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LEGAL EMPOWERMENT OF INFORMAL WORKERS FORMALIZING STREET VENDING AS A TOOL FOR POVERTY REDUCTION

Introduction

Being poor, uneducated and unemployed can be a crime in many places in the world, particularly when you decide to sell food or other products in the streets. The penalties can be as high as six months in prison in countries like Egypt,¹ and can include the confiscation of their goods or fines that have to be paid to the municipality. The plight of global street vendors can be exemplified with the story of Mohamed Bouazizi, the Tunisian fruit and vegetable vendor who set himself on fire in 2010 as a protest after the confiscation of his goods by the police authorities, becoming a catalyst for the Tunisian revolution and the Arab Spring. In countries like Sweden, migration of Roman communities in recent years as panhandlers has triggered discussions about criminalizing this behaviour. In this regard use of public space by street vendors and panhandlers is often addressed through criminal laws.

Informal vendors face exclusion, poverty and difficult working conditions due to laws that criminalize their work and prevent them from the possibility to register their businesses, and work under the rule of law. In a recent book edited by Dan Banik about legal empowerment for workers in the informal economy in Africa, he asserts that besides the important services and goods provided by informal workers, they are denied of social, economic, political and particularly legal protection.² Nevertheless informal workers contribute to

¹ President Mohamed Morsy issued Law 105/2012 increasing the penalties for street vending including the possibility to send them to prison for up to six months, a fine of up to EGP 5,000 and the confiscation of their goods. <http://www.dailynewsegypt.com/2012/12/09/morsy-cracks-down-on-street-vendors/> (accessed March 13, 2013).

² Dan Banik, *The Legal Empowerment Agenda: Poverty, Labour and the Informal Economy in Africa* (2011).

the economy and constitute an emerging frontier for poverty reduction strategies at the bottom of the economic pyramid.³

This chapter brings empirical data to the debate about the ability of law to contribute to the empowerment and development of informal workers, looking into the case of street vendors.⁴ Looking into the potential that law has for poverty reduction is an important goal and for that reason, this research aims to understand whether legal change, getting the legal permit to sell, can in fact bring empowerment for street vendors. This chapter is based on fieldwork data collected as part of my PhD dissertation in the subject of Sociology of Law, under the supervision of Professor Karsten Åström and Måns Svensson. I would like to express a special gratitude to Karsten for his constant advice and contributions that challenged me to provide further attention to the economic and social needs of my informants.

A number of studies suggest that rule of law reforms and legal empowerment strategies have difficulties to empower the poor.⁵ Empowerment, defined as

³ The informal economy was the main theme of the Annual Meeting of the Academy of Management in 2012, in Boston, USA. One of the conclusions of this meeting was that the informal economy has a great potential for poverty reduction and researchers should focus more into this relation. Paul C. Godfrey, 'Towards a Theory of the Informal Economy', in: 5 *The Academy of Management Annals* (2011).

⁴ The debate about using the law for the empowerment of disadvantaged groups was the main theme of the United Nations' Commission on Legal Empowerment of the Poor. Composed by political leaders and academics from many different countries, The Commission worked from 2006 to 2008 to investigate the relations between exclusion, poverty, and the law. As a conclusion The Commission suggests that about 4 billion people in the world lack of basic legal protection which denies them with the possibility to improve their lives. See the report: CLER, *Making the Law Work for Everyone* (2008). However after the publication of this report, a number of articles have been published criticizing The Commission or indicating their weak points, including: Stephen Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice', in: 1 *Hague Journal on the Rule of Law* (2009); Matthew Stephens, 'The Commission on Legal Empowerment of the Poor: An Opportunity Missed', in: 1 *Hague Journal on the Rule of Law* (2009); and Julio Faundez, 'Empowering Workers in the Informal Economy', in: 1 *Hague Journal on the Rule of Law* (2009).

⁵ For instance, Khair showed the problem of legal empowerment strategies to achieve long term changes. See, Sumaiya Khair, 'Evaluating Legal Empowerment: Problems of Analysis and Measurement', in: 1 *Hague Journal on the Rule of Law* (2009). Another example is from Michael G. Donovan, 'Informal Cities and the Contestation of Public Space: The Case of Bogotá's Street Vendors, 1988-2003', in: *Urban Studies January* (2008), p. 37. Otto also asserts that realizing the rule of law for the empowerment of the poor usually requires of additional contextual political, social and cultural factors. Jan Michiel Otto, 'Rule of Law Promotion, Land Tenure and Poverty Alleviation: Questioning the Assumptions of Hernando de Soto', in: 1 *Hague Journal on the Rule of Law* (2009), p. 174. In the book 'Access to Justice and Legal Empowerment' the authors suggest that there are many obstacles the poor face when looking for justice and empowerment through the legal system. Some of these factors include lack of good laws and institutions but also lack of awareness and financial resources that are necessary to pursue a legal claim; see: Ineke van de Meene and Benjamin van Rooij, *Access to Justice and Legal Empowerment: Making the Poor Central in Legal Development Co-operation* (2008).

the ability of people to make purposive choices and transform those choices into desired outcomes⁶, is not necessarily a consequence of formalization. Instead formalization could be used as a tool of control since governments can impose restrictions, fees, taxes, and other rules over street vendors. These are facts that question the importance of being covered by the rule of law from the perspective of the street vendors.

Indeed, qualitative and quantitative studies show contradicting results. Studies questioning the role of formalization stress the fact that despite many formalization reforms informality is growing in the world and most informal vendors refuse to formalize their work.⁷ Additionally, authors in the field of legal empowerment claim that even though law has a potential for improving the lives of the poor, legal reform is not always the main way for informal workers to gain empowerment. For instance, Julio Faundez claims that informal workers are not really excluded from the rule of law but instead the law is used to oppress their work.⁸

To contribute to this longstanding debate about formalization as a tool of empowerment, this article analyses the effects of a recent formalization programme in the city of Bogotá, Colombia. Based on 169 structured interviews with formalized street vendors, this research uncovers local perceptions about legal empowerment, formalization and the rule of law. The results illustrate that empowerment comes from legalizing the status of vendors allowing them to sell without fear of police eviction and not necessarily from income improvement and access to credit.

