

**BACKGROUND PAPER FOR THE
WORLD DEVELOPMENT REPORT 2013**

Urban Informal Workers: Representative Voice & Economic Rights

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world development report

2013 

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INTRODUCTION

2013 World Development Report

The 2013 World Development Report recognizes and focuses on employment as the center of economic development. It argues that employment¹ is the hinge connecting three key transformations—or the lack thereof—at the center of economic development:

- *Living standards:* From an economic perspective, employment provides earnings opportunities to lift households out of poverty, raise their living standards, and reduce the variation of their main income source. Higher yields in farming, access to off-farm small enterprise activities, migration of family members to cities, and transitions to formal sector employment are milestones on the path to improved material and subjective well-being.
- *Productivity:* Through employment creation and destruction within sectors, and reallocations across sectors and countries, employment is also at the root of aggregate productivity gains. Because of gaps in productivity across sectors, reallocating labor across them can contribute to growth (or hinder it).²
- *Social cohesion:* Over the course of development, the structure of the labor force changes in ways that affect societies: by sector of activity, location, type of occupation, and gender. Employment is linked to our identity, our beliefs and our values. This is mirrored in evidence suggesting connections between employment status, and trust in institutions and a willingness to participate in civil society.

Urbanization and the Working Poor

Urbanization—together with the rapid modernization of cities - poses three major challenges to realizing the goals of the 2013 World Development Report. The first challenge is the need to create more and better urban jobs—especially in cities or towns which have de-industrialized. The second is the need to secure and raise the productivity of existing urban livelihoods—which are often undermined or destroyed as cities modernize, invest in large infrastructure projects, and privatize public land and public services. The third is the need to help the urban poor secure housing and basic infrastructure services—which also are often undermined as cities modernize, invest in infrastructure, and privatize their assets and services.

The five case studies summarized and analyzed in this paper describe efforts to secure the livelihoods of urban informal workers—domestic workers, home-based producers, street vendors, and/or waste pickers—by increasing their representative voice and their economic

¹ The term “jobs” is used in the title and text of the 2013 World Development Report. We prefer to use the broader term “employment” that captures both self-employment and wage employment – as a large share of workers in today’s world are self-employed, not wage employed. In this paper, we have used the term “employment” rather than “jobs” throughout.

² We would add that the reallocation of productivity-enhancing measures across sectors and between the formal and informal economies can also contribute to growth (or hinder it). At present, informal enterprises and workers operate largely without the support of productivity-enhancing measures that formal enterprises and workers enjoy.

rights. In four of the five cases, the exception being the domestic workers case, the efforts were led by organizations of these workers who are partners in a global project called Inclusive Cities for the Working Poor.³ The five case studies are included as annexes to this paper.

This Paper

The purpose of this paper is to provide a summary analysis of five case studies prepared for the 2013 WDR team that illustrate why and how the representative voice and economic rights of urban informal workers should be promoted.⁴ Section 1 provides a statistical overview of the urban informal workforce, including: the official statistical definition of informal employment, recent data on non-agricultural employment (a proxy for urban employment data which are not readily available), and the first-ever published data on the four groups of urban informal workers featured in the case studies and this paper. Section 2 explains what platforms for representative voice and what types of economic rights urban informal workers need—and demand - and why the voice and rights of these workers is of such critical importance today. Section 3 presents a summary of the five case studies:

- Self-Employed Women’s Association of India, including its role in helping to build and strengthen organizations of informal workers around the world
- National Policy and Law for Street Vendors in India
- Legal Cases for Street and Market Vendors in Durban, South Africa
- Constitutional Court Judgments for Waste Pickers in Bogotá, Colombia
- Campaign for an International Convention on Decent Work for Domestic Workers

The final section 4 synthesizes the lessons learned from the five cases in regard to increasing voice and realizing rights, with a focus on common strategies, common barriers, and common sources of support. Common strategies included organizing, awareness building, advocacy, and legal struggles plus test cases: with action on these different fronts feeding into each other in a circular, interactive, reinforcing manner. Common barriers and constraints included an inappropriate or hostile institutional environment, competing vested interests, and “the “mindsets” of influential stakeholders. And the common sources of technical and political support included pro-bono lawyers, activist academics, specialized non-governmental organizations, and, most importantly, alliances of organizations of informal workers.

³ For more details on these organizations and the Inclusive Cities project, see www.inclusivecities.org and www.wiego.org (specifically, Informal Economy/Occupational Groups and Organizing-Organizations).

⁴ The WDR 2013 team commissioned the global network Women in Informal Employment: Globalizing and Organizing to prepare these case studies. The authors of the case studies are the co-authors of this synthesis paper.

I. URBAN INFORMAL WORKFORCE⁵

Informal Sector and Informal Employment: Official Statistical Definitions

Since its founding in 1923, the International Conference of Labour Statisticians (ICLS) has met roughly every five years to formulate and adopt resolutions and guidelines on selected topics of labor statistics in the form of resolutions and guidelines. Once approved by the Governing Body of the ILO, these become part of international standards on labor statistics under the UN Statistical Commission. Participants in the ICLS include experts from governments, mostly appointed from ministries responsible for labour and national statistical offices, as well as from employers' and workers' organizations. Observers come from regional and international organizations and other interest groups.

In 1993, the 15th International Conference of Labour Statisticians (ICLS) adopted a resolution setting out the statistical measurement and definition of the "informal sector". This definition is based on economic units and refers to employment and production that takes place in unincorporated enterprises that may also be unregistered or small (e.g. less than 5 employees).⁶

Ten years later, in 2003, the 17th ICLS introduced a broader concept: informal employment.⁷ Informal employment refers to employment arrangements that leave individuals without legal or social protection and, hence, more exposed to economic risk than others, whether or not the economic units they are working for or which they own are formal enterprises, informal enterprises or households.

Using the employment status categories of the International Classification of Status in Employment (ICSE-93), also adopted by the ICLS, the categories of informal employment inside and outside the informal sector are listed in Box 1. It should be noted that data on employment in the informal sector, including those summarized below, may include a few rare instances of workers who are formally employed in the informal sector.

⁵ This section is based on a statistical publication produced by the ILO and the WIEGO network (to be published in mid-2012). This publication entitled *Women and Men in the Informal Economy: A Statistical Picture* is an update of a 2002 publication with the same title. The 2012 edition was written by Joann Vanek, Martha Chen, Ralf Hussmanns, James Heintz, Francoise Carre, and Uma Rani.

⁶ For the full definition see International Labour Office, 1993 *Report of the Fifteenth International Conference of Labour Statisticians*, Geneva, 19-28 January 2003.

⁷ For the full definition see International Labour Office, 2003 *Report of the Seventeenth International Conference of Labour Statisticians*, Geneva 24 November -3 December 2003, Geneva: ILO. A discussion of the conceptual change and its implications for survey design is given in R. Hussmanns, *Measuring the informal economy: From employment in the informal sector to informal employment*, Geneva: ILO, 2004.

Box 1 Informal Employment Inside and Outside the Informal Sector: By Employment Status

Informal employment in the informal sector:

- Own-account (self-employed) workers in their own informal enterprises;
- Employers in informal enterprises;
- Employees of informal enterprises;
- Contributing family workers working in informal enterprises;
- Members of informal producers' cooperatives.

Informal employment outside the informal sector:

- Employees in formal enterprises not covered by social protection through work
- Paid domestic workers not covered by social protection through work
- Contributing family workers working in formal enterprises.

