendors struggling to win bread under penal laws. Our laws need to be humanized by recognizing street vendors reality.'⁴³¹Asaye was quoted. Similarly Getu quests, 'Everywhere in the city, street vendors are there to watch. Aren't they honest persons struggling to get along with life under harassment and daily confiscation of their goods?'⁴³²Consequently, street vendors are barely criminally prosecuted for operating without a license out of sympathy. They are often prosecuted under Article 441 of the Ethiopian Criminal Code for resisting Code Enforcement Officers from discharging their official duty.⁴³³This is for two reasons. First, morality forces Prosecutors and investigating police to consider the lived reality of street vendors. Second, they fear the heavy burden of proving the intention to trade without a license.⁴³⁴

Others argue that the criminal law needs to be strictly enforced, henceforth; street vendors caught trading without a license must be held criminally responsible.⁴³⁵Thus, the failure to clearly legislate the legal status of street vendors is a legal loophole in regulating them.

3.7.2. Unfeasibility of Licensing System to Street Vendors

Licensing system defines who may exercise the constitutional right to trade.⁴³⁶ Licensing system plays a crucial role in determining persons to which street vending business is open. Heavy regulation in licensing system contributes to the increasing number of persons engaging in the informal economy by creating entrepreneurial incentives to skirt regulation.⁴³⁷

⁴³⁰ Mazhambe (n 34)91

⁴³¹ Interview with Asaye Melese, Federal Public Prosecutor at Federal Ministry of Justice,6th of April 2022,Addis Ketema

⁴³² Interview with Getu Amsalu, Federal Public Prosecutor at Federal Ministry of Justice,6th of April 2022

⁴³³ Interview with Mulat Melak, Federal Public Prosecutor at Federal Ministry of Justice,7th of May 2022

⁴³⁴ Ibid

⁴³⁵ Interview with Asmamaw Girma, Federal Public Prosecutor at Federal Ministry of Justice,6th of April 2022

⁴³⁶ Reyes(n150)291

⁴³⁷John C. Cross, 'Street Vendors ,Modernity and Post Modernity: Conflict and Compromise in the Global Economy,' IJSSP(2000)20,38

Licensing requirement in Ethiopia is unfit to the realities of street vendors on the ground. Even in Addis Ababa where distinct licensing system for street vendors has been set, it is still unaffordable to the majority of street vendors, mainly to those from regional states. Accordingly, operating without a license has become viable choice for the majority of street vendors.⁴³⁸ Simplistic and affordable system of licensing is commendable to bring street vendors within the system.

3.7.3. The Failure to Sufficiently Determine Places, Sources, Types, and Qualities of Goods Open to Street Vending

The absence of a distinct legal framework for street vendors specifying vending place, source, types, and the standards those goods should meet paved every place, goods from any sources, and quality open for vending. Consequently, fake, unhealthy, and unsafe goods are easily sold in street vending.⁴³⁹ Goods obtained by the commission of crimes are channeled into the market through street vendors.⁴⁴⁰

The profitability of street vending rests on the sale of contraband, fake and sub-standard goods to a passerby.⁴⁴¹ In Addis Ababa, where street vending regulation tries to regulate places, types, and quality of goods open to street vendors, there is barely compliance with the requirements under the law.⁴⁴² The registered street vendor's lease their vending place for others; others vend formal trader's goods or goods for which they are unlicensed.⁴⁴³ They aggressively engage outside vending zone in search of customers. Consequently, they expose pedestrians to the traffic accident and pickpocketing⁴⁴⁴

The dangers of goods sold by street vendors to human health are equally concerning. In this regard Theodros was quoted as, 'Some of the goods street vendors' offer for sale potentially pose a threat to human health. Goods whose places of origin are unknown, and have no expiry date are offered for sale. Excessive exposure to sunlight renders some goods like cosmetics harmful.'⁴⁴⁵ Similarly,

⁴³⁸ Mesfin Asefa (n134), Hasan (n 136), Beyene (n137), Tesfaye(n138), Cherinet,(n 218)

⁴³⁹ Ibid

⁴⁴⁰ Interview with Ketema Kene, Investigation Police, Addis Ketema Sub-City, May 3rd 2022

⁴⁴¹ Ibid

⁴⁴² Kasahun(n162)

⁴⁴³ Interview with Abebe Regessa, Non-Formal Trade Inspector at Bole Sub city Trade Office, 22nd of April 2022