The first part of this chapter presents the literature review and the conceptual framework of legal empowerment and formalization theory. The second part includes the results of the interviews conducted with formalized street vendors in the city of Bogotá and the discussion of these results. Finally, this article ends with some conclusions and policy implications of this research.

⁶ Deepa Narayan, D., *Measuring empowerment: cross-disciplinary perspectives*, World Bank e-Library. World Bank, Washington, DC (2005).

⁷ See the work of Sergio Peña, 'Informal Markets: Street Vendors in Mexico City', in: 23 *Habitat International* (1999); and Donovan, 'Informal Cities and the Contestation of Public Space: The Case of Bogotá's Street Vendors, 1988-2003'.

⁸ Faundez, 'Empowering Workers in the Informal Economy' (2009).

Law for Poverty Reduction: Review of the Law and Development Literature

Using legal change for poverty reduction and economic development is not a new theme and law and legal norms have played a crucial role in the continuing pursuit for development in the world. During the 1960s and 1970s the law and development movement used foreign aid to promote legal reform that could foster economic development. However this aspiration failed because after some years legal reforms were not able to achieve the expected results.⁹ A recent revival of the use of law for development is the promotion of the 'rule of law', which broadly consist on the establishment of legal predictability, the enforcement of contracts, and property rights.¹⁰ Rule of law projects are part of the mainstream development discourse, as Thomas Carothers said, "One cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles".¹¹ However rule of law projects experience the same problem of the law and development movement, it is not clear what kind of the reforms work effectively to foster development and poverty reduction.

But not only in the field of law and development, is legal change seen as a tool to achieve social change. In developed and developing countries law plays a crucial role because of the normative power that has to organize and coordinate our society.¹² For instance, governments can use the law to distribute economic benefits as well as to provide access to basic services like health and education. Law can also constitute a tool to support democracy because it can regulate the participation of citizens in the government and their

⁹ David M. Trubek and Marc Galanter, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development', in: *Wisconsin Law Review* (1974).

¹⁰ Thomas Carothers, *Promoting the Rule of Law Abroad: In Search for Knowledge* (2006), p. 17.

¹¹ Carothers, *Promoting the Rule of Law Abroad: In Search for Knowledge*, (2006) p. 3.

¹² In law and social change see the important contributions of: Sally F. Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study', in: *7 Law & Society Review* (1973) and Sharyn L. R. Anleu, *Law and Social Change* (2000). In this longstanding debate some authors argue about the big limitations of law to produce any kind of change in society with a kind of pessimistic view, for instance: Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (1991); and the authors from the Critical Legal Studies movement in the United States like Mark Tushnet, 'A Critique of Rights: An Essay on Rights', in: *62 Texas Law Review* (1984). Contrary, others see a potential in legal change to support social movements and legal activists, see: Michael W. MacCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (1994); Stuart A. Scheingold, *The Politics of Rights* (1974); and Bryant G. Garth and Austin Sarat, *How Does Law Matter?* (1998). Others see instead the role of law in social change from an individualistic approach and use the concept of legal consciousness to explain how legal change can affect individuals' behavior, as explained by Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (1998).

political rights. Recently, the use of law for development has been part of the global fight against poverty under the assumption that law can be a tool for the empowerment of disadvantaged groups.¹³

However for people living under poverty¹⁴ law is not always seen as tool of empowerment but instead as a tool of control.¹⁵ For instance, street vendors¹⁶ usually see the law as a way to control and exclude them from the possibility to work and to earn a livelihood.¹⁷ For instance, David Harvey refers to this as the exclusion of the right to the city and claim these kinds of regulations are oppressive of disadvantaged groups.¹⁸ Street vendors see the law as an instrument of control because vending is considered illegal in many states, or it is only allowed under the condition of having a license or a permit, which in practice is not affordable or possible to get. Many street vendors live their lives under constant fear of eviction and harassment because the law does not recognize their businesses, they are seen as the cause of urban congestion, and

¹³ Using law as a tool for poverty reduction was the question that inspired the 2008 report of the United Nations Commission on Legal Empowerment of the Poor. According to The Commission people living in poverty should be covered by the rule of law so that they can enjoy their status as citizens and protect their rights. The report of the Commission is available at: http://www.unrol.org/doc.aspx?n=Making_the_Law_Work_for_Everyone.pdf (accessed 11 of March, 2013).

¹⁴ Although defining poverty and 'the poor' can be a very contested field, this article uses the term poverty to refer to the individuals living under the national poverty line, which is determined for each country and depends on their specific economic and development conditions. Another measurement of poverty is the one developed by the World Bank in which extreme poverty includes people that live with less than 1.25 US dollars a day and moderate poverty less than two to five US dollars a day. Using the national poverty line instead allows for a better representation of the conditions of poverty in a specific country and therefore is better to understand the situation of disadvantaged populations in different countries. For instance the percentage of people living under the poverty line in Colombia in 2011 was 34 per cent while people living with less than two US dollars a day was 15,8 (2010), according to the data of the World Bank, available at: <http://data.worldbank.org/topic/poverty> (accessed 11 of March, 2013).

¹⁵ A Marxist definition of law sees it as the use of coercion from the privilege class over the rest of society and therefore law is a tool of control. See: Hans Kelsen, *The Communist Theory of Law* (1955).

¹⁶ The word "street vendor" is used in this chapter as a synonym of street traders, peddlers and hawkers. Street vendors are people who work selling goods or services on public spaces and their work is usually regulated in urban planning laws.

¹⁷ Lucas Konzen shows in his dissertation that local authorities in the city of Acapulco, Mexico, tend to see street vending as a serious social problem that must be controlled, ordered and regularized by the state. Lucas Konzen, *Norms and Space: Understanding Public Space Regulation in the Tourist City* (2013), p. 154. Other contributions that show the role of law for the control of street vendors are: Kate Swanson, 'Revanchist Urbanism Heads South: The Regulation of Indigenous Beggars and Street Vendors in Ecuador', in: 39 *Antipode* (2007); and Veronica Crossa, 'Resisting the Entrepreneurial City: Street Vendors' Struggle in Mexico City's Historic Center', in: 33 *International Journal of Urban & Regional Research* (2009).