Source: ICLS 2003

Informal Employment as a Share of Non-Agricultural Employment

There is as yet no official statistical definition of informal employment in agriculture. Therefore, most estimates of informal employment are presented as a share of non-agricultural employment. There is also no consensus on how to define what constitutes an “urban area”: with the result that there are limited official data on urban employment, formal or informal. In the absence of official employment data for cities and towns, non-agricultural employment is often used, therefore, as a proxy.

What follows here is the summary of recent estimates of informal employment as a share of non-agricultural employment in developing regions: soon to be published in a joint ILO-WIEGO publication (Vanek et al 2012). Informal employment comprises more than half of non-agricultural employment in most developing regions and is as high as 82 per cent of non-agricultural employment in South Asia and over 80 per cent in some countries in sub-Saharan Africa. The exceptions are the Middle East and North Africa where informal employment represents 45 per cent, Eastern Europe and Central Asia with 11 per cent, and urban China with 33 per cent of non-agricultural employment. While employment in the informal sector (i.e. in informal enterprises) is generally a larger component of informal employment than informal employment outside the informal sector (i.e., in formal enterprises or households), the latter has increased in several countries where data are available, notably in India and in Mexico.

The recent estimates disaggregate informal self-employment into employers who hire others, own account operators in single person or family enterprise, and contributing family workers. Of these three self-employment categories, own account employment is the largest, comprises 33 to 53 per cent of total informal employment (non-agricultural). Contributing family workers are the second largest category with 5 to 12 per cent of informal employment (non-agricultural).

Employers in most regions are only 1 to 4 percent of informal employment. However, in East and Southeastern Asia, employers comprise 9 per cent.

Specific Groups of Urban Informal Workers

For the joint ILO-WIEGO publication, the WIEGO network commissioned special analyses of recently-available urban employment to estimate the share of four groups of informal workers—domestic workers, home-based workers, street vendors, and waste pickers - in urban employment in 16 cities in 10 countries.

The estimates found that waste pickers represent less than 1 per cent of urban employment in these cities. All four groups are likely to be under-enumerated and/or misclassified: it is hard to know whether waste pickers are more likely to be so. What follows is a summary of what the estimates show about the other three groups:

Domestic Workers

- Domestic work is an important occupation, involving a sizeable proportion of the urban workforce: from 4 per cent in India to 5.5 per cent in Latin America to 23 per cent in South Africa.
- Everywhere, domestic work represents a much higher percentage of women, than men, urban workers: 8 per cent compared to 3 per cent in India; 12 per cent compared to 0.5 per cent in Latin America; and 55 per cent compared to 5 per cent in South Africa. Expressed differently, most domestic workers are women: from 82 per cent in Kenya to 96 per cent in South Africa.
- The majority—in some countries the vast majority - of domestic workers are informal, except in South Africa and Brazil, where roughly a quarter of domestic workers are considered formal because their employers contribute to their health insurance or old age pensions (South Africa) or they have a worker identity card that entitles them to various employment benefits (Brazil).

Home-Based Workers

- Home-based work cuts across different branches of economic activity and represents a significant share of urban employment in some cities/countries: from 3 per cent in Buenos Aires to 6 per cent in urban South Africa to 18 per cent in urban India.
- The vast majority (70 per cent or more) of home-based workers are women, except in South Africa where women represent less than one quarter of home-based workers in part because some sub-contracted taxi drivers and truck drivers (mostly men) report that they are home-based and tradesmen often work under sub-contracts from their home.
- The majority of home-based workers are informally employed: 60 per cent in Buenos Aires and 75 per cent in urban South Africa.

- A significant share of home-based work is in manufacturing and trade: 24 and 37 per cent, respectively, in South Africa; 23 and 33 per cent, respectively, in Buenos Aires.
- In India and sub-Saharan Africa (outside of South Africa), the majority of home-based workers are self-employed, mainly as own account workers. By contrast, in South Africa, around 27 per cent of home-based workers are homeworkers: that is, persons carrying out work within their home under a sub-contract from a firm or its contractors. Many of these are brick-makers, stone masons, construction workers, or hand packers.

Street Vendors

- Street vendors constitute an important share of urban employment in Africa, including South Africa, but less so in Asia and even less in Latin America: 3 per cent in Brazil, 11 per cent in India, and 15 per cent in South Africa.
- In many countries, especially in Africa, the majority of street vendors are women: 63 per cent in Kenya, 70 per cent in South Africa, and 88 per cent in Ghana.
- Everywhere, the vast majority of street vendors are informal: 94 per cent in Buenos Aires and 97 per cent in South Africa.

II. REPRESENTATIVE VOICE & ECONOMIC RIGHTS

As background to the case studies summarized and analyzed below, this brief section defines what is meant in this paper by representative voice and economic rights and highlights why we think representative voice and economic rights are of such critical importance today for the working poor in the urban informal economy.

What Do Urban Informal Workers Mean by Representative Voice and Economic Rights

Voice has emerged as a cross-cutting theme for the 2013 World Development Report. The authors of the Report, as well those they have consulted, recognize that the working poor need to be able to exercise voice in order to pursue their livelihoods and secure their economic rights. But the working poor in the informal economy tend to be less organized and have fewer opportunities for representative voice than formal workers (ILO 2002). As promoted by the organizations of informal workers described in the case studies and this paper:

- *Voice*: refers not only to individual voice of the urban working poor but also, more importantly, to the collective and representative voice. Collective voice comes through being organized in democratic member-based organizations. Representative voice comes through having representatives of these organizations participate in relevant policy-making, rule-setting, collective-bargaining, or negotiating processes. Ideally, the representation of member-based organizations in the relevant processes should be ongoing, not one time or ad hoc, and should be statutory

- *Economic Rights*: refers to a wide range of labor, commercial, and property rights that the urban working poor need to secure their livelihoods (and living standards), to make them more productive, and to be able to use their representative voice to demand appropriate changes to the wider institutional environment that affects their livelihoods and living standards.⁸ It should be noted that the urban working poor also need social rights such as housing, health, and social protection and that the line between economic and social rights is not always clear: for instance, for home-based workers whose home is their workplace the right to basic infrastructure services serves both social/housing and economic/workplace goals.

Although they do not use these terms, arguing more simply and directly “do no harm” and “provide support”, the urban informal workers demand two basic types of economic rights:

- *Negative Economic Rights*: “Negative rights” refer to the right not to be subjected to—to be free from—barriers or constraints to pursuing their livelihoods and making them more productive.⁹
- *Positive Economic Rights*: “Positive rights” refer to the right to legal and social protections (such as the right to pursue a livelihood, the right to social protection) as well as promotional measures that formal workers and formal enterprises enjoy (such as skills training, financial and business development services, job placement and marketing services).

Why Do Urban Informal Workers Need Representative Voice and Economic Rights

As noted earlier, cities around the world are fast changing: seeking to modernize and compete for world class status in a global economy. In their efforts to modernize, many cities invest in large infrastructure projects and privatize public services. In the process, as the case studies illustrate, the working poor in the informal economy often face increasing constraints or barriers to simply pursuing their livelihoods—making it even more difficult to maintain their living standards and difficult, if not impossible, to increase their productivity. When, in the process, cities also privatize public land and public services: the situation of the urban working poor often becomes quite desperate. When cities also privatize public land, which they often do, this reduces the land or open areas available to the urban working poor to pursue their livelihoods. Unless carefully regulated, the privatization of public services and private land can make these public goods less available or more costly to the urban working poor: of particular and immediate concern is the privatization of land and of basic infrastructure and transport services which are critical to their livelihoods and living standards.

⁸ It should be noted that the labor rights are premised on the notion of an employer-employee relationship. But many of the working poor are self-employed. For them, labor rights are not always relevant. Instead, the basic right to pursue a livelihood as well as commercial rights and property rights are of greater relevance and importance.

