



## Using the Right to Information in the Informal Economy: A How-To Guide

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The right to information is broadly recognized in international law and in most countries' national laws. A meaningful right to information is an important first step for citizens' full enjoyment of many other rights.

In the informal economy, the right to information is often not fully realized or respected. For example, workers may have trouble finding all of the laws that govern their activities. Even existing information may not be easily accessible to workers. It might be published in a language that is not widely used by informal workers, for example, or it might be overly legalistic. Or workers might have to piece together the big picture from many different laws. And it is difficult for informal workers to get official data on how the laws are enforced in practice. Arguments based on the right to information (summarized in table 1, below) may play a useful role in addressing these challenges.

This brief aims to provide informal workers and their allies with background information on the right to information. Because specific right-to-information provisions differ from country to country, it is best used in consultation with in-country lawyers or paralegals. However, even when additional legal support is not available, citizens have the right to demand information on their own.



Meaningful access to information for informal workers is an important tool in ensuring that they can fully realize other rights. This *Kayeyi* (headloader) worker group from Ghana organized around Health issues to obtain better access to Health Services.

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The ability of workers to ensure their workplace rights is strongly related to their access to laws, access to meaningful legal information and access to official documentation of government activities.

## Introduction

Informal workers in many countries face challenges related to access to information.<sup>2</sup> Incomplete access to information undermines workers' ability to ensure their workplace rights are fully enforced in at least three ways:

- 1. Access to laws:** It may be difficult for workers to find the full set of laws and regulations that govern their activities.
- 2. Access to meaningful legal information:** Published laws may not be sufficient to make workers aware of how their rights and duties function in practice. For example, published documents may be overly legalistic or not in workers' languages. Or the activity in question may be governed by overlapping regulatory frameworks that are incomplete or even in conflict with each other.
- 3. Access to official documentation of government activities:** Information about officials' actual practices may not be well-documented or available to the public. For example, street vendors may have difficulty

**TABLE 1: Overview of Access to Information Challenges in the Informal Economy**

Challenge	Description	How Can the Right to Information Help?
<b>Access to laws</b>	Difficulty identifying or getting copies of all laws relevant to work in the informal economy	<ul style="list-style-type: none"> <li>International norms describe the right to information as a fundamental human right.</li> <li>Most nations have right to information provisions in legislation and/or the constitution.</li> <li>In some countries, and under internationally-recognized best practices, the right to information also means the government has the duty to publish and disseminate information.</li> </ul>
<b>Availability of accessible and meaningful legal information</b>	Insufficient information available to help workers identify relevant rights and duties – e.g., because it is too legalistic, stems from too many different (and possibly conflicting) legal sources, is in a language not used by many informal workers, etc.	<ul style="list-style-type: none"> <li>Right to information means the right to meaningfully access information – otherwise, it is merely for show.</li> <li>It is good public policy to have well-informed citizens; it increases rule of law and compliance with laws on the books.</li> <li>Rights of linguistic minorities and due process rights also require that legal information be accessible in a meaningful way.</li> </ul>
<b>Access to official information on how laws are enforced in the informal economy</b>	Difficulty accessing government records and statistics on behaviour of officials charged with regulating and overseeing the informal economy	<ul style="list-style-type: none"> <li>Freedom of information (FOI) laws in many countries allow citizens to request government records.</li> <li>When FOI laws do not exist or are insufficient, arguments about the right to information that are based in international law or national right-to-information principles may be useful in campaigning for new or better FOI legislation.</li> <li>Even when FOI processes are not used, discourse on the right to information can help in campaigns for better government statistics-keeping and information dissemination.</li> </ul>

getting information about fines, evictions, or confiscation of goods. In the case of domestic workers, data on employer behaviour, workplace conditions, and government monitoring of the workplace also may not be collected or published.

<sup>2</sup>See, e.g., International Labour Organization [hereinafter ILO], *The Informal Economy: Enabling Transition to Formalization 3* (2007). See also Global Rights International Report, *Domestic Workers in the United States: A Report Prepared for the U.N. Human Rights Committee in Response to the Second and Third Periodic Report of the United States 2*, available at [http://www.globalrights.org/site/DocServer/Domestic\\_Workers\\_report\\_FINAL.pdf?docID=5503](http://www.globalrights.org/site/DocServer/Domestic_Workers_report_FINAL.pdf?docID=5503) ("The private nature of domestic work means that there is a greater need for ... access to information."); Press Release, ILO, *ILO Seminar Reaching Out to Thailand's Home-Based Workers* (April 23, 2001), available at [http://www.ilo.org/asia/info/public/pr/WCMS\\_BK\\_PR\\_25\\_EN/lang-en/index.htm](http://www.ilo.org/asia/info/public/pr/WCMS_BK_PR_25_EN/lang-en/index.htm) ("Other key issues [for home-based workers] include[e] ... providing easier access to information.")<sup>2</sup> See, e.g., <http://right2info.org/>, *Access to Information Laws*, available at <http://right2info.org/access-to-information-laws> (last accessed Sept. 16, 2012).