¹⁸ The idea of the right to the city is being developed by David Harvey following the work of the French sociologist Henri Lefebvre. David Harvey, 'The right to the city', in: 27 *International Journal of Urban and Regional Research* (2003).

they do not pay taxes to the state.¹⁹ Furthermore, in some cities street vending is a criminal offence to public order and vendors can be sent to prison. However in other cases, vendors deliberately decide to work outside the law because the freedom and flexibility of informality can be very attractive to them.²⁰

Nevertheless, law can be a tool of empowerment for street vendors when they gain legal status through the formalization of their businesses allowing them to work without fear of eviction. In this field, one of the most debated contributions is the one of the Peruvian Economist Hernando De Soto, for whom formalization, understood as gaining legal status, can be a tool of economic empowerment. Formalization allows small entrepreneurs to access formal credit and the financial capital that is necessary for the expansion and growth of their businesses.²¹

Moreover, formalization is also part of a global trend that aims to use legal reforms to improve the lives of the poor.²² This trend is being promoted at the

¹⁹ Bromley describes the arguments pro and against the existence of street vendors and the role of government in the regulation of their work. See R. Bromley, 'Street Vending and Public Policy: A Global Review', in: 20 *International Journal of Sociology and Social Policy* (2000). Additional key debates about street vending regulation can be found in Sharit Bhowmik, *Street Vendors in the Global Urban Economy* (2009). Additionally for research about street vendors in Latin America see the recent contributions of: G. Steel, 'Whose Paradise? Itinerant Street Vendors' Individual and Collective Practices of Political Agency in the Tourist Streets of Cusco, Peru', in: *International Journal Of Urban And Regional Research* (2012); Crossa, 'Resisting the Entrepreneurial City: Street Vendors' Struggle in Mexico City's Historic Center'; Swanson, 'Revanchist Urbanism Heads South: The Regulation of Indigenous Beggars and Street Vendors in Ecuador'; and Stacey Hunt, 'Citizenship's place: the state's creation of public space and street vendors' culture of informality in Bogota, Colombia', in: 27 *Environment & Planning D: Society & Space* (2009).

²⁰ Wilma Nchito indicates that in Lusaka, the capital of Zambia many street vendors prefer to work outside legalized markets because the process to enter the markets is costly and complicated. Wilma Sichombo Nchito, 'Formalising Trading Spaces and Places: An Analysis of the Informal Sector in Lusaka, Zambia', in *The Legal Empowerment Agenda: Poverty, Labour and the Informal Economy in Africa*, (2011). In other cases vendors hold strong political power and become the 'untouchables' because political leaders are afraid to lose their support particularly during times of elections, explained Chinsiga and Kayuni in the case of Malawi. Blessings Chinsiga and Happy Kayuni, 'The Complexities and Paradoxes of Governing the Informal Sector in Malawi: The Cases of Street Vending in Zomba and Blantyre', in *The Legal Empowerment Agenda: Poverty, Labour and the Informal Economy in Africa*, (2011).

²¹ According to De Soto, 'The poor of the world - five-sixths of humanity - have things, but they lack the process to represent their property and create capital. They have houses but not titles; lands but not deeds; businesses but not statutes of incorporation' H. De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (2000), p. 6.

²² This trend is mainly supported by authors in the field of New Institutional Economics that consider that well-functioning property rights are essential for development. See the important contributions of Oliver E. Williamson, 'The New Institutional Economics: Taking Stock, Looking Ahead', in: 38 *Journal of Economic Literature* (2000), p. 598; Seth W. Norton, 'Poverty, Property Rights, and Human Well-Being: A Cross-National Study', in: 18 *Cato Journal* (1998-1999); and Douglass C. North, 'The New Institutional Economics and Development', in: *Economic History* (1993).

global level by international organizations in their rule of law projects under initiatives like the 'doing business report' of the World Bank²³ and the 'legal empowerment of the poor' at the United Nations.²⁴ They advocate for the use of rule of law reforms to promote the legalization and formalization of the poor, through the use of identity cards, property rights, rights in their businesses, access to justice, and legal aid, among others.

Hernando De Soto and the Formalization for the Poor: Theoretical Framework

With the contributions of Douglas North, legal institutions, including the law, are seen as the rules of the game that can reduce transaction costs and improve the development of a particular society.²⁵ The idea that one can identify the institutions that can promote or hinder development is the main field of study of the New Institutional Economics, which in contrast to classical economics, considers that the market is not only defined by the rationality of supply and demand.²⁶ Instead this school of thought asserts that institutions, like legal norms, customs or traditions influence the performance of actors in the market and therefore are essential to promote economic development. These theories are interesting for this research because they help to understand the relation between legal norms and economic improvements.

The theory of Hernando De Soto is part of the New Institutional Economics and his work represents an important contribution to that field. With the publication of the books *The Other Path* in 1989 and *The Mystery of Capital* in 2000, De Soto brought the importance of institutions such as property and business rights for economic development.²⁷ He argues that in many countries the assets of the poor do not enjoy property rights and therefore are not protected by the law. These assets are regulated outside the legal system in what De Soto calls, "a parallel economy driven by local practices and norms that allow poor entrepreneurs to do business in the shadows of their nation's legal system."²⁸ Extra-legality is what holds back poor entrepreneurs like street

²³ World Bank, *Doing Business Report*, (2014).

²⁴ United Nations Development Programme, *Commission on Legal Empowerment of the Poor*. (2008)

²⁵ Douglass C. North, *Institutions, Institutional Change and Economic Performance* (1990).

²⁶ Peña, 'Informal Markets: Street Vendors in Mexico City' (1999).

²⁷ Hernando De Soto, *The Other Path: The Invisible Revolution in the Third World* (1989); and De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (2000).