⁹ The concept of “negative rights” and “positive rights” is derived from the distinction drawn by philosophers, from Immanuel Kant to Amartya Sen, between “negative freedom (or liberty)” and “positive freedom (or liberty)”. According to these philosophers, negative freedom is the absence of obstacles, barriers or constraints. Persons have “negative freedom” when they have actions available to them but in this negative sense. Persons have “positive freedom” when they have actions available to them which allow them to take control of their lives and realize their fundamental purposes.

The working poor in the informal economy need representative voice in urban planning and land allocation and in urban policy-making and rule-setting. Of critical importance, as the cases illustrate, are the rules regarding who can do what where in cities.

III. ILLUSTRATIVE CASES

This section summarizes the five case studies prepared for the 2013 WDR by the global action-research-policy network Women in Informal Employment: Globalizing and Organizing (WIEGO). The first is of the Self-Employed Women's Association of India, the world's largest trade union of informal workers, which is actually a sisterhood of institutions that organize, mobilize, advocate for, and provide services to some 1.4 million women informal workers across India. The SEWA example illustrates the range of interventions needed to increase voice, negotiate economic rights, and secure livelihoods of the working poor, especially women, in the urban informal economy. The other four case studies document specific legal struggles or campaigns by organizations of informal workers and their supporters: two by street vendor organizations and their supporters, one each by waste picker and domestic worker organizations and their supporters.

Self-Employed Women's Association (SEWA) of India

In 1971, a small group of women cart pullers and head loaders in the wholesale cloth market of Ahmedabad City in the state of Gujarat, India approached Ela Bhatt, a labor lawyer who, at the time, directed the Women's Wing of the Textile Labour Association founded by (together with others) Mahatma Gandhi. These women carried loads of clothes to and from the wholesale market, either in their carts or on their heads. They were paid on a per trip basis, regardless of the distance they had to travel or the weight they had to carry. Often, they were not paid the full amount they were owed because no records were kept. At their request and with their support, Ela Bhatt helped organize the group and negotiate with the cloth merchants to gain fair treatment. Word of this success spread quickly. Soon other groups of informal women workers approached the TLA Women's Wing with their complaints. Each time, Ela Bhatt held a public meeting at which the women could air their complaints. At one such meeting, a woman from the crowd suggested they form an association/union of their own. Thus, on an appeal from the women and at the initiative of Ela Bhatt and the TLA Women's Wing, the Self-Employed Women's Association was born.

Registered as a trade union in 1972, SEWA is today the largest trade union of informal workers in the world, not just in India, with nearly 1.4 million members, all working poor women: over 800,000 in Gujarat State and over 500,000 in eight other states of India. The members are drawn from multiple trades and occupations and from all religious and caste groups. SEWA is also the most influential organization of informal workers worldwide: having influenced policies, norms, and practice at the local, national, regional, and international levels. SEWA has been a pioneering leader of three international movements: labor, women's movement and micro-finance. It is a member of the International Trade Union Confederation (ITUC).

The SEWA approach involves meeting with specific groups of working poor women, understanding their struggles, and developing joint strategies. SEWA stresses self-reliance, both individual and collective, and promotes organizing around four sources of security: work, income, food, and social security. SEWA is primarily a trade union but engages in a wide range of interventions, including leadership development, collective bargaining, policy advocacy, financial services (savings, loans, and insurance), social services, housing and basic infrastructure services, and training and capacity building. In sum, together with its members, SEWA pursues a joint strategy of “struggle” (union-type collective bargaining, negotiations, campaigns, and advocacy) and “development” (direct interventions and services of various kinds).

Organizing is the central strategy of SEWA and takes several forms. In addition to organizing its members by trade into trade unions, SEWA helps its members to form cooperatives, other forms of local associations, as well as state and even national federations. All members of SEWA belong to a relevant trade group and are voting members of the SEWA trade union; many also belong to one or more other SEWA membership-based organizations—cooperatives, producer groups, companies, and (in rural areas) savings-and-credit groups. The trade union is federated at the national level and the cooperatives and rural groups/associations are federated into separate state-wide or national organizations.

Of particular concern to SEWA is the fact that the working poor, especially women, do not have a voice in the institutions that set the rules which affect their lives and livelihoods. SEWA seeks, therefore, to expand the voice of its members through representation at different levels: by building the capacity of its members and creating opportunities for them to participate in local councils; municipal, state, and national planning bodies; tripartite boards; minimum wage and other advisory boards; sector-specific business associations; and local, state, and national labor federations.

Over the past three decades, SEWA has helped found, build, or inspire membership-based organizations and networks of informal workers around the world. SEWA has helped co-found an international network of street vendor organizations (StreetNet), a regional alliance of home-based worker organizations (HomeNet South Asia), the National Association of Street Vendors of India (NASVI), and the global action-research-policy network Women in Informal Employment: Globalizing and Organizing (WIEGO). SEWA has also inspired other networks of informal worker organizations, including: HomeNet South East Asia, the Global Alliance of Waste Pickers, and the International Domestic Workers’ Network (IDWN).

While some of these networks and organizations remain weak, most have been able to leverage resources and influence policies on behalf of their members. Furthermore, by acting collectively by sector and across sector—at the local, national, regional, and international levels - these networks and organizations have been able to secure policies, laws, or legal judgments in support of one or more of the groups in many countries; two international conventions (for home-based workers and domestic workers); and growing recognition worldwide of the economic and social contributions of these groups of workers.

Legal Struggles and Victories: Four Cases

Street Vendors in India

Street vending is an age-old occupation in India that continues to grow in numbers. Today, an estimated 11 percent of all urban workers—roughly 14.4 million in all—India earn their livelihoods by selling goods or services from the streets (Chen and Raveendran 2012). In cities and towns across India, street vending is an important source not only of employment but also of affordable goods and services at convenient locations. Yet, street vendors are considered illegal and are constantly harassed by local government and the police. Increasingly, as cities and towns around India grow and seek to modernize, street vendors are also seen as a burden and hindrance to urban planning and renewal. They are often evicted to make way for large-scale urban infrastructure projects.

Since 1998, when it was founded, the National Association of Street Vendors of India (NASVI) has dealt on a daily-basis with the challenges to street vendors associated with urbanization, urban renewal, and economic reforms. One of its first steps was to conduct a survey of street vending in six cities of India in 2002. The report of this survey, entitled *Hawkers in the Urban Informal Sector: A Study of Street Vending in Six Cities*, served to highlight the increasing harassment of street vendors by local authorities and the growing exclusion of street vendors in city plans. The report generated a good deal of discussion and was presented at a national workshop organized by the Ministry of Urban Development in 2000. At that workshop, the Minister for Urban Development announced that a National Task Force on Street Vendors would be set up to frame a national policy with and for street vendors.

The national policy for street vendors, which was jointly developed with NASVI and other organizations of street vendors and was adopted by the national government in January 2004, recommended that state and local governments register street vendors, issue identification cards to street vendors, and amend legislation and practice to reduce the vulnerabilities of street vendors. The main plank of the policy was to establish Vending Committees at the town and ward levels with representatives from street vendor organizations to identify designated zones for vending and hawking. However, the national policy has not been implemented very widely: in large part because local governments are controlled by state governments and few state governments formulated their own state policies based on the national policy.