⁴⁴⁴ Mesfin (n134), Hasan (n 136), Beyene (n137), Tesfaye(n138), Cherinet,(n 218)

⁴⁴⁵ Theodros (n 243)

Selamawit was quoted expressing her concern over the dangers of street food as ‘The quality and hygiene of foods street vendor offer for sale is very concerning for public health. In short, such foods can be a source of foodborne disease.’⁴⁴⁶

Further, there is no substantial difference as to the types of goods open to street vending and those of goods allowed for sale in formal business. Consequently street vendors sell goods of the same quality as the one in formal trade at a cheaper price. Currently, street vendors emerging under a new guise are the main providers of clothes, electronics, and cosmetics for boutiques and other retailers⁴⁴⁷ without any restrictions.

3.7.4. Failure to Limit Transitional Period to Formal Trade

In Ethiopia, including Addis Ababa City Non-Formal Trade Regulation there is no clear law setting the time framework within which street vendor should graduate for formal trade. But, officials claim street vendors operating under Regulation for Non-Formal Trade must be transited to formal trade within five years, though in reality, no one wants such transition, merely to exploit opportunities in street vending.⁴⁴⁸

3.8. Institutional Loopholes

Institutional capacity to act is influenced by legal constraints and non-legal factors like bureaucratic culture, professional training, and agency resources.⁴⁴⁹ There are basic institutional loopholes hindering the effective regulation of street vendors in Ethiopia.

3.8.1. Lack of Clear Institutional Understanding of the Concept of Street Vendors

The absence of clarity and uniformity on who street vendors are and how they operate, among regulatory organs have limited regulatory capacity of regulators to only to those street vendors operating on the street, unlicensed and unregistered.⁴⁵⁰ Such traditional understandings excluded

⁴⁴⁶ Interview with Selamawit Kebede, Food Establishment Regulatory Affairs Team Leader at Yeka Sub city Food, Medicine and Healthcare Administration and Control Office, 18th April 2022

⁴⁴⁷ Yoseph(n 184)Theodros(n 188)

⁴⁴⁸ Kasahun(n 162) and Mesfin(n 134)

⁴⁴⁹ Tomain(n 102)388-389

⁴⁵⁰ Kasahun(n 162)

mobile and semi-fixed, above all new variants of street vendors from the reach of the regulatory arm.⁴⁵¹

It also creates an opportunity for street vendors to emerge under a new guise and operate unregulated. That is why, business in ‘Luggage’ and ‘Delivery’ -a new variant of street vending favored for the avoidance of any regulatory framework are steadily growing.⁴⁵² The concept of street vending stretches far beyond business conducted on the street.

The lack of clear and uniform institutional understanding on the identity of street vendors curtailed the regulatory capacity of institutions from regulating street vendors comprehensively. Hence, from aforementioned discussions, it can be drawn that the new variants of street vendors intentionally involving in street vending of any type to avoid business regulatory frameworks are not only unregulated but also seen as legal business entities by regulatory organs in Ethiopia as repeatedly observed by the author.

3.8.2. Jurisdictional Gap and Overlap

The existence of a clear mandate among regulators is crucial for effective business regulation and enforcement. Currently, there is no national institutional entity established by law to distinctly regulate street vendors as a trade.⁴⁵³ Though Addis Ababa is the only City with a Non-Formal Trade Regulatory Department, its power is limited severely to those street vendors formalized by registration.⁴⁵⁴ Those street vendors without a license and unregistered are regulated in the form of clearance from public street by City Code Enforcement.⁴⁵⁵ The irony is street vendors operating in a new guise are neither regulated by Trade Bureau nor City Code Enforcement. Consequently, the jurisdictional gap created favorable conditions for such street vendors to breed more.