²⁸ Hernando De Soto, 'Are Africans culturally unsuited to property rights and the rule of law? Some reflections based on the Tanzanian case, Hernando de Soto', in *Rights and Legal Empowerment in Eradicating Poverty*, (2008), p. 155–6.

vendors, and therefore De Soto suggests a change in the legal system in order to cover them under the rule of law.

Street vendors need to formalize their businesses to be able to reach all the economic potential they have. De Soto used the example of street vendors in Lima to show the hidden economic value they have in their businesses, a value that is not recognized by the law and that he calls the 'special right of ownership'.²⁹ Additionally, their merchandise is not protected and therefore, it can be confiscated at any time by police authorities. De Soto insists that having a proper legal right can empower informal entrepreneurs to access credit and other forms of capital. In that sense, street vendors could gain the power to improve their life after formalization because they could use their own assets and efforts to access credit and lift themselves out of poverty.

De Soto's theory attests that formalization can cause empowerment because vendors could improve their freedom, invest more in their businesses, access credit, and improve their lives. The logical sequence of empowerment is:

Formalization → Increase Economic Freedom → Empowerment → Life Improvements

However, the concept of legal empowerment includes more than economic change and for that reason; this research complements De Soto's theory with a broader definition of empowerment. Legal empowerment is broadly defined as the use of legal institutions including: law, access to justice, legal aid, or legal knowledge, to improve the control that poor people have over their lives.³⁰ It emphasizes the increase in people's freedom and the possibility to live without fear. This view of empowerment is based on the idea of Nobel Prize winner in economics Amartya Sen's about 'development as freedom'. According to Sen, "[q]uite often economic insecurity can relate to the lack of democratic rights and liberties"³¹ and therefore development cannot only be measured in terms of needs but instead in terms of capabilities.

In the case of street vendors, they are deprived of some of the most basic freedoms. They cannot work freely since their job is considered illegal and they have constant fear of eviction from the police. They also fear harassment from the owners of formal businesses, from other street vendors competing for

²⁹ De Soto, *The Other Path: The Invisible Revolution in the Third World*, (1989) p. 66.

³⁰ Legal empowerment is defined as, "the use of law to increase disadvantaged populations' control over their lives through a combination of education and action." S. Golub and K. MacQuay, *Legal Empowerment: Advancing Good Governance and Poverty Reduction. Overview Report*. (2001), p. 7.

³¹ Amartya Sen, *Development as freedom*, (1999), p.16.

space, and overall some have lost their self-respect and confidence, feeling that what they do for living is a criminal activity. They lack of intrinsic empowerment, they lack of basic freedoms, 'feeling self-confident, walking with dignity, feeling respected, living without fear'.³² This is what Martha Nussbaum calls, one of the negative freedoms that are basic for people to escape poverty and consist on the possibility to live without fear.³³

Both the theory of De Soto about the economic empowerment that comes after formalization and the more broad perspective of Amartya Sen are used in this article to understand the effects of formalization for street vendors in Bogotá. The aim is to underrate whether formalization is a tool for economic improvements or only for improvements in the person's self-respect and confidence.

Formalization of Street Vendors in Bogotá: A Case Study

The case of formalization of vendors in the city of Bogotá³⁴ used the 'zoning model' in which street vending is allowed under the condition that vendors are located in certain geographical zones. Although the zoning model has been criticized in previous research³⁵ for trying to move street vendors out of the city centre, the vending zones in Bogotá differ to traditional zoning models. In contrast to zones that are used to move street vendors out of commercial locations, the vending zones in Bogotá were located in the same places where vendors are used to conduct their businesses. Vendors were not displaced or removed from the city but instead they were organized in tents in busy locations. In this section, I will explain the background of the formalization process in Bogotá and the methodology used for the data collection.

The aim of the 'transitional zones' was to improve the use of public space for vendors, pedestrians and drivers. Apart from the right to sell, vendors were given a tent of about four square meters where they could store and display

³² Deepa Narayan, *Measuring empowerment : cross-disciplinary perspectives* (2005), p 16.

³³ Martha Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice', in: 9 *Feminist Economics* (2003).

³⁴ Bogotá has followed traditional models of urban planning in Latin America, based on formalization policies mostly licensing and relocation in malls, specially built for the purpose of moving the vendors out of the public space. However the case of Bogotá has some special characteristic that makes it different from other cities, particularly the alternative policies initiated by the government in 2005 aiming to support informal vendors instead of the traditional approach of prohibition and evictions.

³⁵ Vending zones are considered the cause of urban disintegration in places where zones were used to move the vendors out of the city centre. See: Yandi Andri Yatmo, 'Street Vendors as 'Out of Place' Urban Elements', in: 13 *Journal of Urban Design* (2008); Lyn H. Lofland, *A World of Strangers: Order and Action in Urban Public Space* (1973).

their products. The process to formalize their businesses in the transitional zones was simple and affordable for street vendors; it did not include much paperwork neither the payment of taxes, nor additional fees from the city. In this regard the transitional zones in Bogotá differ from other formalization processes that are made to collect taxes from vendors. The most important thing for the government was that vendors could increase their revenues and improve their businesses, because the government expected the vendors to be able to move to commercial retail places in the future. Then, they could collect taxes but not now when the businesses were so small.

However vendors have to pay a fee to their associations and the service of electricity. The reason for that is that vendors had to be part of an association because it was required to be organized in order to participate in the zone.³⁶ In addition, they have to pay the electricity bill to the energy company and in some cases a security guard in the evenings. Vendors in the transitional zone have the possibility to store their goods overnight, contrary to vendors outside formalization who have to carry their goods to a storage place every day. In contrast with the 'non-formalized' vendors, the group in the 'transitional zone' enjoyed the possibility to have a permanent structure to work. The city gave vendors a basic tent and vendors have the possibility to renovate and improve this infrastructure. In most places, vendors used the tents given by the government and added some additional furniture like chairs and tables for their customers.

The legal framework of the transitional zones

In Colombia the regulation of public space is assigned to the municipalities and each city has its own legislation.³⁷ Municipalities have two types of regulations: Agreements and Decrees. Agreements are made by the city council and work like laws but at the local level. Instead, Decrees are made by the city mayor to transform those Agreements into specific and detailed regulations. Therefore Decrees must be in accordance to national Laws and to the municipal Agreements.