In response to this lack of implementation, the national government declared the need for a new national policy for street vendors while NASVI demanded a national law for street vendors. Meanwhile, organizations of street vendors won several court cases which ruled in favor of street vendors, including a landmark Supreme Court judgment in October 2010 that directed the appropriate government authority to enact a national law by June 2011 to protect the fundamental rights of vendors and hawkers to carry on their business. Soon after the judgment, NASVI launched a campaign for a national law: both on the streets with the vendors and at the highest levels of government. But the Minister of Housing and Urban Poverty Alleviation (MHUPA), and later the Minister of Law and Justice, argued that the “appropriate government authority” mentioned in the Supreme Court judgment was state or local governments and that, therefore, a national law was not called for. NASVI continued to press for a national law arguing that the issues of street vendors relate not only to urban planning but also to livelihood,

labor, employment, and social protection—all subjects of the national government, not state governments. In late 2011, thanks to the campaign and advocacy efforts of NASVI and other organizations, the two ministries changed their position and decided to support a national law for street vendors. The draft law was formulated by the Ministry of Housing and Urban Poverty Alleviation in consultation with NASVI and other organizations of street vendors and has been presented to the Parliament of India for its decision at the winter session of 2012-13.

Street Vendors and Barrow Operators in South Africa

In South Africa, one third of all economically active persons are engaged in the informal economy: and, in urban areas, nearly 30 per cent of all informal workers are involved in trade.

Despite the predominance of informal trade in South Africa and elsewhere, there are very few good examples of inclusive urban planning for street traders. For many years, Warwick Junction, a precinct in the inner city of Durban that houses, on a busy day, up to 8000 street and market traders, was looked to as best practice of street vendor management and support: characterized by high levels of consultation with the street vendors and resulting in a high level of self-regulation and a sense of ownership of the area by the street vendors.

But in February 2009, to the surprise of many, the Durban/eThewini Municipality announced its plans to grant a fifty year lease of public land to a private developer to build a shopping mall in Warwick Junction: at the site of the Early Morning Market (EMM), a fresh produce market in the center of the Junction that was to celebrate its centenary in 2010. These plans entailed a redesign of the whole district ensuring that the foot traffic, estimated at 460, 000 commuters a day, would be directed past the mall rather than the informal traders so threatening the viability of all street and market traders in the Junction.

There was a groundswell of opposition to the proposal and a major civil society campaign opposing the development ensued. There has been a long history of street trader organizing in Durban in general and in the Warwick Junction in particular. Street trader organizations were supported by the Congress of South African Trade Unions and the South African Communist Party in the KwaZulu-Natal province who publicly opposed the proposals. Durban is also the head quarters of the international alliance of street trader organizations or StreetNet. Civil Society groups meet weekly under StreetNet's campaign 'World Class Cities for All'. Urban practitioners and academics also joined the campaign—writing letters to the press, arranging public debates and giving technical assistance. Central to this campaign was a series of legal cases pursued by a public interest, non-profit law firm—the Legal Resources Centre (LRC).

The essence of the case was challenging the process by which the City awarded the contract to a private real estate developer: thus drawing on administrative law. This entailed close scrutiny of a vast number of council documents the City was forced to furnish the legal team. It is unlikely that the case would have been won with reference to socio-economic rights alone. With respect to the process, on one hand the legal case was a key component of a major civil society campaign, while on the other hand civil society support and input were critical to success of the legal case. Asiye eTafuleni, a local non-governmental organization that provides technical support to the informal economy active in the area facilitated access to appropriate claimants for the LRC and monitored daily developments in the market, so alerting the LRC to day-to-day

harassment of traders by the City. These traders were supported by a strong network of trader organizations that have been operating in the area for years and the broader civil society group that rallied around this issue. Finally a group of urban practitioners identified with this issue and gave professional expertise—advice on environmental impact assessment processes, heritage legislation, urban design and architectural inputs all of which informed the court papers.

By April 2011 the City Council finally rescinded its 2009 decision to lease the market land for the mall development noting that there was ‘little prospect of the legal challenges relating to the current proposal being resolved’. This was a major victory for the street vendors and barrow operators of Warwick Junction. The legal case did not mandate the change in position by the City Council. But the legal cases, in combination with civil society activism and protests, helped leverage the change in the City Council’s position.

Waste Pickers in Colombia

For decades, if not centuries, *recicladores* (waste pickers) in Colombia’s capital, Bogotá, have earned a living by recycling metal, cardboard, paper, plastic, and glass and selling the recycled material through intermediaries. Today there are an estimated 12,000 *recicladores* in Bogotá. Waste picking is a difficult job, and workers are subject to arbitrary pricing by middlemen and to harassment and discrimination on the streets.

The privatization of public services, including waste collection, threatened the livelihoods of the *recicladores*. Municipal governments have been allowed to give exclusive contracts to private companies for the collection, transport, and disposal of waste and recyclables. Over the past 10 years, *recicladores* have struggled to continue waste picking and have filed legal claims to preserve their occupation. Organizations such as the Asociación de Recicladores de Bogotá (ARB), an umbrella association of cooperatives representing over 2,500 waste pickers in Bogotá, played a key role in aggregating claims and taking the legal cases forward.

The *recicladores* achieved a landmark victory in 2003 when the Constitutional Court ruled that the municipal government’s tendering process for sanitation services had violated the basic rights of the waste-picking community. In making its case, the association and its pro-bono lawyers appealed to the Constitution’s provision of the right to equality, arguing that waste pickers should be allowed preferential treatment and judicial affirmative action in the tendering and bidding process for government contracts to manage waste.

Subsequent cases have appealed to constitutional provisions, including the right to survival as an expression of the right to life (article 11 of the Constitution), which was used to argue the right to pursue waste picking as a livelihood, and the right to pursue business and trade (article 333), which was used to argue that cooperatives of waste pickers—and not only corporations—can compete in waste recycling markets. The most recent ruling, in December 2011, halted a scheme to award US\$1.7 billion worth of contracts over ten years to private companies for the collection and removal of waste in the Bogotá City. The court mandated that the cooperatives of waste pickers had a right to compete for the city tenders and gave the ARB until March 31, 2012 to present the municipality with a concrete proposal for solid waste management inclusive of the waste picking community. With the help of allies, the ARB prepared such a proposal, elements of which were adopted into the official proposal made by the district agency in charge of the

city's public service. However, the district's proposal did not meet all the waste pickers' demands or needs. Therefore, Colombian waste pickers have not yet achieved a complete guarantee of the sustainability of their livelihoods, and will continue legal action aimed at securing this.

Domestic Workers Globally

Domestic workers work in or for households carrying out tasks such as cleaning, cooking, gardening, child and elder care. The ILO estimates that there are a minimum of 52.6 million domestic workers worldwide, while other estimates are nearly twice as high. Women, generally from the poorest sections of society, make up an estimated 83 percent of domestic workers. Many are migrants and child domestic workers, mostly girls, are common. In most countries, domestic workers are excluded from labor and social protection laws. Migrant workers are even more likely to be unprotected.

Despite obstacles, domestic workers have a long history of organization and advocacy to be recognized as workers and covered by the labour laws of their respective countries. In 2006, domestic worker organizations began to organize internationally with the support of international trade unions and NGOs. Their main demands were to be recognized as workers with the rights to workers rights and benefits. In 2008, after the International Labour Organization (ILO) decided to place "Decent Work for Domestic Workers" on the agenda of the International Labour Conferences in 2010 and 2011, they began a campaign for an ILO Convention. The campaign was led by the newly formed International Domestic Workers' Network (IDWN) with its organizational base in the International Union of Food and Allied Workers (IUF).

The campaign involved extensive coordination and engagement at the country level to mobilize workers and engage with Ministries of Labour, trade unions and employers' associations. The process had some immediate benefits. In Jamaica the minimum wage for domestic workers was raised by 10 percent; Indonesia and Malaysia signed a Memorandum of Understanding to improve the conditions of Indonesian domestic workers in Malaysia. In June 2011, with an overwhelming majority vote, the ILO adopted two standards: Domestic Workers Convention, 2011 and Domestic Workers Recommendation, 2011.