Jurisdictional gap and overlap in the regulation of street vending result in regulatory confusion and power conflict. This is manifestly observed in Addis Ababa where street vendors formalized by

⁴⁵¹ Rechi(n 128)814

⁴⁵² Tedros (n 188)

⁴⁵³ Firew(n 134)

⁴⁵⁴ Kasahun(n 162) and Mesfin(n 134)

⁴⁵⁵ Ibid

Trade Bureau were forcefully evicted and confiscated by code enforcement officers on different occasions.⁴⁵⁶

3.8.3. Lack of Institutional Coordination among Regulators

Regulation of street vendors requires concerted effort and coordination among stakeholders. Ministry of Trade, Regional Trade Bureaus, Food and Drug Authority, Consumer Protection Directorate, Revenue Authority, and Code Enforcement Office share a role in regulating street vendors. Unfortunately, they barely act in coordination in exercising their respective regulatory powers.⁴⁵⁷

The lack of coordination manifests itself on different accounts ranging from the issuance of a license to consistent monitoring and inspection by stakeholders. Street vendors licensed by the Addis Ababa Trade Bureau to engage in the sale of Foods and packed Soft Drinks will be refused a certificate of competence from the Food, Medicine and Health Care Administration and Control Authority.⁴⁵⁸ And sometimes evicted and their goods are confiscated without due process of law.

Recently, the confrontation between street vendors engaging in business in luggage and customs authority is the result of a lack of coordination and mutual understanding between the Custom Authority and the Ministry of Finance.⁴⁵⁹ The lack of proper coordination among regulators creates unwarranted regulatory cost for the State and street vendors.

3.9. The Excesses in Regulation of Street Vendors

Excesses in regulation denotes the unintended consequences resulting from a mismatch between regulatory justification, the effectiveness of regulatory tools employed, and the lived realities of street vendors. The choice of inappropriate regulatory instrument ensue in unintended social, economic, and political controversy.⁴⁶⁰ Mouhamed Bouazizi, Tunisian street vendor self-

⁴⁵⁶ Asaye (n 132) and Mesfin Yadesa (n 245)

⁴⁵⁷ Asaye (n 132), Mesfin (n 134), Mesfin Yadesa (n 245), Kasahun (n 162)

⁴⁵⁸ Theodros Getachew (n 243), Selamawit (n 445), Kasahun (n 162)

⁴⁵⁹ Demise (n 182)

⁴⁶⁰ Tomain (76) 409

emulation, an act that sparked the Arab Spring is the manifestation of excesses in regulation of street vendors.⁴⁶¹

Excesses in regulation result from a mismatch between regulatory justification and regulatory tools employed to achieve the intended regulatory objectives. Mismatch occurs either when wrong regulatory justifications are identified, but, correct regulatory tools are applied or when regulatory justifications are proper, but wrong regulatory tools are applied.⁴⁶²In Ethiopia, the social and economic regulatory justifications underlying regulation of street vendors are quite convincing. But, the regulatory tools adopted are neither congruent to lived realities of street vendors nor to the regulatory justification underlying the regulation. Consequently, avoiding regulatory frameworks, corruption, a gross violation of human rights to get compliance to regulation, unwarranted regulatory costs incurred by the state to clear street vendors from the street, and traffic accidents occurring during chasing street vendors from street are all unwarranted excesses created by the mismatch between regulatory tools and the realities of street vendors.

One of the unintended excesses resulting from the regulation of street vendors currently in Ethiopia is the growing culture of bribing regulators for survival by street vendors. Systematic bribing is survival strategy for street vendors. 'Street vendors you see here and elsewhere pay bribes to code enforcement and police officers. Otherwise, harassment and daily confiscation await them.'⁴⁶³ Muktar was quoted. Further, youth in the areas where street vendors operate in large numbers act as middlemen between code enforcement and street vendors to make the business smooth and get their fair share from the paid bribe.⁴⁶⁴

The battle between Code Enforcement and Street often renders pedestrians to traffic accidents.⁴⁶⁵ Street vendors also become victims while escaping confiscations from Code Enforcement Officers. Often, the quarrel between Code Enforcement Officers and Street Vendors claims human life from both sides. Their goods will be confiscated without any due process of law, and physical abuse is common to the business of street vending on public streets. The litter left by street vendors on

⁴⁶¹ Nyemb (n14)1

⁴⁶² Tomain(n76)401

⁴⁶³ Interview with Muktar.K Street Vendor at Mexico, 12th of March 2022

⁴⁶⁴ Ibid

⁴⁶⁵ Observed at Autobestera and Megenagna on 17th and 21th of January 2022

street is cleaned by tax payer's money. The state is also losing the golden opportunity in using street vending for job creation and poverty reduction. These are excesses resulting from overregulation and failure to sufficiently regulate street vendors in Ethiopia.