³⁶ The process to request a vending zone is not long and the only cost is the amount that the organizations of vendors have to pay to obtain a proper registration in the Chamber of Commerce. This registration cost about five US dollars, for 2013. See http://camara.ccb.org.co/documentos/11594_tarifasregistros2013f.pdf (Accessed on March 11, 2013). Apart from this the vendors must pay the association fee that varies from two to twenty five US dollars a month and it is decided by the vendors themselves.

³⁷ Law number 9 from 1989 in Article 7 says: "The municipalities (...) may create according to their legal organization, entities that will be responsible to manage, develop, maintain and support financially the public space."

In Bogotá, the city law (Agreement 079 of 2003) establishes the need to have a special permit to conduct street vending.³⁸ This permission can be an individual license but it can also be the establishment of a vending zone, as in the case of the 'transitional zones'. These zones were specifically created by the Decree 419 signed by the mayor of Bogotá in 2006 as part of a general plan to regulate the use of public space. This Decree defines the 'transitional zones' as places where vending is allowed under the condition that vendors that are part of an association.³⁹ It was an interesting regulation because it was not based on individual licenses but instead on a permit given to a group of vendors. The specific permit for each zone is decided by the local mayors of the 20 districts of Bogotá by a resolution signed by each mayor and the leader of the vendors' association. This resolution operates like a contract that contains the specific rules in the transitional zones including the rights and duties of each party, the time frame for the zone, and the specific location. In contrast to vendors in the transitional zones, the police could evict the vendors that are in the streets at any time. This eviction is legally based in a municipal code that allows the police to confiscate the goods and tools used by street vendors forcing them to move out of the public space.⁴⁰ This is the regulation used by the police to harass and evict vendors outside the transitional zones.

However the regulation of street vending is a field of constant disagreement. With Decision T-772 from 2003, the Constitutional Court of Colombia established that prior to evictions the government must provide alternative sources of work for street vendors. The Court argued that the National Constitution of Colombia of 1991 protects the right to work and to a livelihood and therefore street vendors cannot be evicted if there are not jobs in the market or alternatives to generate a decent income. This decision is used by the organizations of vendors to defend their rights but the government sometimes argues against that saying that they have the duty to protect the public space.

³⁸ Article 80 of the city law: Agreement 079 of 2003, determines that there must be permission from the competent authority for the existence of occupation of public space in due form by peddling or stationary vending.

³⁹ Initially the government created the zones as a transitional space for vendors to improve their businesses and then move to the formal economy. But soon after the first zones completed the two years of permission, the government realized that moving into retail markets was not possible for most of the vendors. According to the leader of the association of Bosa, it is not possible to create a formal business in two years since the conditions for a business to succeed in the formal economy are more difficult than in the street. Personal interview, August 9, 2012.

⁴⁰ Article 68 of the Agreement 79 of 2003 of Bogotá says: "Corresponds to the police authorities to protect the integrity of public space and its assignment to common use."

In summary, the regulation of street vending is decentralized to the local government but it is still influenced by the Constitutional Court. Although the law and the decisions of the Court influence the application of law at the local level, the focus of this research was not on the formal laws regulating the transitional zones but instead on the way in which they work. For that reason, I visited the transitional zones and asked the vendors to explain the laws to me in relation to their own unique experiences. The legal context was important to understand the law in books but the main aim was to look at the law in action.

Methodological Considerations

I collected qualitative and quantitative data,⁴¹ in order to understand whether street vendors perceived formalization as a tool of empowerment or not. The quantitative part consists of 169 interviews conducted in July and August of 2012 in the city of Bogotá. The questionnaire used for the interviews consisted of 30 questions about vendors' socio-economic status, working conditions, perceptions about their situation after the formalization of their businesses, and other aspects of empowerment such as trust, collective action and rights awareness. Interviewees were not asked directly about the meaning of empowerment since the word is not familiar and can be difficult to understand. Instead I used questions about life improvements and the possibility to have control over their lives. For this paper I have used some of the questions that were relevant for the evaluation of empowerment after formalization.

Interviews included both closed-ended questions and open questions to allow interviewees to express their opinions and beliefs in their own terms. Since it was not possible to obtain a list with all the 455 participants of the formalization programme, I used a systematic sample in which half of the total vendors (228) were asked to answer the survey. The respondents were selected from the ten districts where the formalization programme is currently operating in order to ensure a complete geographic representation of the sample. In addition, respondents were guaranteed confidentiality to avoid bias in their responses.⁴² Since the vendors were located in rows one after the other, I asked every second vendor to obtain a random sample. From this sample,

⁴¹ The quantitative data explains the improvements in the lives of the vendors interviewed while open interviews with the leaders of the organizations of vendors as well as with government officials were necessary to provide a better understanding of the contextual situation in which formalization was used. This design was essential to accomplish what Creswell denominates as the increase scope and comprehensiveness of the study. John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (2003).

⁴² The author made all of the translations from Spanish to English.

169 vendors agreed to respond the survey while 59 refused, thus the response rate is 74 per cent, including 93 women and 76 men.

In order to obtain internal validity from the quantitative data, I used a random and representative sample. However it was not possible to have a control group due to difficulties obtaining a representative sample of non-formalized street vendors. This is a limitation of this research. However, I complement the quantitative interviews with qualitative questions that could give us a better picture of the phenomenon studied. From the qualitative questions I use direct quotes from vendors to reduce the possibility of contextual bias.⁴³ Furthermore, measuring empowerment presents a challenge in terms of reliability since it is not possible to ask participants about empowerment as such and therefore it is necessary to have alternative measurements and indicators. To overcome the lack of familiarity of street vendors with the term empowerment, I used measurements of life improvements like improving working conditions and increased income as well as general questions about freedom and well-being, which are commonly used in other empowerment studies.⁴⁴

The Consequences of Formalization: Results

This section contains the main results of the interviews conducted among formalized street vendors in Bogotá. It includes the general socio-economic characteristics of the population interviewed, their answers to the questions of life improvements after formalization, access to credit, investments, and income improvements. From the total of 169 interviews, 76 were male and 93 female. Most of the vendors had five or less years of education, which restricted them to find jobs because most of the formal employment in big cities like Bogotá requires certain level of education. The age of the vendors varied from 33 to 69 years. Street vending also includes people under the age

⁴³ Providing the exact quotes from qualitative interviews helps to ensure internal validity giving readers the possibility to make their own interpretations of the data.