The main achievement of the Convention is that domestic workers are unconditionally defined as workers with the same protections under national labor laws and social protection schemes as other workers. Some articles in the Convention provide special protection for live-in, migrant, or other specific groups of domestic workers. The Recommendation provides a comprehensive framework and set of guidelines for governments seeking to implement legislation in line with the Convention.

The Convention and Recommendation will not directly or immediately change the situation of domestic workers, but they provide a normative framework and legislative springboard for organizations to work further with governments and other partners. The process of achieving the ILO Convention was itself a catalyst for global organizing and for gaining representative voice at the global level. It contributed to building the capacity of organizations, and individual leaders, especially women; enhanced the status of domestic workers associations with formal trade

unions; and created the preconditions for recognition and enforcement of rights in countries. Whilst the campaign for ratification is a long term process, legislative changes are taking place as a result of the adoption of the Convention. For example, in March 2012, the Government of Singapore announced that it would require employers to grant one day off per week for the over 200,000 domestic workers in the country, mostly immigrants from India, Indonesia, the Philippines, and Sri Lanka.

IV. INCREASING VOICE & REALIZING RIGHTS

There are a number of cross-cutting common themes or lessons that emerge from these case studies regarding what it takes to increase the representative voice and to realize the economic rights of the working poor in the urban informal economy. What follows is a summary analysis of the core set of strategies, legal arguments, barriers or constraints, and sources of support that were common across all of the cases.

Common Strategies

Organizing: In all five cases, member-based organizations (MBOs) of the urban working poor were at the center of the legal struggles. Indeed, without the MBOs there would most likely not have been a legal struggle. The pro-bono lawyers and other supporters would not have known what legal demands to make without the MBOs and their members voicing their legal grievances and demands: thereby both initiating and informing the legal struggles. This being said, it is also true that in most cases, the MBO of informal workers might not have been formed without the help of outsiders who helped bring the informal workers together.

Awareness Building: All of the MBOs featured in the case studies seek to increase awareness that their members contribute to the economy and, therefore, are entitled to economic rights: awareness both among their members and among key stakeholders whose thinking or practice impact on the livelihoods and living standards of their members. Among their membership, they do this through workers' education and mobilization campaigns. Among key stakeholders, they do this through on-going negotiations and advocacy. They are helped in this process by support institutions, such as the global network Women in Informal Employment: Globalizing and Organizing (WIEGO), which promotes improved statistics and research on urban informal workers and disseminate the data and information to the MBOs and to key stakeholders.

As noted earlier, one of the initial steps taken by NASVI was to conduct a survey on street vending in six cities of India. The report of this survey, written by an Indian academic closely allied with NASVI, is entitled *Hawkers in the Urban Informal Sector: A Study of Street Vending in Six Cities*. The report generated a good deal of discussion and was presented at a national workshop organized by the Ministry of Urban Development which, led, in turn to a national policy on street trade.

Advocacy & Legal Struggles: All of the MBOs featured in the case studies advocate, on an on-going basis, for more appropriate laws, regulations, and policies in support of the working poor in the informal economy. In each of the cases, the MBOs not only instigated the litigation but also advised the legal advocates during the litigation. But reform of laws, regulations, and

policies is not enough. The new laws, regulations, and policies need to be enforced and implemented. The MBOs engage, on a daily basis, in collective bargaining and negotiations to ensure the reforms are implemented. This process is enhanced and strengthened when representatives of the MBOs have the capacity and opportunity to participate in relevant rule-setting and policy-making processes: which, as the SEWA experience indicates, might include local councils; municipal, state, and national planning bodies; tripartite boards; minimum wage and other advisory boards; sector-specific business associations; and local, state, and national labor federations. For example, as mandated by the National Policy for Street Vendors in India, the establishment of Town and Ward Vending Committees addressed the need of street vendors to be involved in decision making about the location of their vending sites: one of the major sources of conflict between street vendors and city officials.

The actions of the MBOs on these three fronts tend not to be linear or sequential: rather, circular and interactive. Organizing enhances advocacy and legal struggles: as there is strength in numbers and credibility in the grounded knowledge of the organizations of urban informal workers. But the struggle to change laws, regulations, and policies can also act as a catalyst for organizing and a means to gain representative voice. For instance, what the domestic workers case demonstrates is that the tripartite process of negotiating an ILO convention can be an important catalyst and tool for global organizing, providing a common issue and focus around which workers can campaign, build global solidarity and strengthen organizations on the ground. It can also provide a forum for the representative voice of those previously unheard to be heard.

Common Legal Arguments

In all the cases, the legal struggles demanded a combination of negative rights (i.e., removal of barriers and constraints) and positive rights (i.e., provision of legal and social protections or productivity-enhancing measures): as specified for each group in Box 2.

Box 2 Negative and Positive Economic Rights for Urban Informal Workers

Domestic Workers

- **negative** - right not to be subjected to harassment or abuse by recruiters or employers
- **positive** - right to minimum wages and worker benefits such as overtime pay, sick leave, health insurance, and pensions

Street Vendors

- **negative** - right not to be subjected to harassment, confiscation of goods, evictions, arbitrary warrants and convictions
- **positive** - right to vend in public spaces under fair and reasonable restrictions (balancing competing rights of different users of public spaces) + to maintain natural markets + to infrastructure services as vending sites

Waste Pickers

- **negative** - right not to be subjected to harassment, bribes, and evictions by city authorities and/or arbitrary prices in recycling chain
- **positive** - right of access to waste and inclusion in modern waste management system, fair prices for recyclables, and infrastructure for sorting and storage

The legal arguments used in successful court cases that mandate these economic rights—both negative and positive - included a combination of socio-economic and procedural norms and of different duty bearers.

Socio-Economic Norms

National constitutions were evoked in most of the the court cases: specifically articles relating to the right to life, the right to livelihood, the right to pursue a business, and the right to public space. Also, the courts ruled in some cases on the basis of the assumption of discrimination, disadvantage, or vulnerability.

Procedural Norms

In the case of the waste pickers in Colombia and the street vendors in South Africa, the legal cases challenged the process by which the city—Bogotá and Durban, respectively - awarded contracts to private companies: contracts for solid waste management in Bogotá and a contract to build a mall, including allocation of public land and subsidies, in Durban.

Duty Bearers

In the case of the waste pickers in Bogotá and the street vendors in Durban, the duty bearer is the municipal government. In the case of the street vendors in India, the proposed national law is premised on the assumption that the national government bears the duty to protect the rights to livelihood, employment, and social protection of all of its citizens. In the case of the domestic workers, the Convention and Recommendation are premised on the notion that domestic workers are employees with a recognized employer—the individual or household who employs them—who is the main duty bearer. Other duty bearers in the case of specific provisions of the Convention and Recommendation include the third party - the recruitment or placement agency—that places the domestic workers with a specific employer; and, in the case of migrant domestic workers, the governments of both the sending and receiving countries.

Common Barriers and Constraints

In promoting the representative voice and economic rights of their members, the MBOs of informal workers face a number of constraints and barriers. In pursuing their livelihoods, urban informal workers often encounter the same barriers and constraints.