3.10. Are Street Vendors sufficiently regulated in Ethiopia?

In Ethiopia, there are attempts to regulate street vendors under the existing business regulatory frameworks applicable to Formal Traders. The Ministry of Trade and Regional Integration insists as it stands now, the existing legal and institutional frameworks suffice to regulate street vendors.⁴⁶⁶ Contrarily, Regional States and City Administrations reiterate insufficiency and incompatibility of the existing regulatory frameworks to the lived realities of street vendors. Tax evasion, pedestrian congestion, customer's rights, unfair competition against formal traders and the platform it provides for contrabands and other criminal proceeds underlie the need to have distinct regulatory frameworks.⁴⁶⁷ The contradictory positions among the regulators regarding challenges posed by street vendors and the need to issue new regulatory framework triggers one to quest if street vendors are not really completely outside regulatory frameworks, are they sufficiently regulated in Ethiopia?

In Ethiopia, public streets are overly crowded with street vendors, goods from legal to illegal sources, from luxury to necessity goods, from expensive to cheap goods, from fake and expired goods to properly packed, from ordinary goods to goods requiring a certificate of compliance, unhealthy and unsafe goods are unrestrainedly sold over street vending. If the position held by the Ministry of Trade and Regional Integration holds truth, why and how these all things happen over Ethiopian Street?

More, not all persons engaging in street vending are poor and unemployed struggling to win daily bread. The number of traders engaging in street vending to evade tax and other regulatory frameworks is staggering. The newly emerging forms of street vendors popularly known as a business in luggage and those vending by cars debunk the truth that street vendors are from being sufficiently regulated in Ethiopia.

⁴⁶⁶ Firew(n 135)

⁴⁶⁷ Mesfin (n134),Hasan (n 136),Beyene (n137),Tesfaye(n138),Cherinet,(n 218)

The efficacy of the existing legal and institutional regulatory frameworks inter-alia regulation of street vendors has been practically proved to be ineffective and insufficient. Street Vendors are regulated only based on the rule of construction arising from definition given to trade and traders in Ethiopia. The peculiar feature of street vendors and the regulatory requirement under the existing laws are incongruent. The regulatory frameworks failed to deter street vending from being a platform for tax avoidance and other regulatory frameworks.

The puzzle of regulating street vendors is not solely attributable to the inability to enforce the existing regulatory frameworks efficiently. The incompatibility of existing regulatory frameworks with the lived realities of street vendors is the main barrier. The regulatory framework needs to be realistic and affordable to street vendors and simultaneously addresses the rationales in regulation from the public interest viewpoint in Ethiopia. It is out of this, that the world started to witness distinct regulatory regime for street vendors. The concrete move by Addis Ababa and Dire Dawa to regulate street vendors distinctly reveals the insufficiency of the existing regulatory regime.

3.11. The Burden to Design Sui Generis Form of Regulation for Street Vendors

The failure to sufficiently regulate street vendors makes a search for a new regulatory path towards regulation of street vendors a burden than being a matter of choice in Ethiopia. Such regulatory frameworks must be congruent with the unique characteristics of street vendors while addressing the public interest behind the regulation. Devising sui generis kind of regulation can best solve and end the puzzle towards regulation of street vendors.

3.11.1. The Concept of Sui Generis Form of Regulation

Sui Generis is a Latin term to mean 'of its kind, of its class, unique or peculiar.'⁴⁶⁸ In intellectual property discourse the term denotes the special form of protection outside the known framework.⁴⁶⁹ It is regime tailored akin to a peculiar feature of a given group to achieve the certain objectives and needs.⁴⁷⁰

⁴⁶⁸ Bryan A. Garner, Black's Law Dictionary, 2004 8th ed, 4499

⁴⁶⁹ Moni Wekesa, 'What is Sui Generis System of Intellectual Property Protection,' Techno Policy Brief (2006) African Technology Policy Studies Network, 3

⁴⁷⁰ Ibid

Sui Generis Regulation denotes designing a regulatory framework of its kind, outside the existing regulatory framework, particular to a peculiar feature of street vendors to achieve the needs underlying business regulation. It must embrace the unique nature of street vendors, distinct from the known business regulatory framework for formal traders while simultaneously addressing the rationales in regulation of street vendors.