The right to information is a well-established norm under almost all domestic legal regimes.<sup>3</sup> It is also an important principle in international law.<sup>4</sup> A fully developed right-to-information regime should also include freedom of information (FOI) legislation that translates the general right into a clear process for accessing information.<sup>5</sup> While many countries still lack such legislation, a growing number – including countries with large numbers of informal workers, such as India and South Africa – have enacted comprehensive FOI laws in recent years.<sup>6</sup>

This brief first provides a short synopsis of the right to information in domestic and international law. It then examines how informal workers might use both the general right to information and national freedom of information laws to improve access to information on informal work and the law. Complete access to information on workers' rights and duties is essential for the full enjoyment of many other rights.

## Right to Information in International & Domestic Law

### General International Trends

The right to information has a long history in international law. During the UN General Assembly's first general session in 1946, the international community recognized that "[f]reedom of information is a fundamental human right."<sup>7</sup> Article 19 of the Universal Declaration of Human Rights, adopted in 1948, further reads:

***Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.***<sup>8</sup>

While the international community has a long-standing tradition of recognizing the right to information, norms related to access to information gained new salience in the 1990s. During that decade, there was a proliferation of national access to information laws. Additionally, the UN Commission on Human Rights established the office of the UN Special Rapporteur on Freedom of Expression and Opinion in 1993.<sup>9</sup>

In the past two decades, attention has shifted from the right to information as a *generalized* right to the best practices by which such a right can be made *meaningful*. And in many countries, there has been a parallel shift from generalized constitutional principles toward more specific FOI laws.

Specific features of an FOI regime vary by country. A cross-country survey by Toby Mendel, a leading right-to-information activist and scholar, identified nine best practices on freedom of information in domestic law:

1. maximum disclosure should guide FOI legislation;
2. public bodies should have an obligation to publish information;

<sup>3</sup> See, e.g., [Right2Info.org](http://right2info.org), Access to Information Laws, available at <http://right2info.org/access-to-information-laws> (last accessed Sept. 16, 2012).

<sup>4</sup> See generally U.N. Office of the High Commissioner for Human Rights [hereinafter UNHCR], Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, available at <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx> (last accessed March 21, 2012). The right to information has also been recognized as a fundamental right which states must respect by the Inter-American Court of Human Rights. Corte IDH, La Colegiación Obligatoria de Periodistas, Opinión Consultiva OC-5/85 Serie A, No 5, del 13 de noviembre de 1985 para. 70 [Inter-American Court of Human Rights, The Compulsory Licensing of Journalists, Consultative Opinion OC-5/85 Series A, No. 5, Nov. 13, 1985, para. 70] (cited in Article 19, Access to Information: An Instrumental Right for Empowerment 3 (2007), available at <http://www.article19.org/pdfs/publications/ati-empowerment-right.pdf>).

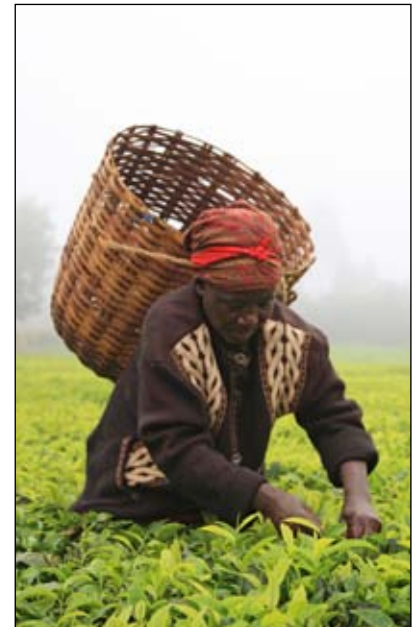
<sup>5</sup> UNESCO, Toby Mendel, Freedom of Information: A Comparative Legal Survey (2008).

<sup>6</sup> Right to Information Act, No. 22 of 2005 (India); Promotion of Information Act 2 of 2000 (S. Afr.).

<sup>7</sup> Calling of an International Conference on Freedom of Information, G.A. Res. 59(1), U.N. GAOR, 1st Sess., U.N. Doc. A/RES/59(I) (Dec. 14, 1946), available at <http://www.unhcr.org/refworld/docid/3b00f0975f.html>.

<sup>8</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/810 at 71 (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr/index.shtml#atop>.