Inappropriate or Hostile Institutional Environment

Existing laws, regulations, and policies are often not appropriate for the employment arrangements of informal workers and enterprises or are biased in favor of formal enterprises and workers. The city bylaws relating to street trade are often quite outdated and punitive. In Durban, South Africa, the bylaw that requires that street vendors obtain a written permission from an official prior to leaving their stall, even to use a public toilet, is “draconian and reminiscent of the oppressive apartheid laws” (Chetty and Skinner 2012). In India and other former colonies, municipal bylaws often date back to the colonial era and reflect the urban

planning model of the colonizing countries. The city regulations relating to solid waste management are generally more recent: designed with a modern city and technical solutions in mind without recognition that traditional waste pickers have cleaned the cities for decades, know best how to recover recyclables from waste, and thereby help reduce both carbon emissions and the costs (to the city) of disposing waste.

In addition, the administrative and governance structure of a county often stands in the way of implementing appropriate laws, regulations, and policies. This is because, despite recent efforts to decentralize and provide more autonomy to municipal governments, municipal governments often remain under the control of state governments which, in turn, remain under the control of national governments: without clear boundaries of which level of government is responsible for what. For example, in the case of the 2004 National Policy for Street Vendors in India, many of the state governments never formulated a state policy based on the national policy and most of the municipal governments remain under direct control of state governments, always looking up to the state for government orders.

In the case of domestic workers, new procedures for enforcing labor laws are needed: as labor inspectors often find it difficult to inspect private homes. Special norms and procedures are also needed to protect migrant domestic workers from harsh or abusive treatment by immigration authorities and recruitment/placement agencies.

Finally, some legal systems are more amenable to positive economic and social rights arguments than others. This has to do in part with how constitutions are drafted but also with the receptivity of courts to such arguments. South Africa is perhaps the leading example in the world of a legal system that, by virtue of its constitution and interpretive decisions by its courts, embraces a positive economic and social rights agenda. Colombia's constitutional court has also emerged as one willing to protect economic and social rights (personal communication, Muneer Ahmad). In sum, positive rights arguments are likely to be more successful in some countries than in others; and structural and institutional design features, as well as legal and jurisprudential culture, will in part inform the success of different strategies

Competing Vested Interests

There is a widespread assumption that the informal economy represents unfair competition to the formal economy. From the perspective of the urban informal workers, the formal private sector in various guises—as employer, as private real estate developer, and as competitor in specific value chains—has unfair advantages and poses unfair competition. Consider the case of the private development company that got a contract to build a mall in the heart of a natural market next to a transport node or the private companies that got the contracts worth USD 1.7 billion to collect and dispose of solid waste for ten years in Bogotá City. Without the legal cases described in this paper, 8,000 street vendors in Durban and 12,000 waste pickers in Bogotá would have lost their livelihoods. Consider domestic workers: they have little, if any, bargaining power in comparison to their recruiters and the employers. Also, in the domestic workers campaign for a convention, it was the Employer Group within the tripartite system of the International Labour Conference that voiced the greatest opposition to the Convention and Recommendation on Decent Work for Domestic Workers: although the employers of domestic workers come from all three groups in the tripartite system—government, employers, and workers—the formal

companies represented in the Employers Group perceived an indirect threat from domestic workers being recognized as workers with workers rights: namely, that their employees would demand higher wages or salaries in order to pay more to the domestic workers who made it possible for them to work outside their homes.

When cities privatize public land and public services, the formal economy—that is, formal firms—often benefits at the expense of the informal economy. This is even more likely when governments privatize public services and public land. In Colombia, after the economy was liberalized in the mid-1990s, the public sanitation system was the first sector to be privatized. In Durban, the municipal government supported a private company in its unsolicited bid to build a mall on public land that would have destroyed both an historic 100-year old fruits-and-vegetables market and the livelihoods of 8,000 vendors in a natural market. The privatization of public goods and services, including public land, not only leaves cities with fewer resources to use for public purposes—but also a smaller pool of public resources that organizations of the urban poor can try to leverage for their members.

“Mindsets” of Influential Stakeholders

Another major constraint or barrier is the “mindsets” or assumptions of influential stakeholders in economic and international development circles but also local urban practitioners and policy makers. For instance, many mainstream economists subscribe to one or both of two common assumptions about informal operators and informal activities: informal operators are seen as illegal, as deliberately avoiding taxation and regulation; and informal activities are seen as inefficient and non-productive. Many local government decision makers and built environment professionals subscribe to the view that removing street vendors, waste collectors and informal settlements is a sign of ‘progress’ since the informal economy is inimical to what is considered a ‘modern’ city.

In telling the story of SEWA, Ela Bhatt, the founder, refers to the mindsets—or conceptual blocks—that SEWA faced in registering its various sister institutions: the mindsets of trade unionists who resisted SEWA’s efforts to register as a trade union (arguing that trade unions were only for the wage employed, not the self-employed); of bankers who resisted SEWA’s efforts to register its bank (arguing that the clients would not be able to sign as they were illiterate); of officials in the cooperative department who resisted SEWA’s efforts to register a cooperative of village midwives (arguing that midwifery was not an economic activity), a cooperative of waste pickers (asking what products will they make), and a cooperative of grassroots video producers (arguing that illiterates cannot write scripts and produce videos). She also notes that many economic and social policies are premised on the assumptions that only formal workers are workers, only formal economic activities are productive, and only formal employees can be covered by labor laws and social protection.

When asked for her vision of the future of cities, Ela Bhatt calls for cities in which the informal economy is recognized as part and parcel of urban economies—in which homes-as-workplaces are recognized and supported with basic infrastructure services; informal traders exist alongside large retail shops and malls; waste pickers are included in modern solid waste management; all categories of workers, including domestic workers, are covered by legal and social protection.

She argues that “economic diversity” should be preserved and promoted in much the same way “bio diversity” is preserved and promoted.

The case studies also illustrate that there are common dominant mindsets about specific groups of informal workers and how policy makers should respond to them:

Domestic Workers—Many observers question whether private households should come under the jurisdiction of existing labour laws and regulations. The home is widely seen as a private realm and a “safe haven” that should not—or need not—be regulated. Further, the employers—private clients or households—do not perceive themselves as “employers”. Their relationship with the domestic worker remains highly personalized, although unequal, and informal. Moreover, existing labour laws and regulations are inappropriate or inadequate for several types of domestic workers: those who work part-time for more than one employer; migrant domestic workers whose citizenship status erodes the possibility of negotiating or enforcing labour standards; migrant workers whose visa status is linked to that of their employers who are also migrants (e.g. diplomats); and trafficked migrants whose passport is withheld by their recruiters.

Street Vendors—City officials, urban elites, and big business often complain about street vendors: considering them to be an unsightly nuisance; a source of disorder, congestion, and crime; as a threat to larger off-street commerce; and as obstructing the free flow of traffic.

Local residents often argue that street vending is fine in principle but not in their neighbourhood (Bromley 2000).

Waste Pickers—When cities decide to modernize, a common plank of their urban renewal program is solid waste management. The prevailing model of solid waste management conceives of waste management in terms of sanitation and cleansing of the city, to be done in highly efficient mechanized ways: to the neglect of environmental concerns and the livelihoods of those who have cleaned (and recycled) waste from the city for decades, if not centuries. This approach typically involves the privatization of public waste management and, in the process, the transformation of waste which was considered a public good found in public spaces—and freely available to the public—into a private commodity. In the process, the recycling skills, the carbon reduction function, and the livelihoods of traditional waste pickers are undermined or destroyed all together.