Sui generis regulation conceptually differs from asymmetric regulation. The asymmetric regulation sets different procedures and standards for different actors within the existing regulation.⁴⁷¹ It also differs from smart regulation that denotes regulatory pluralism with flexibility calling for the interplay of government, business, and third parties.⁴⁷² Sui generis regulation shares flexibility feature with smart regulation but departs from it by introducing a government lead regulatory framework of its kind for street vendors.

3.11.2. Why Sui Generis Regulation for Street Vendors?

A missing regulatory framework is as costly as excessive regulation for street vendors too,⁴⁷³ as it is for the general public. The regulatory system that ignores peculiar features of street vendors exposes them to continuous harassment and confiscations of their goods without due process of law. The existence of a regulatory framework gives proper legal status and recognizes the business of street vendors. Patricia Acerbi was once quoted as Brazilian Democracy was never a finished product and must incorporate the logic of informality and understand dialogic conditions behind formality and informal sector, for it is how the majority of urban Brazilians understand justice and citizenship.⁴⁷⁴ Sui Generis Regulation is one way to accord street vendors with legal recognition.

The existing regulatory frameworks have practically failed the test of regulating street vendors in reality. Owing to the increasing population, unemployment, and poverty, street vending is the sole survival strategy for many.⁴⁷⁵ People neither obey law either for fear of sanctions for its breach or it is from a sovereign, but, for it is only morally right for them to do that.⁴⁷⁶ Majority of street

⁴⁷¹ Devid Lavi Faur, Jaciant Jordana and Fabrizio Giraldi, 'Regulatory Revolution by Surprise: On the citadels of Regulatory Capitalism and Rise of Regulocracy' (2005) Paper presented for the 3rd ECPR, Budapest, 19

⁴⁷² Neil Gunningham and Darren Sinclair, Smart Regulation, ANU Press, 133

⁴⁷³ Chen(n 3)27

⁴⁷⁴ Naik(n 105)30

⁴⁷⁵ Ibid

⁴⁷⁶ Sifuna(n 108)162

vendors in Ethiopia, operate rejecting the existing regulatory framework for it is mostly incompatible with their peculiar features.

The overlap between street vendors livelihood rights and the interests underlying their regulation can easily be solved by introduction of Sui Generis regulation that successfully helps ‘as filtering membrane’ between those involved in street vending to evade regulatory frameworks from those engaging in it as the last resort for survival purposes. It is a system to bring street vendors under the regulatory power of the law. It was in recognition of such realities that in *Gainda V Municipal Corporation of Delhi*, the Supreme Court of India held majority of street vendors are poor and the creation of a suitable legal frameworks is pivotal.⁴⁷⁷

Consequently, Sui Generis Regulation strikes the balance between the needs of street vendors and the public interest underlying regulations. It ensures the regulatory frameworks play a functional role in poverty reduction, empowering the poor’s, creating employment opportunities and making livelihood rights compatible with government regulatory power, and bringing every street vendor as a segment of traders under Ethiopian Commercial Laws.

3.11.3. Whose Powers Should Issuing Sui Generis Regulatory Frameworks Be?

Regulation of street vendors within the context of business regulation is indicia of limiting the right to pursue a livelihood. It is the Federal Constitution that laid the foundation for the right to livelihood through engagement in economic activity of one’s own choice.⁴⁷⁸ Every person has the right to trade subject to restrictions imposed by laws.⁴⁷⁹ Street vending is a manifestation of the right to livelihood expressed via right to trade enshrined under the Federal Constitution. Hence, any limitation on the exercise of the right to trade falls within the power of the federal government.

Further, it is the mandate of the Federal Ministry of Trade and Regional Integration to issue regulatory frameworks on trade.⁴⁸⁰ Enacting the regulatory framework for street vendors is the manifestation of this power. On a similar question, the Supreme Court of India held the law regulating street vendors must be issued by parliament alone for the issue of street vendors

⁴⁷⁷ *Gainda Rem V MCD*(n 274)

⁴⁷⁸ FDRE Constitution(n 267)(41(1)(2)

⁴⁷⁹ Commercial Code (n 286)

⁴⁸⁰ Executive Organ Proclamation(n 410)22(1)(a)

transcends municipal regulation and it is inextricably linked to livelihood rights, employment, and social security of urban poor.⁴⁸¹Hence, it is a federal government that must issue the Sui Generis regulatory framework for street vendors.