<sup>9</sup> UNHCR, *supra* note 3.



**A fully developed right-to-information regime should also include freedom of information (FOI) legislation that translates the general right into a clear process for accessing information.**



**Around the world, however, the complex sets of exceptions and administrative procedures involved in most FOI legislation mean that, even under best circumstances and with a presumption toward disclosure, many private citizens still struggle to get the information to which they are legally entitled.**

3. the promotion of open government should underpin the FOI regime;
4. the scope of exceptions should be limited;
5. there should be processes in place to facilitate access to information;
6. costs should not be excessive;
7. meetings of public bodies should be open to the public;
8. there should be a presumption in favour of disclosure so that the burden of proof falls on an agency trying to withhold information, not on someone requesting information; and
9. there should be good protections in place for whistle-blowers.<sup>10</sup>

These principles are designed to ensure that the public interest justifications of FOI laws are well-served. Under a good FOI law, individuals can access appropriate information with a relatively low personal burden.

These are best practices, but many national laws fail to meet all of these principles. Thus, one advocacy strategy may be to use growing international recognition of these best practices to argue for domestic laws that better meet the goals of transparency and open access.

## **Access-to-Information Laws By Country**

National FOI laws are typically the most specific and well-developed mechanisms for accessing information in a given jurisdiction.

International customary law and the best practices described in the section above may be useful for arguing for stronger FOI mechanisms. These international norms may therefore be useful in reform campaigns. However, on a day-to-day basis, the complicated bureaucratic procedures that are often associated with obtaining information mean that national laws play an important role in determining the accessibility of information in practice.<sup>11</sup>

As of January 2012, there were at least 90 countries with national FOI legislation. About 60 countries have a constitutional provision recognizing the right to information.<sup>12</sup> Many countries fall in both categories.

The United States' 1966 Freedom of Information Act (FOIA) was one of the earliest comprehensive national FOI laws. More recently, comprehensive national laws have come into effect in many large, developing democracies, including India, Kenya, and South Africa, as well as in many smaller states.<sup>13</sup>

In at least five countries, the right to information extends not only to the government's documents but also to privately-held information that is necessary to the realization of a public right,<sup>14</sup> which may prove increasingly important as, in many jurisdictions, a growing number of government responsibilities, including law enforcement activities, are subcontracted to private companies.

Around the world, however, the complex sets of exceptions and administrative procedures involved in most FOI legislation mean that, even under best circumstances and with a presumption toward disclosure, many private citizens still struggle to get the information to which they are legally entitled.<sup>15</sup>

<sup>10</sup> Mendel, *supra* note 4, at 31-42.

<sup>11</sup> In some countries, particularly larger countries with federal systems like India and the USA, state-level or other sub-national FOI laws may also be useful for accessing information held by local authorities.

<sup>12</sup> Mendel, *supra* note 4.

<sup>13</sup> *Id.* at 20-22.

<sup>14</sup> <http://www.right2info.org/>, *supra* note 2.

<sup>15</sup> FOI commonly include exceptions for broad categories of information, such as information that threatens national security or undermines the right to personal privacy. The specific exceptions, as well as whether there is a presumption for or against disclosure, vary by country, and country-specific information can be found at <http://right2info.org/laws>.

A partial list of notable right-to-information laws, focusing primarily on countries with significant populations of informal workers, is available in table 2, below. A complete list of national provisions by country is available at <http://right2info.org/laws>, and a list of constitutional provisions by country is available at <http://right2info.org/constitutional-protections-of-the-right-to>.