Common Sources of Support

All five cases illustrate the importance of the joint action of member-based organizations of the working poor and support individuals or institutions. The alliance that campaigned successfully against the proposed mall in Durban included local associations of street vendors, an international alliance of street vendors (StreetNet) headquartered in Durban, the Congress of South African Trade Unions (COSATU), the South African Communist Party in the KwaZulu-Natal province, civil society organizations, urban practitioners, academics, and the legal resource centered that filed the case. Central to this campaign was a series of legal cases pursued by a public interest, non-profit law firm—the Legal Resources Centre (LRC). The other organizations and individuals joined hands in writing letters to the press, arranging public debates, and providing technical assistance to the campaign and the legal case. A local NGO dedicated to

providing legal, technical, and design support to the street vendors of Warwick Junction played a key role: monitoring the situation on the ground, alerting the LRC to the day-to-day harassment of traders by the city, and facilitating access by the LRC to appropriate claimants.

The alliance that helped advocate for the national policy and, now, the national law for street vendors in India included the affiliates of the National Association of Street Vendors of India, including the Self-Employed Women's Association, as well as academics and activists working on street vendor issues. An important ally and advocate was a government body, the National Advisory Council (NAC) headed by Sonia Gandhi. The alliance that helped the Asociación de Recicladores de Bogotá in its campaign to be allowed to bid for solid waste management contracts included the 25 cooperatives of waste pickers that belong to the Asociación, pro-bono lawyers, academics, and a number of NGOs.

The alliance that helped build the International Domestic Workers' Network and supported its campaign for the ILO convention included a global union federation (International Union of Food Agriculture, Hotel, Restaurant, Catering and Allied Workers Associations), a national union federation (FNV of the Netherlands), an international action-research-policy network (Women in Informal Employment: Globalizing and Organizing, WIEGO), and other NGOs. During the tripartite discussions at the 2010 and 2011 International Labour Conferences, this alliance mobilized additional resources: researchers who helped the domestic worker delegates find information, write speeches, and draft demands; media experts who helped write press releases and organized press conferences and interviews and used social media to publicize the negotiations; and interpreters who interpreted for delegates and also translated documents.

At the heart of each of these successful campaigns, except for the domestic workers campaign, was a legal case. Key to the success of the legal cases was access by the informal workers and their organizations to free, high-quality, and responsive legal assistance—from a high-level team of lawyers. The informal workers would not have been able to pay for such high-level legal representation: they were fortunate to be represented by such high-level pro-bono lawyers.

At the same time, the technical knowledge and political support from civil society—most importantly, from the informal workers themselves—were critical to the success of the legal case.

In sum, as the authors of the domestic workers case concluded: “well managed collaborations and alliances with a range of organizations allows for a pooling of resources, skills, knowledge, including that of the domestic workers themselves. They extend points of influence and leverage, raise awareness more widely and potentially increase pressure on those with power to influence the outcome of the negotiations... (It) was only through the nascent international movement of domestic workers joining forces with the broad trade union movement and other allies that this successful outcome was achieved” (Bonner and Pape 2012).

In today's globalizing economy and modernizing cities, there is a critical on-going need to promote the representative voice and economic rights of the urban working poor in the informal economy: to improve living standards, increase productivity, and promote social cohesion. As the cases illustrate, to promote representative voice and economic rights of the working poor requires more and stronger member-based organizations of the working poor as well as more and stronger alliances between these MBOs and experienced, informed, committed supporters. In

the end, what the working poor want and demand are changed mindsets and models—which recognize them as legitimate economic actors—and appropriate laws, regulations, and policies that create a level playing field between the formal economy—of formal firms and workers—and the informal economy—of informal enterprises and workers.

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ANNEX I

WIEGO CASE STUDY FOR 2013 WDR

Constructing an Inclusive Model for Public Waste Management Based on the Legal Empowerment of Colombia's Waste Picking Community

Federico Parra,¹⁰ Lucía Fernández¹¹

CONTEXT

Waste Picking in Bogotá

Bogotá, the capital of Colombia, is a city of more than eight million inhabitants. As the country's largest urban center, it registers high levels of consumption, which are in turn reflected in the large degree of waste production. The city only has one landfill for final disposal, which receives daily 5,074 tons of waste composed mainly of organic waste (64 per cent), along with dangerous materials and recyclable waste (metals, cardboard, paper, plastic, and glass).¹²

Bogotá does not have a formal system that would allow for the recuperation of recyclable waste. Given the State's lack of solutions relating to the integral management of waste, for over 60 years the community of "popular recyclers"¹³—better known as waste pickers—has endeavoured to recycle containers and other material by searching waste bins and garbage bags throughout the city's public space. Recyclable materials consist of glass, cardboard, paper, plastic, aluminum and other metals, and due to the work of thousands of waste pickers, these are reinserted into the

¹⁰ Federico Parra holds a Master's Degree in Social Anthropology from the National University of Colombia. His thesis was titled *Procesos de territorialización entre los recicladores de Bogotá*, 2003 [The Processes of Territorialisation Amongst Bogotá's Waste Pickers, 2003]. He is currently the Director for Latin America of ENDA (<http://www.enda.sn>).

¹¹ Lucía Fernández is an architect (School of Architecture of Grenoble) and holds a Master's in Philosophy (Faculty of Philosophy, Lyon 3, France). Her thesis title was *Dinámicas de Reciclaje Espontáneo: Miradas cruzadas entre la ciudad de Montevideo y París en el siglo XIX*, 2010 [Dynamics of Spontaneous Recycling: Crossed Perspectives between Montevideo and Paris in the 19th Century, 2010]. Currently, she is the Global Coordinator for WIEGO's Waste Picker Program (www.wiego.org).

¹² These numbers are quoted in the Technical Support Document for the Master Plan of Integral Solid Waste Management, 2006 version. However, by January 2009, the UAESP estimated residential waste production at 90,517 tons per month, which equaled 2,977 tons per day. The non-residential production was estimated at 47,222 tons per month, which meant 1,553 tons per day. Therefore, the overall daily average was 4,530 tons.

¹³ This concept was coined in 1993 by Enda A. L. Colombia and it refers to the activities that constitute the "informal" component of the productive cycle of recycling.

productive circuits that take advantage of recyclable materials to the amount of 600 tons per day.¹⁴

The daily livelihood of waste pickers depends on free access to the recyclable materials. Their work is performed in very difficult conditions because it involves canvassing the city following long routes, often in harsh weather. As well, they must manually separate the potentially recyclable waste from all other kinds of waste because the city does not promote segregation-at-source practices. Once collected, the recyclable waste is transported in vehicles pulled by humans or animals to collection centers or warehouses where the materials are weighed and paid for by the facility's owner or administrator according to the market demand rate for recyclable materials. This payment does not correspond to the labour time invested by the waste picker, but rather to the weight of the material that has been picked up. Moreover, the payment is subject to deductions regularly imposed by each of the intermediaries in the recycling chain.¹⁵ The activities related to this recycling work are performed without any guarantees or coverage when it comes to fair wages, social security and industrial security. In addition, waste pickers endure the stigmas and discrimination that link them to criminal activity, drug abuse, indigence, and the inherent properties of waste.¹⁶

Rationale for Waste Pickers' Legal Actions

Despite the long-standing history of the waste picker's performance in collecting and removing waste, for more than ten years the city has been implementing and consolidating a model of waste management that emulates the technology-oriented models of other cities. This model perceives of waste management as related to sanitary and technical aspects, rather than related to livelihoods and involving joint responsibility amongst all actors of society. This approach has also been endorsed by the policies of fiscal and structural adjustment recommended by international organizations, which have prioritized the privatization of public services and have ultimately rendered waste a private commodity, where it previously had been considered "unusable property" found in public spaces.