⁴⁴ See: Ruth Alsop and Nina Heinsohn, 'Measuring Empowerment in Practice', in: 3510 *World Bank Policy Research Working Paper* (2005); Solaya Ibrahim and Sabina Alkire, 'Agency & Empowerment: A proposal for internationally comparable indicators', in: *OPHI Working Papers Series* (2007); Khair, 'Evaluating Legal Empowerment: Problems of Analysis and Measurement'; Alexy Buck and Liz Curran, 'Delivery of Advice to Marginalized and Vulnerable Groups: the Need for Innovative Approaches', in: 3 *Public Space: The Journal of Law and Social Justice* (2009); and Matthew Longshore Smith and Carolina Seward, *Causal theories and citizenship: Bridging the theory-data gap in Sen's capability approach* (2005). For measurements of legal empowerment see: Adam L. Masser, 'Measurement Methodologies for Legal Empowerment of the Poor', in: *UNDP Oslo Governance Center* (2009).

of 33 and in some cases under the minimal working age of 18 but in the formalization programme most of the vendors are above 33 years old. The respondents have worked as street vendors from four to 35 years and the average has worked in this occupation for about 15 years. Inside the formalization programme, the average vendor has been formalized for five years. This indicates that formalization usually attracts experienced vendors who have better access to information about government programmes and about their rights. New vendors have more difficulties to formalize.

Life improvements as an outcome of empowerment

The interviews included a question about life improvements that were aimed to uncover the reasons behind those improvements in order to test the hypothesis about the empowering role of formalization. The question asked was: "In your opinion, has your life improved, remained the same, or worsened as a result of entering the vending zones?" The majority of vendors stated that their life has improved. This is an important result because it shows a positive perception about formalization among most of the vendors. The very small number of vendors that considered their lives worse said the reason for that was a decrease in the amount of goods sold. Some of these vendors were thinking about moving out of the vending zone and going back to the streets while others said that even with lower income it was worth to be formalized because they could have more peace at work.

While visiting one of the vending zones in the district of Suba, I was able to interview two vendors who decided to go back to the streets. They were selling candies and cigarettes at the bottom of a pedestrian bridge and told me that being in the zone was not beneficial at all for them. One of them said:

"We had a lot of problems in our vending zone, first because we did not want to pay the association fee and also because we think we are better alone ... You can see I sell here my products and I don't care about what the others sell I don't understand the point of having an association of vendors."⁴⁵

But other vendors outside the transitional zones were positive about formalization. In a visit to the district of Kennedy, I observed a number of vendors outside the transitional zones and I interviewed some of them about their working conditions and the reasons why they were not formalized. One

⁴⁵ Vendor located outside the transitional zone in the district of Suba. Personal Interview. August 1, 2012.

of the vendors said: ‘I am waiting in line to enter the vending zone, I am a member of the association of vendors in this zone, I have my ID card and I am active in all the meetings. As soon as a place becomes available they assign it to the next person in line’.⁴⁶ For this vendor being part of an association was already a way to secure his work, he said the police will come sometimes and tell him to move from one place to another but he has never been evicted. He said people in the transitional zone let him to sell his product, a traditional drink called ‘forcha’, since he was the only one selling this product in the area. He added, “I am a good person, I always asked the owner of the tent for permission to stand next to them and I give them a glass of my drink everyday as a way to show my gratitude.” He even offered me a glass of his product free of charge.

To understand the reasons given by street vendors to explain why they have improved their lives, I asked them in an open question to state the main benefits of formalization. Table 1 illustrates the results.

Table 1: Relations between live improvements and formalization

Benefits of entering the transitional zone (multiple answers were possible)	Frequency	Percentage
Now the police does not harass me	72	43
I am protected from rain and sun under the tent	71	42
I can working in peace	19	11
I can display my products better	16	9
Other	41	24

The question asked was: “What is the main benefit of entering the transitional zone?” This question measured the level of empowerment that comes from formalization because it shows the possibilities that people value as important in their lives. I was able to identify two main reasons of improvements: freedom from police harassment and protection from the weather.

⁴⁶ Vendor located outside the transitional zone in the district of Kennedy. Personal Interview. August 8, 2012.

Additionally, I asked vendors if they have experienced police harassment in which the police confiscated their goods to understand the impact of formalization in terms of reducing police control. Evictions can be less severe and police may only require vendors to move out of the streets but I asked about confiscation because of the economic impact it can have on their lives. Table 2 illustrates the results.

Table 2: Eviction with the confiscation of their goods before and after formalization

Have the police confiscated your goods before or after formalization?	Frequency	Percentage
Confiscation after formalization	0	0
Confiscation before formalization	94	56
Never experienced confiscation	75	44
Total	169	100

Although it was predictable that street vendors were not going to experience evictions or the confiscation of their goods after the formalization of their business, we asked this question to see if the law was followed and respected at the local level. The fact that no one has experienced eviction or the confiscation of their goods shows that the law was respected by the police. When it comes to confiscation before formalization, the results show that most of the vendors experienced confiscation of their goods. This result demonstrates that police harassment is a strong threat in the lives of street vendors and helps to explain why they considered protection from police harassment as one of the most important outcomes of formalization.

Formalization and Economic Freedom

Both the lack of police harassment and protection from the weather are important consequences of formalization. However, since the idea was to test the legal empowerment theory from an economic perspective, it was surprising that vendors did not mention access to credit as one of the reasons of their improvement. For that reason, I asked the leaders of the associations in subsequent interviews about the possibilities to obtain formal credit.