**Table 2: Selected List of Right-to-Information Laws by Country**

Country	Key Right to Information Laws
<b>Bangladesh</b>	<p><u>Right to Information Act, 2009</u> (establishes an <u>Information Commission</u> and administrative procedures for requesting information from public bodies; <a href="#">alternate English summary available here</a>)</p> <p>SEE ALSO <u>The World Bank Institute, The Power of Using the Right to Information Act in Bangladesh (2011)</u></p>
<b>Brazil</b>	<p><u>Law on the Right to Information, Federal Law No. 12.527/2011</u> (administrative procedures for access to information)</p> <p><u>Federal Law No. 8.159/1991</u> (Article 22: establishes the right to “full access of public documents”)</p> <p><u>Constitution of Brazil, 1988</u> (Article 5, para. XXXIII: “[E]veryone shall have the right to receive information of his own interest or of public interest from public entities, which shall be given within the time prescribed by law.”)</p>
<b>Colombia</b>	<p><u>Constitution, 1991</u> (Article 74: “Every person has a right to access to public documents except in cases established by law.”)</p> <p><u>Law 57 of 1985, Ordering the Publication of Official Acts and Documents</u> (providing access to some public records; this has been shaped and strengthened by a series of decisions from the Constitutional Court that have given the law more force than what it might appear to have from its text alone)</p> <p>SEE ALSO <u>Proposed Text of the Bill on the Right to Access Information</u>, proposed by right-to-information advocates in 2011 (as of August 2012, adopted by Congress and awaiting approval by the Constitutional Court)</p>
<b>Ghana</b>	<p><u>Constitution, 1992</u> (Article 21(1): “All persons shall have the right to ... (f) information, subject to such qualifications and laws as are necessary to a democratic society.”)</p>
<b>India</b>	<p><u>Right to Information Act, 2005</u> (No. 22 of 2005) (establishes procedures for accessing public information, and was part of a broad right-to-information movement that also resulted in a number of state-level right-to-information laws)</p> <p><u>Jammu &amp; Kashmir Right to Information Act, 2009</u> (No. 8 of 2009) (covers Jammu and Kashmir, which are the only states not covered by the national act)</p> <p>SEE ALSO <u>Right to Information Information Service Portal</u></p>
<b>Indonesia</b>	<p><u>Public Information Disclosure Act, 2008</u> (requires public bodies to regularly publish information and establishes the right to petition for government information)</p>
<b>Mexico</b>	<p><u>Constitution, 1917</u>, amended 2007 (Article 6: creates a right to information; 2007 amendments required all states and the Federal District to update their right-to-information laws and provide online access to laws and government information)</p> <p>SEE ALSO <u>Portal Ciudadano</u>, the national web portal for government information</p>
<b>Nigeria</b>	<p><u>Freedom of Information Act, 2011</u> (administrative procedures for access to information)</p>
<b>Peru</b>	<p><u>Law of Transparency and Access to Public Information</u> (No. 27806), 2002 (administrative procedures for access to information)</p> <p><u>Constitution, 1993</u> (Article 2: “Every person has the right ... (5) to request information, without cause, and to receive it from any public entity within the legal term, at its respective cost. Exception is hereby made of information affecting personal privacy and that expressly excluded by law or for national security reasons.”)</p> <p>SEE ALSO <u>Justicia y Transparencia</u>, a website maintained by civil society organization Suma Ciudadana that compiles Constitutional Court jurisprudence on access to public and private information</p>
<b>South Africa</b>	<p><u>Constitution, 1996</u> (Article 32: establishes the right to information and requires enactment of national legislation)</p> <p><u>Promotion of Access to Information Act, No. 2 of 2000</u> (administrative procedures for access to information)</p>
<b>Thailand</b>	<p><u>Constitution, 2007</u> (Sections 56-62)</p> <p><u>Official Information Act, 1997</u> (administrative procedures for access to information)</p>



**Informal workers in many countries face difficulty accessing the laws and regulations governing their activities, and straightforward information about how these laws meaningfully translate into day-to-day responsibilities and rights. There is also often an absence of information about how these laws are enforced, and whether local officials are acting in accordance with them.**

In addition to basic access-to-information provisions, many FOI laws are passed as part of a broader trend toward transparency and open information. And as technology develops, governments can reasonably be expected to make more information more broadly accessible, often through online tools.<sup>16</sup> For example, in Kenya, the government is also undertaking a new e-Portal to digitize all government information.<sup>17</sup> Mexico offers a Google-like search engine that allows people to look for laws and filter them by level. It includes a translation feature and a “recommended” section to allow people to quickly access the most popular information.<sup>18</sup>

For the time being, the 20 UN-recognized leaders in e-Government are all high-income countries.<sup>19</sup> And across most countries, vulnerable groups’ access is often limited by lower access to technology.<sup>20</sup> But the rise of e-Government may also be used as evidence of the growing international recognition of the need for transparency, information dissemination, and participatory tools to help citizens engage with their government.

## **Using Access-to-Information Laws to Address Challenges Facing Informal Workers**

Insufficient legal information, as well as insufficient access to the information that does exist, characterize the informal economy in many countries. The right to information is widely recognized in international law, both as a right in itself and as a prerequisite for the full exercise of other rights.<sup>21</sup>

Yet informal workers in many countries face at least three sets of obstacles to obtaining the basic information they need to fully enjoy this right:

- difficulty accessing the laws and regulations governing their activities;
- difficulty getting straightforward information about how laws meaningfully translate into day-to-day responsibilities and rights; and
- an absence of information about how laws are enforced (and whether local officials are acting in accordance with the laws).

Arguments based on the right to information may be important in designing, advocacy strategies that address the first two challenges. And existing, freedom of information laws may be useful in workers’ efforts to access specific, information about how officials are behaving in practice. (Major access to information challenges, and arguments and strategies for addressing them, are summarized in Table 3 at the end of this brief.)