3.11.4. What Elements should it incorporate?

Sui Generis regulation for Street Vendors must clearly define the subjects of regulation, rationales for regulation, and the specific applicable regulatory frameworks. It must define who can act as street vendors, the procedure for a license, the kinds of goods permitted for sale, the quality and standard it must meet, places and time permitted for street vending, the potential source of merchandise, and the time within which to graduate for formal trade, the frameworks governing consumer's rights, procedures to redress potential dispute with customers, and their duty to pay tax must be stipulated.

Further, the respective regulatory mandates of the organs regulating street vendors must be unambiguously and clearly defined. Enforcement mechanisms for compliance with legal regulatory frameworks need to be ascertained.

⁴⁸¹ Alva(n 145)187

CHAPTER FOUR

4. Conclusions and Recommendations

4.1. Conclusions

Despite prediction of its eventual demise, street vending has continued thriving and emerging in new variant at unexpected places creating livelihood opportunities for the poor and economically marginalized people in Ethiopia.

Notwithstanding other cognate expressions used locally or regionally, Street Trade, Street Commerce, Hawkers, Peddlers, and Street Entrepreneurs denote Street Vendors. Street vending denotes sales of goods and services from impermanent business stalls or temporary structures by hawking on public streets, squares, or from building to building. They can be fixed, semi-fixed or mobile.

Though, the cause and characteristics of street vendors are theoretically explainable by Modernization, Structuralist, Neoliberal, and Post-Modernist theories, none of them single handedly holistically explain all motives behind street vending nor helps to develop substantive guidelines for regulation of street vendors. We must jointly employ them to understand the causes and characteristics of street vendors holistically. The causes range from unemployment to the rational choice to evade taxation and other regulatory frameworks.

Regulation of street vendors within the business regulation context remained contentious across the world. It ranges from the attempt to completely ban street vending to the issuance of moderate, contextualized, and distinct regulatory frameworks for street vendors. The experience drawn in this regard was that, despite harsh regulatory approach towards street vendors they continue thrive and emerge under new guise. Given their peculiar features, they are not amenable to regulatory frameworks framed for formal trade, and attempting to regulate both under the same regulation is not only futile but, faces fierce resistance resulting in unwarranted consequences. The regulatory lacuna arising out of such resistance paves the way for formal traders to unduly use street vending as platform for tax evasion, and other regulatory frameworks and street vendors as a conduit. This leads to the unwarranted social, economic and political crisis.

In Ethiopia, the number of street vendors is staggeringly increasing. Growth in population, unemployment, poverty, draconian licensing procedures, tax evasion, and other regulatory requirements underlay street vending. It is everything from a survival strategy to a platform for contraband and other proceeds of crimes, fake and goods unsafe to public health.

In Ethiopia, despite their ubiquitous operation, the conceptual understanding of street vendors is limited to those street vendors traditionally operating on public streets only. There is no commonly shared understanding as to whom street vendors are. All forms of street vendors are common to Ethiopia, and are emerging in new forms, and at unexpected places. Originally, it was Addis Ababa City Code Enforcement Regulation No.54/2012 that brought the notion of ‘Illegal Street Vending’ into existence. Nonetheless, it defined street vending from an illegality viewpoint. Later, Addis Ababa City Informal Trade Policy and Non-Formal Trade Regulation No 88/2017 came with the idea, this time replacing it with ‘Non-Formal Trade and Non-formal Trader’. The aim was to regulate street vendors distinctly under these regulations.

More, the legal status of street vendors remained unclear and ambiguous. It swung between Legal and Illegality and Formal and Informality while it should have been defined as an activity than what renders them legal or illegal, formal or informal. Such is a backward and traditional way of defining street vendors. For all legal and practical reasons, Street Vendors are a trader and their acts constitute commercial acts as defined under Ethiopian commercial laws. The causes and motives rendering them street vendors have nothing to do with their legal status as a trader.

This legal status at least theoretically subjects street vendors to Legal and Institutional regulatory frameworks governing trade. First, they are a trader in all aspects. Second, commercial acts of street vendors have not been excluded from the ambit of commercial laws to be regulated under distinct laws. Thirdly, all traders and commercial acts unless explicitly exempted are presumed to be within the reach of legal and institutional frameworks governing business. Normatively, they are under the legal regulatory frameworks of Commercial Code, Commercial Registration, and Business Licensing Proclamation, Trade Competition and Consumer Protection Law, Food and Drug Administration Proclamations, and regionally under distinct laws governing their operation like Addis Ababa City Non-Formal Trade Regulation and Code enforcement Service Regulation.