The leaders of the vendors explained that formalization was not enough to help street vendors access formal credit in the banks. One of the leaders explained how after formalization they got help from the government to open bank accounts with the hope to obtain small loans. However after visiting the banks and asking them for loans, the formalized vendors realized that getting a loan was not as easy as they thought. Most street vendors could not get loans because they did not own a home that they could use as collateral to secure the credit.

Additionally the banks refused to give credits to them for different reasons, including the record of previous unpaid bills. This was in the opinion of some leaders one of the main problems with the promises given by the government about the benefits of formalization. According to the leader of the association of street vendors in the district of Bosa, the government failed to fulfil all the promises of the 'vending zones' because the reality of the vendors is different to the one the government has in mind. He said,

"They trained us on how to open a bank account and how to get credits there, but this process did not work because the vendors can't show that they have the capacity to pay, we do not have a permanent income. Additionally, many vendors are reported in the Cifin (the bank information system of risk) for not paying things like a cell phone bill." ⁴⁷

They could not use their small street vending businesses as collaterals in the way indicated by De Soto because the capital of their business was too small. Additionally, it is very difficult to get a guarantor that can support your loan because the banks usually need someone with formal employment or with real estate property even for very small loans. A woman in the district of Puente Aranda said,

"We started to save money when we joined the transitional zone because the government told us we were going to get credits in a bank... But at the end this was not possible, no matter how good is your business you need to have a guarantor and no one in this country want to be a guarantor. We all know that people are afraid to back you up in a formal credit." ⁴⁸

⁴⁷ Leader of the association of vendors 'Asominoristas'. Personal Interview. August 9, 2012.

⁴⁸ Street vendor in Puente Aranda. Personal Interview. August 15, 2012.

The second explanation why formalization could be good for economic freedom is that it creates an incentive for people to invest more in their businesses and that their products are protected from bad weather conditions. In fact 71 of the interviewees considered this as one of the major improvements. One of the vendors said, "The best thing about this programme is that now we are protected from the rain and the sun, and our products are protected too".⁴⁹ Other vendors confirmed this and said, "We can display more products and we can buy better things".⁵⁰

The possibility to have a legal status and a tent or kiosk empowered many vendors in expanding their businesses. This was particularly true for people preparing food, who could also have some chairs outside their businesses, or for people selling clothes, who could have a place for their customers to try on the clothes. Some handcrafters also saw an advantage in the tents because they could make their arts and sell them at the same time. Before formalization they had to walk from one place to another to sell their products and use the evenings to create them. Vendors were able to invest more in their businesses and also their products were protected from bad weather conditions.

Moreover they also improved their social status, which helped them to improve their relation with their buyers. One vendor said, "Now the costumers respect us and they appreciate our work and our products more."⁵¹ This improvement in their social status is good for economic freedom because it allows them to have a better self-esteem and to feel that they are not lawbreakers.

The third element of economic freedom is the possibility to increase one's income to be able to escape poverty. Vendors were asked to state their current income and to say if they considered that their income has improved after formalization.

The results show that about one quarter of the vendors earns less than a minimal wage, which in 2012 was the equivalent to 320 USD per month. Half of the vendors earn as much a minimal wage and one quarter earns more (Table 6). From the observations and informal conversations with the vendors one can tell that there are different reasons why some earn very little while others earn more. Some people have very basic businesses and their profit is very low, for instance people selling cigarettes. Some locations are better than others, some people are more enthusiastic, or have a wide variety of products and

⁴⁹ Male street vendors from the district of Barrios Unidos. Personal interview. August 14, 2012.

⁵⁰ Female street vendor from the district of Engativa. Personal interview. August 14, 2012.

⁵¹ Male street vendor from the district of Chapinero. Personal interview. August 15, 2012.

Table 3: Income

How much is your monthly income?	Frequency	Percentage
Less than a minimal wage	44	26
About a minimal wage	86	51
Between one and two minimal wages	39	23
Total	169	100

Table 4: Income change after formalization

	Frequency	Percentage
Has improved	78	46
Remained the same	55	33
Got worse	36	21
Total	169	100

therefore they sell more. Vendors were also asked, "Has your income increased, remained the same or decreased after entering the transitional zone?"

It is not possible to know if the increase in the vendors' income was due to their new legal status or for instance a general improvement in the national economy. However for the purpose of understanding the formalization theory, the improvement in half of the vendors' income is already an important outcome.

Legal Empowerment of Street Vendors: Analysis

The results of this study indicate that formalization can be a tool of economic empowerment, not because of access to credit and capital as stated in De Soto's theory but because when vendors are secure from police evictions and protected from bad weather conditions. They improved their freedom and they were able to guard their products. Having this freedom is essential for street vendors to invest more in their businesses, to improve the relations with their costumers, to increase their income, and principally to improve their lives.

Most of the studies⁵² that criticized De Soto are right about the fact that formalization can hardly generate access to capital and credit for the poor. Unfortunately, there is not a snowball effect that comes after formalization to improve the economic gains of the poor. They are still selling basic goods at low prices and they depend on long hours of work in order to make a living. Sometimes their income even decreases after formalization because they cannot provide goods at the busiest corners in the city. Street vendors are not entirely entrepreneurs, most of them do not innovate or bring new products, they take upon the most common products and that is why you find 15 vendors selling the same food items on the same street.

However, those studies failed to discover the important role that formalization has for the poor and failed to recognize that De Soto was right about the decreased value of the assets of the poor. By knowing that their businesses are legal, street vendors have an incentive to invest more and their goods are not lost due to confiscation. All vendors in this study were protected from the confiscation of their goods and this is an economic gain. This study shows that legal rights for street vendors can prevent the worsening of their economic conditions and allow them to focus on their businesses.

Additionally, in places like Bogotá where there is rain many days a year the possibility of street vendors to have a tent empowered them to improve their working conditions but also to increase their economic gains. In a place like Bogotá the daily harassment comes more from the rain than from the police. Vendors outside the transitional zone have to cover their products with plastics

⁵² Woodruff, 'Review of de Soto's *The Mystery of Capital*'; Shackelford, 'The Promise and Peril of Property Rights Formalization' (2001); and Rossini and Thomas, 'The size of the informal sector in Peru: A critical comment on Hernando de Soto's *El Otro Sendero*' (1990); Erica Field, *Do Property Titles Increase Credit Access Among the Urban Poor? Evidence from a Nationwide Titling Program* (2008); and Julio Calderón, 'The Formalization of property in Peru 2001-2002: the case of Lima', in: 28 *Habitat International* (2004).

when the rains come or move to a covered place. In that process they lose time but also some of their merchandise can be damaged losing some or all the value. The tents empowered the vendors economically and prevented the loss of value of the goods that can be damaged by the rain.