### **Laws and Regulations Must Be Published and Widely Circulated**

The most fundamental challenge that informal workers often face is the inability to identify or access the laws and regulations that govern their activities. Laws may not be widely published or circulated. Or it may not be clear which versions are up-to-date or otherwise controlling.

<sup>16</sup> Mendel, *supra* note 4, at 33.

<sup>17</sup> See, e.g., Government of Kenya, eGov, <http://www.e-government.go.ke/> (last accessed March 24, 2012).

<sup>18</sup> Government of Mexico, Portal Ciudadano, <http://www.gob.mx/> (last accessed Sept. 18, 2012).

<sup>19</sup> United Nations, E-Government Survey: E-Government for the People 10-11 (2012).

<sup>20</sup> *Id.* at 87-99.

<sup>21</sup> See, e.g., Article 19, Toby Mendel, *Freedom of Information as an Internationally Protected Human Right*, available at <http://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>.

Membership-based organizations (MBOs) can argue that the right to information, particularly when considered in light of other rights such as due process rights, requires governments to ensure that laws are accessible to the general public. In particular, laws should be made available to the populations whose activities they govern.<sup>22</sup> Many national courts and legislatures have recognized that the right to information is a fundamental human right.<sup>23</sup>

Some national regimes not only allow citizens to access information upon request, but also require that governments actively disclose information essential to ensuring an informed populace.<sup>24</sup> Toby Mendel's comparative legal survey argued that a good FOI law requires that government bodies regularly publish information, and do not simply wait and respond to case-by-case requests.<sup>25</sup> The African Declaration states that "public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest."<sup>26</sup> Advocates may argue that information to be disseminated should include laws and regulations relevant to citizens' regular activities, as well as information on the functions of the government.<sup>27</sup>

The rise of e-Government portals and other information-sharing technologies<sup>28</sup> may also improve the accessibility of laws. MBOs may want to work with both national and local governments to ensure that laws relevant to informal workers are included in such projects. MBOs may want to pay particular attention to the inclusion of relevant local laws, such as municipal ordinances or city council resolutions, which may be less likely to be digitized but often govern many of the day-to-day aspects of street vending. And when informal workers lack regular Internet access, MBOs may also work with governments to ensure that online legal databases are not used to replace other forms of publication that may be more accessible to workers.

**The rise of e-Government portals and other information-sharing technologies may also improve the accessibility of laws if relevant local laws, such as municipal ordinances or city council resolutions, (which may be less likely to be digitized) are included. However, online legal databases should not replace other forms of publication that may be more accessible to workers.**

## **Rights and Duties Must Be Publicized in Ways Appropriate for and Accessible to Informal Workers**

### **1. How Can Access Fail to Be Meaningful?**

Even when informal workers can physically obtain laws, they frequently face a second challenge: laws are often published in ways that do not make them easily accessible or useful.

This happens most egregiously when laws are not published in workers' language(s).<sup>29</sup> Even when laws are published in workers' languages, the regulatory schemes may be overly complex or described in a highly legalistic manner. This often makes it difficult for citizens to identify the full range of relevant laws and to understand how those laws interact.

Work in any sector of the informal economy may be regulated by a variety of *types* of laws (for example, street vending is often regulated by a combination of business laws, police laws, tax laws, and trade union laws) and at a

<sup>22</sup> For an in-depth discussion of how international legal jurisprudence has developed around access to information as a fundamental human right, see generally Mendel, *supra* note 20.

<sup>23</sup> See generally Mendel, *supra* note 4.

<sup>24</sup> In India, for example, the Supreme Court held that, "The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression ... disclosure of information in regard to the functioning of the government must be the rule ..." *S.P. Gupta v. President of India and Ors* [1982] AIR (SC) 149, p. 234.

<sup>25</sup> Mendel, *supra* note 4, at 33.

<sup>26</sup> African Commission on Human and People's Rights, African Declaration of Principles on Freedom of Information in Africa Principle IV(2), 32d Sess. (Oct. 23, 2002).

<sup>27</sup> See, e.g., Helen Darbishire, The World Bank, Working Paper (May 2011): *Proactive Transparency: The future of the right to information?*

<sup>28</sup> See, e.g., Geoffrey Kirkman & Jeffery Sachs, *Subtract the Divide*, Worldlink;

see also, e.g., Robert M. Kossick, Jr., *Mexico's Emerging E-Government Program: The Role of the Internet in Promoting Economic Development, Democratic Governance, and the Rule of Law*, 8 L. & Bus. Rev. Am. 141.