Registration, licensing, regulating types of goods and their quality, compliance with taxation, and competency certificate are presumed regulatory frameworks for street vendors too.

Institutionally, the Ministry of Trade and Regional Integration, Regional Trade Bureaus, Trade Competition and Consumers Protection Directorate, Food and Drug Administration Authority, or regional counterparts of these institutions have the power to regulate street vendors within their respective fields. Only Addis Ababa City established Non-Formal Trade Regulatory Directorate to regulate street vendors separately.

Non-compliance with these legal and institutional regulatory frameworks on the ground does not imply street vendors are without regulatory frameworks at all. However, it is an indication that Ethiopia has failed to sufficiently regulate street vendors. The incongruence of the regulatory frameworks with the lived reality of street vendors is one cause behind noncompliance with the existing regulatory frameworks. The mismatch between regulatory justifications and peculiar features of street vendors resulted in regulatory failure.

There are legal and institutional loopholes in regulating street vendors. First, the existing legal frameworks neither clearly define the legal status of street vendors nor articulate if they are exceptions to the frameworks. Second, specific regulatory tools adopted under the existing legal regulatory frameworks are incompatible with the peculiar features of street vendors. Thirdly, they failed to sufficiently define and regulate how street vendors must operate in terms of places, types of goods they vend, quality such goods must meet, and a time framework for transition to formal trade. Institutional loopholes are the absence of clear and uniform institutional understanding as to whom street vendors are along with their legal status. Jurisdictional gaps and overlap between stakeholders and lack of coordination in regulating and enforcing regulatory frameworks are major institutional loopholes.

The attempt to regulate street vendors and formal traders under the same regulatory frameworks resulted in unwarranted consequence transcending the ideal purpose of regulating business. These are simply 'Excesses' in regulating street vendors. As it is costly for street vendors, the state also expends huge expenses to get compliance for the regulations incongruent with the realities of the subject of regulations. Fostering the culture of bribes between Street Vendors and Code

Enforcement for the survival of the business, it invites new guests to act as middlemen facilitating the payment. Gross violation of human rights of street vendors, group quarrels between law enforcement agencies and street vendors is claiming life, confiscation without due process of law in the name of enforcing legal regulation, and traffic accidents are consequences transcending the sanctified purpose of regulating street vendors. These all constitute Excesses of Regulation.

The regulatory loopholes and excesses in the regulation of street vendors reveal street vendor are not sufficiently regulated in Ethiopia. The recent attempt by Addis Ababa City is also nothing than Formalization process than regulating street vendors. The normative tales in legal texts and lived reality of street vendors are different. The regulatory insufficiency paved the way for formal trades to use Street vending as a backdoor to evade regulatory frameworks. More, it helps them engage in street vending invisibly in new forms and at unexpected places.

The insufficiency and mismatch between the existing regulatory frameworks with peculiar features of street vendors make the search for new paths obligatory than the matter of choice to overcome aforementioned challenges. Accordingly, Siu Generis regulation will solve the puzzle surrounding the regulation of street vendors. It will ensure not only effective regulation, but enable regulation works for poverty alleviation, reduction of unemployment, job creation, and bring street vendors under the rule of law by sufficiently regulating them.

4.2. Recommendations

Based on the aforementioned findings the following are recommended.

- ✓ Ethiopia must enact National Street Vendor's Policy and Sui Generis regulatory framework for street vendors.
- ✓ Such Sui Generis regulatory frameworks must take into account particular features of street vendors while simultaneously ensuring effective regulation. Further, it must clearly define the legal status of street vendors, and serve as a tool for poverty alleviation, and reduction of unemployment.
- ✓ Sui Generis regulatory framework for street vendors must be detailed enough in stipulating a regulatory framework governing entry, operation, and exit from street vending. Accordingly, it must define who is allowed to do street vending, the licensing procedures, the kinds of goods and services open for vending, what the sources such goods need should be, the quality and standards such goods and services must meet, and the time limit for transitions to formal trade. The respective rights and obligations of street vendors must be asserted unequivocally.
- ✓ Independent regulatory institution either within the Ministry of Trade and Regional counterparts or a completely independent organ shall be established. Such institution needs to ensure effective collaborations among stakeholders in regulation of street vendors.

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