But the reasons why in this case formalization was able to empower street vendors are specific to the case. Formalization worked in Bogotá because the legal norms, such as the decree that authorized the transitional zones, were followed by the government and by the police, overcoming the problem of enforcement, typical in many developing countries like Colombia. Lack of enforcement is one of the main obstacles of legal empowerment reforms⁵³ and therefore the fact that formalization was respected by the police, was essential in this case.

Additionally, this case was successful because the zones were located in public spaces that were good for vending; and it was free of cost (except for the vendors' association fee). In contrast to other formalization programmes that are seen as a way to reduce the number of vendors or that impose high costs,⁵⁴ the vending zones in Bogotá aimed to empower the vendors to improve their lives.

Likewise, international organizations advocating for the rule of law and legal empowerment of the poor should consider the actual needs of the poor before promoting any legal reform. Suppose that an international organization comes to Bogotá to evaluate this programme of formalization of street vendors and they find that after more than two years, vendors were not able to access credit, neither to move into the formal economy, then formalization would be considered as a failure. However, using the perceptions of street vendors and the empowerment approach, this research was able to understand formalization as being more than access to credit and capital; it is a tool to improve the autonomy, self-esteem, and empowerment of the poor. Changing the legal status of informal vendors is essential for their empowerment proving that the relationship between law and development includes more than economics.

The possibilities to draw generalizations from this study are limited since empowerment measurements are subjective and context specific. Saying that applying the same type of formalization reform in another country would lead to similar outcomes would be irresponsible since the economic conditions of

⁵³ Stephen Golub, 'Less Law and Reform, More Politics and Enforcement: A Civil Society Approach to Integrating Rights and Development', in *Human Rights and Development: Toward Mutual Reinforcement*, (2005).

⁵⁴ See: Faundez, 'Empowering Workers in the Informal Economy' (2009); or Shackelford, 'The Promise and Peril of Property Rights Formalization' (2009).

the country, and the respect that government officials have for the law plays a major role. However I found a strong relation between legal status of street vendors and their empowerment in other cases in India⁵⁵ and South Africa⁵⁶ and therefore it is possible to draw conclusions to the field of legal regulation of street vendors. For instance, the regularization of street vending in Bhubaneswar, India, is similar to the vending zones in Bogotá. In Bhubaneswar the local government also used a vending zone model and gave the vendors small kiosks to develop their businesses. It is a successful case of formalization in which street vendors have seen important life improvements. In a survey study developed by Sharit Bhowmik and Debdulal Saha in Bhubaneswar⁵⁷, vendors reported that:

"Their most important issue for such zones was that they allowed them to function without fear. Earlier these vendors were in frequent conflicts with the municipal authorities and the police. They had to scatter whenever they saw impending police or municipal raids. This led to a great deal of tension among vendors as they had to keep a constant watch out for these raids."

Further research should compare successful models of formalization to uncover similar patterns of institutional and legal design that can explain why in some cases formalization can empower the poor. In summary, formalization can be a tool of economic empowerment because it can prevent the economic losses of evictions and allows the vendors to focus in their work. People's right to work and to earn a livelihood is a fundamental right that allows street vendors to gain empowerment in terms of increase freedom.

Conclusions

The promotion of the rule of law and legal empowerment of the poor is a venture that requires a bottom-up approach. The case of street vendors in the transitional zones of vending in Bogotá illustrates that contrary to the theory defended by De Soto and supported by international organizations, formalized street vendors in Bogotá were not able to access credit that could help them to invest more in their businesses. The results support the findings of previous

⁵⁵ Sharit Bhowmik and Debdulal Saha, *Study of Street Vendors in Ten Cities in India* (2012).

⁵⁶ In Durban, the Warwick Junction Project provided street vendors with shelter and basic amenities as well as the right to sell in the most important intersection of public transportation of the city. This project is another example of the potential that legal recognition have for the improvement of the life of street vendors. See: Richard Dobson, Caroline Skinner and Jillian Nicholson, *Working in Warwick: Including Street Traders in Urban Plans* (2009).

⁵⁷ Bhowmik and Saha, *Study of Street Vendors in Ten Cities in India* (2012).

research criticizing the formalization theory.⁵⁸ However, the findings of this research also indicate that street vendors were able to use their legal status to improve their lives and working conditions, increasing their pride and self-esteem, which are consequences of formalization less explored in the literature.

While many street vendors are trapped in poverty, formalized vendors were able to improve their lives; they gained confidence, self-respect and autonomy. The law was a tool to empower them recognizing their work and providing them with security at work. Criminalizing the livelihoods of street vendors can have terrible consequences in their livelihoods and therefore this research suggests that in order to empower street vendors stopping evictions and confiscations is an essential step.

Globally, street vendors experience constant dis-empowerment due to laws that see them as invaders of public spaces, unfair competitors, and in extreme cases laws that see them as criminals. These laws play a central role in the lives of millions of families that earn their livelihoods from selling goods or services on the streets. Having a legal framework that aims to empower and protect the work of the poor, should be a main goal in rule of law projects around the world.

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⁵⁸ See: Christopher Woodruff, 'Review of de Soto's The Mystery of Capital', in: 39 *Journal of Economic Literature* (2001); Scott J. Shackelford, 'The Promise and Peril of Property Rights Formalization', in: Available at SSRN: <http://ssrn.com/abstract=1395958> or <http://dx.doi.org/10.2139/ssrn.1395958> (2009); and R. G. Rossini and J. J. Thomas, 'The size of the informal sector in Peru: A critical comment on Hernando de Soto's El Otro Sendero', in: 18 *World Development* (1990).

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