<sup>29</sup> See, e.g., Winnie V. Mitullah, A Review of Street Trade in Africa p. 16 (2004), available at [http://www.inclusivcities.org/pdfs/23\\_Mitullah\\_A\\_REVIEW\\_STREET\\_TRADE.pdf](http://www.inclusivcities.org/pdfs/23_Mitullah_A_REVIEW_STREET_TRADE.pdf).

**The right to information requires not only physical access to laws, but also design and dissemination of laws and regulations that are meaningful to the regulated population. A regulatory regime governing informal workers should be straightforward and should not require reference to an excessive number of laws.**



variety of *levels* (national, state, local, etc.), often without a comprehensive regulatory scheme to unite the various laws.<sup>30</sup> Laws at different levels or from different parts of the government may even conflict with one another. Thus, even when informal workers have physical access to information about the laws that govern their activities, there is no guarantee that they will have *meaningful* access to that information.

Informal workers and their associations may be able to use arguments about the right to information in campaigns to improve the cohesion and clarity of informal economy regulation. In particular, workers can argue that a meaningful right to information requires not only physical access to laws, but also the design and dissemination of regulations understandable to the regulated population.

### **3. Strategies for Making Information More Meaningful to Informal Workers**

Campaigns to improve the accessibility of information might incorporate one or more of three broad types of goals, as appropriate to each local situation:

1. Publication of laws in languages appropriate to informal workers.
2. The development of capacity-building literature that makes laws more accessible to informal workers.
3. Legal reforms designed to streamline laws in the informal economy and eliminate the inconsistencies that may exist in informal economy regimes governed by a variety of laws.

First, and most basically, MBOs can argue that meaningful access to information for informal workers includes the right to receive information in their own language(s). National constitutions may have laws that protect the rights of linguistic minorities, and MBOs may also make reference to provisions in international law that guarantee the linguistic rights of indigenous people, migrant workers, and linguistic minorities. The Universal Declaration of Human Rights, for example, guarantees “all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as ... language ....”<sup>31</sup> ILO Conventions No. 107 and 169 require signatories to ensure that information on economic and social rights is available in a language accessible to indigenous groups.<sup>32</sup>

Second, MBOs may wish to argue that the right to meaningful information requires that governments publish comprehensive guides to laws governing informal work in their jurisdiction. MBOs might encourage governments to publish short documents to help readers know their rights and responsibilities that are easily accessible to a wide range of informal workers. Governments could also be encouraged to work with MBOs in the design of such materials (for one example designed for vendors in New York City, see <http://makingpolicypublic.net/index.php?page=vendor-power>).

In addition to arguments that governments are *obligated* to disseminate information, MBOs might also argue that it is *good public policy* to ensure that citizens have all information necessary to act according

<sup>30</sup> See, e.g., Philomena Muiruri, *Women Street Vendors in Nairobi, Kenya: A Situational and Policy Analysis Within a Human Rights Framework* 65-67 (2010) (discussing conflicting and overlapping by-laws governing vending, many of which date from the colonial administration).

<sup>31</sup> See, e.g., Universal Declaration of Human Rights, *supra* note 8, Article 2. For a comprehensive list of legal authorities protecting the rights of linguistic minorities in international law, see UNESCO, *Most Clearinghouse on Linguistic Rights: International Legal Instruments*, <http://www.unesco.org/most/ln2int.htm> (last accessed June 7, 2012).

<sup>32</sup> ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples Convention in Independent Countries, art. 30, adopted June 27, 1989; ILO Convention (No. 107) Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries, art. 23, adopted June 16, 1989, both available at <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0>.



to their rights and duties. Ensuring that citizens know the laws will likely improve rule of law and rates of compliance with the law. It is therefore in the government's own best interest to ensure that informal workers, officials, and, where applicable, employers, all have access to information that clearly explains the relevant laws.

Third, MBOs can argue that a meaningful right to information requires governments to clarify which laws will be applied to informal workers' activities and, when laws are in conflict, which should prevail. In addition, MBOs can argue that, when laws governing informal workers conflict, governments must take action and develop one consistent and overarching regulatory framework.<sup>33</sup> This argument draws not only on informal workers' right to information, but also on their rights to due process and equality before the law, which are recognized in international law.<sup>34</sup>

## **Informal Workers Have the Right to Information about Official Activity Relevant to Their Work**

Informal workers frequently face a third informational challenge. It is difficult to access basic information about *how* laws are being enforced and how officials or employers are behaving in practice.

For example, street vendors may have trouble accessing basic statistics such as the number and type of confiscations, when and where vendors have been evicted, and when fines were issued and collected. Many times such information is not even collected; merchandise is simply seized or destroyed without documentation.<sup>35</sup> Similarly, waste pickers may be harassed by local authorities, even when they are entitled to engage in their work.<sup>36</sup> And, without good government record-keeping, domestic workers and their advocates may not know if illegal workplace conditions that they face, such as long hours or sexual harassment, are the result of a problematic employer or a systemic pattern of abuse.<sup>37</sup>

Information about the behaviour of officials, which may or may not conform to the laws on the books, is essential for informal workers to fully understand the regulatory framework in which they work. In the case of domestic workers, information on workplace conditions is also crucial, and because of the uniquely private nature of domestic work, governments may need to implement special programs to monitor the health and safety conditions in their workplaces.<sup>38</sup>

Information on official and employer behaviour will help workers anticipate and prepare for day-to-day interactions with local officials and negotiate with their employers. And it will help workers, MBOs, and their lawyers de-

**The right to information is necessary for the realization of a number of other fundamental rights, including due process and equality before the law. Access to information is also an important tool to help workers and their allies advocate for improvements to laws and to engage with officials to ensure that rights are respected and enforced consistently.**

<sup>33</sup> The government of Bogotá, for example, has done this for vendors with the creation of the *Fondo de Ventas Populares*. And some vendors' advocates in India have argued that the proposed National Policy should be adopted and implemented on the national level, rather than at a state or local level, to prevent the proliferation of different regulatory schemes that may ultimately come into conflict with one another.

<sup>34</sup> See, e.g., Universal Declaration of Human Rights, *supra* note 8, Article 10.

<sup>35</sup> See, e.g., WNYC News Blog, Soho Street Vendors to Sue NYPD, City Over Seizure of Goods, Sept. 5, 2012, available at <http://www.wnyc.org/blogs/wnyc-news-blog/2012/sep/05/street-vendor-sue-nypd-city/>; Times of India, Hawkers in Pune Demand Identity Cards, July 26, 2012 (lack of identity cards leads to unauthorized harassment of even legally registered street vendors), available at <http://timesofindia.indiatimes.com/city/pune/Hawkers-in-Pune-demand-identity-cards/article-show/15162739.cms>; Forward Syria, Fruit & vegetable sellers under pressure, Aug. 3, 2010; U.S. Dept. of State, Bureau of Democracy, Human Rights, and Labor, Country Report: Nigeria, March 8, 2006 ("On February 3, the FCDA demolished 'illegal structures' at the large Wuse Market in Abuja. Hundreds of police officers used tear gas to clear crowds from the market before some 7,500 shops and stands were bulldozed. Vendors were not allowed to remove their inventories before the shops were demolished. No compensation was paid to vendors whose shops and inventories were destroyed.")

<sup>36</sup> See, e.g., Press Release, Global Alliance of Waste Pickers, Waste pickers frame common struggles and demands (Apr. 27, 2012), available at <http://globalrec.org/2012/04/27/press-release-in-pune-waste-pickers-frame-common-struggles-and-demands/> (waste pickers had been harassed by police prior to issuance of identity cards).

<sup>37</sup> See, e.g., ILO, Effective Protection for Domestic Workers: A Guide to Designing Labour Laws (2012), available at [www.ilo.org/wcmsp5/groups/public/%40dgreports/%40dcomm/%40publ/documents/publication/wcms\\_173365.pdf](http://www.ilo.org/wcmsp5/groups/public/%40dgreports/%40dcomm/%40publ/documents/publication/wcms_173365.pdf).

<sup>38</sup> See, e.g., Global Rights International Report, *supra* note 1, at 2.



**Some strategies might draw on civil society cooperation, too. For example, a vendors' association in New York commissioned a brochure that illustrated key city laws and explained them in five languages most widely spoken by street vendors.**

termine if there is a pattern of rights violations (whether across the board or by certain agencies or officials). Documenting a pattern of rights violations may be a necessary step when informal workers or their advocates take legal action or push for reforms.

Informal workers may therefore consider using FOI laws to obtain information on official practices and records. In many jurisdictions, this may need to be a two-part campaign, with MBOs balancing their energy between obtaining information in the short-run by *using* FOI laws and making it easier for future workers to obtain information by *improving* FOI laws.

Campaigns for better FOI laws may be necessary because existing FOI laws are often imperfect and do not always adhere to the internationally-recognized best practices.<sup>39</sup> Even the best FOI laws can be burdensome. For example, many FOI laws require the filer to pay a fee or meet other administrative requirements. FOI laws may allow considerable time to elapse between filing and receipt of information. The laws may contain various exemptions for things like national security and privacy. Even if not directly applicable to informal work, such exceptions might be invoked by authorities to delay or complicate requests for information, as they often are in other contexts.<sup>40</sup>

MBOs interested in using FOI laws more regularly may therefore also wish to coordinate with other civil society organizations to campaign for less burdensome FOI laws. FOI procedures with faster response times or less costly filing fees, for example, might provide more meaningful access to the working poor and other citizens with limited resources.

If the requirements under a FOI law are very burdensome, MBOs may also wish to pursue alternate strategies, such as arguing that the right to information demands that governments release such statistics publicly. Or they might advocate for laws that require governments to keep more comprehensive statistics on informal work (such as fines and evictions of street vendors, or information on working conditions, hours, or resolution of wage theft cases for domestic workers).

Some strategies might draw on civil society cooperation and citizen reporting, too. For example, at the innovative website [ipaidabribe.com](http://ipaidabribe.com), citizens from India, Kenya, Indonesia, Zimbabwe, and Pakistan (and soon Mongolia and the Philippines) can share stories about their experiences with official bribery.<sup>41</sup>

Again, even if they choose not to use formal FOI processes, informal workers and their advocates can use right-to-information discourse in support of such laws. They might argue, for example, that a meaningful right to information means that the government must regularly publicize information necessary for citizens to understand how the government is behaving.

A more complete understanding of the laws that govern the informal economy, as well as the associated enforcement processes, is important for ensuring that informal workers understand their full range of rights and duties. This will also help workers and their allies to advocate for improvements to laws that are insufficient to protect their rights. And it will give them additional tools for engaging with local officials and other stakeholders to ensure that enforcement processes are consistent with informal workers' rights.

<sup>39</sup> For a discussion of best practices, see generally Mendel, *supra* note 4.

<sup>40</sup> See, e.g., <http://right2info.org>, Exceptions to Access, <http://right2info.org/exceptions-to-access> (last accessed July 1, 2012).

<sup>41</sup> I Paid a Bribe, <http://ipaidabribe.com/> (last accessed Sept. 25, 2012).

**Table 3: Summary of Major Right-to-Information Challenges and Strategies**

Problem	Solutions	Useful Arguments
<b>General attitude within public bodies that does not value transparency or information-sharing</b>	Ensure that government understands citizens will hold it accountable and are demanding access to information	<p>International norms and developments within many countries demonstrate that the right to information is an increasingly important part of the basic bundle of rights</p> <p>Creation of FOI laws and investment in things like e-Government in many countries reflect the countries' recognition of this norm</p>
<b>Difficulty accessing relevant laws</b>	Work with government to ensure better publication and dissemination of laws	<p>Right-to-information principles derive from national and international law</p> <p>Due process rights require that people know what their rights and duties are</p> <p>It is good public policy to ensure that people are well-informed about their rights and duties</p>
<b>Existing legal information is not in informal economy workers' languages</b>	Ensure that information is published in the correct language(s)	<p>Linguistic minorities have specific rights</p> <p>It is good public policy to ensure that laws are published in ways accessible to the relevant population</p>
<b>Existing information is overly legalistic</b>	Work with the governments and civil society organizations to design materials that make legal information more accessible to the general population	Right to information must be a meaningful right
<b>Legal regimes may be overly complex, overlapping at different levels, or even in conflict</b>	Campaign to streamline legal regimes related to informal workers	Due process rights mean that people have the right to know what their rights and duties are and to have a reasonable expectation of which laws will be enforced, and how
<b>The government does not publish important information about activities related to informal workers</b>	Make requests for government records under FOI laws	When FOI laws are not available, or not good, the access-to-information rights recognized in national and international law can be drawn upon
<b>FOI laws exist but are difficult or burdensome for people to use in practice</b>	<p>Reform laws or procedures for FOI requests</p> <p>Require that the government disseminate, rather than wait for requests</p> <p>Use other strategies to get information, such as citizen reporting</p>	Internationally-recognized best practices include the requirement to publish

**WIEGO LEGAL BRIEFS** describe and analyze the legal environment facing informal workers, and the legal strategies and precedent-setting cases that may lead to more secure livelihoods.

**ABOUT WIEGO:** Women in Informal Employment: Globalizing and Organizing is a global research-policy-action network that seeks to improve the status of the working poor, especially women, in the informal economy. WIEGO draws its membership from membership-based organizations of informal workers, researchers and statisticians working on the informal economy. For more information see [www.wiego.org](http://www.wiego.org).

**ABOUT INCLUSIVE CITIES:** Launched in 2008, the Inclusive Cities project aims to strengthen membership-based organizations (MBOs) of the working poor in the areas of organizing, policy analysis and advocacy, in order to ensure that urban informal workers have the tools necessary to make themselves heard within urban planning processes. Inclusive Cities is a collaboration between MBOs of the working poor, international alliances of MBOs and those supporting the work of MBOs. For more information see [www.inclusivecities.org](http://www.inclusivecities.org).



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