From the date of its founding in 1958 until it was terminated in 1994, the Empresa Prestadora de Servicios Públicos [Public Service Delivery Enterprise; EDIS was its acronym in Spanish] was in charge of collecting and transporting solid waste in the city of Bogotá. Although there was conflict between waste pickers and the employees of EDIS, mainly due to the latter's appropriation of recyclable materials to supplement monthly incomes, the situation for the waste picking community took a turn for the worse after 1994. As a result of the policies geared to opening up the economy begun in 1995, the Colombian state went from being a guarantor of

¹⁴ This statistic is quoted by the Asociación de Recicladores de Bogotá [Association of Waste Pickers of Bogotá] for 2005, and it coincides with the information provided by the UESP – U.T. Fichtner - Cydep. Ltda., *Master Plan of Integral Solid Waste Management, 2000*. Book I, Executive Summary.

¹⁵ In the chain that links the waste picker who collects the recyclable material and the companies that ultimately benefit from it, there may be between two and four intermediaries who get their share from the deductions to the payments that waste pickers get from the companies. This can significantly diminish the payment the waste picker receives.

¹⁶ This is reflected in the derogatory terms that society has coined to refer to waste pickers, such as "garbage people" and even "the disposables."

social protection to a regulator of economic relations.¹⁷ The public sanitation system was the first to be privatized and this opened the door for big groups of national and international economic interests to encroach upon the delivery of public services in the country. In this new context, waste pickers do not face the individual interests of municipal public employees, but rather the corporate interests of private companies that are now delivering a service that was historically a public responsibility.

Following the recommendations of the first Master Plan for Integral Solid Waste Management,¹⁸ municipal governments have imposed this private-based corporate model to manage waste, ignoring the factual existence of both “popular recycling” and the waste picking community. By adopting this approach, these governments seek to secure the advantages and profits generated by the use of recyclable materials for the political alliances they represent.

Within the new framework, the city of Bogotá has seen the permanent issuing of ordinances and by-laws that seek to address the issue of waste management by granting exclusive rights of collection, transport, and final disposal to private companies, which are now in charge of delivering public services. This policy direction has harmed the most vulnerable segments of society, those who have historically survived by relying on this productive niche. Within this context, Colombian waste pickers have been struggling intensely against the lucrative interests of national and transnational companies in order to protect their means of survival and maintain their trade.

Waste Picker Organizations and Allies

The Association of Waste Pickers of Bogotá (in Spanish, Asociación de Recicladores de Bogotá or ARB) was established in 1990 and today brings together 25 first-level organizations that represent 2,500 of the 12,000 waste pickers in Bogotá. The ARB has geared its activities towards the consolidation of formal organizations that focus on both the political representation of its members’ interests, as well as the improvement of their productive processes to enhance the income and quality of life of all waste pickers.

Through the ARB, waste pickers have confronted the market’s restrictions on their trade, the problems generated by their position in the productive chain of the recycling circuit, and the public policies on waste management that have even insinuated waste pickers could disappear as a social and productive sector. To tackle these factors, the organized waste picker unions in Bogotá have developed and improved their strategic lobbying in public policy formulation processes when their rights are threatened. They have proposed innovative ways for understanding the issue of waste management and integrating waste pickers themselves as public managers. This process of legal empowerment and struggle for access to recyclable materials,

¹⁷ Federico Parra, “Reciclaje popular y políticas públicas sobre manejo de residuos en Bogotá” [Popular Recycling and Public Policies on the Management of Waste in Bogotá], in P. Schamber & F. Suárez (comp.), *Recicloscopio: Miradas sobre recuperadores urbanos de residuos en América Latina* [Recicloscopio: Perspectives on Urban Waste Recyclers in Latin America.] Buenos Aires: Prometeo, 2007, p.76.

¹⁸ After the environmental disaster caused by the landslide of almost one million tons of garbage in the city’s sanitary landfill site in 1997, the municipal authorities commissioned a study to design strategies for a better waste management and to reduce the amount of waste that arrived at the sanitary landfill site. The results of this study were presented in 2000, and recycling was identified as the main strategy that the city needed to develop in order to achieve those goals.

and thus for the right to work, has been supported in the last decade by civil society organizations, university students, allied pro-bono lawyers, and non-profit organizations. In particular, CiViSOL, the Foundation for Systemic Change, is an NGO that has been instrumental in supporting Colombia's waste picking community in their legal challenges.¹⁹

DESCRIPTION AND ANALYSIS OF THE LEGAL STRUGGLE

Historical Background and Institutional Framework

In 1985, the number of waste pickers in the streets of Bogotá increased due to the closing of several municipal landfill sites. According to the Ministry of Health census, by 1983 there were roughly 3,000 waste pickers working in these landfill sites, and it was in these places where the first waste picker organizations were born, such as “Progresar” in 1985, “Rescatar” in 1987, and “El Porvenir” in 1990.

In 1987, a sanitary state of emergency was declared in Bogotá as a result of the poor coverage of waste collection and the precarious final disposal of waste. Between 1989 (when the municipality opened the “Doña Juana” sanitary landfill site) and 1994 (when the transfer of public sanitation services to private hands was implemented) the Public Service Executive Unit (UESP, by its Spanish acronym) was created as an entity of the municipality of Bogotá.

In 1994, the municipality granted a contract for the collection and transport of waste, as well as the sweeping and cleansing of public streets, to four private companies that bid for it. The contract also granted these companies exclusive service areas to perform their work. Up to 2002, and after several deferrals in the execution of the contracts, the municipal government, through UESP (now UAESP), once again tendered contract bids for the delivery of these services, including the collection of recyclable materials.

Despite previous conciliatory efforts between the organized waste picking community and the capital city's municipal government, the latter set terms of reference for the bidding process that proved to be unachievable for waste pickers. The terms of reference reflected exclusively the corporate profiles of the bidding companies, which had, to that point, been delivering the services of waste collection, sweeping, and street cleansing for more than eight years.

Legal Process

As a result, in December of 2002 the Association of Waste Pickers of Bogotá, supported by CiViSOL, filed the first action of protection arguing that such terms of reference (related to both experience and capital) excluded the organized waste picking community, lacked an affirmative action approach designed to reduce the community's vulnerability and unequal status, and violated minimum vital rights (in this case, the lack of access to waste was conceived as a vulnerabilization that threatened the waste pickers' access to the minimum requirements of life).

¹⁹ CiViSOL is a civil society, non-profit legal entity with no political affiliation that operates as a foundation in New York and Cali, Colombia. It was established in 2008, but builds on experience accumulated over many years, dealing with different initiatives of legal empowerment on behalf of the most vulnerable sectors.

This action of protection was denied in both the first and second court instances, by the 43rd Penal Municipal Court and the 1st Penal Court of Bogotá, respectively. The reasons given were as follows: 1) all administrative actions are considered legal actions; and 2) the feasibility of affirmative actions in favour of the waste picking community could not be presumed because they could be detrimental to the private bidders whose suitability to deliver a public service provided the municipal government with confidence. It is worth mentioning that this dual argument of first opposing the action and then privileging the well-being of the majority, as opposed to the rights of vulnerable minorities, had already been used in Bogotá in the cases of small transport workers and street vendors.

The ARB then filed the case before the Constitutional Court in August of 2003. The Court's ruling concluded that Bogotá's municipal government and the UESP, through the aforementioned administrative action (the tendering of bidding terms of reference), had violated the basic rights that the waste picking community had to due process, equality, and work, and the principles of acting in good faith. Therefore, article 3 of the ruling T-724 ordered, *"(...)as related to the terms of article 24 of Decree 2591 of 1991, the Public Service Executive Unit of the Capital District of Bogotá, or any other entity in the District that would be relevant, to include affirmative actions in favour of Bogotá's waste pickers when it comes to all future cases regarding the contracting out of public sanitation services, given that the activities they perform are related to those services. This shall be undertaken in order to achieve real conditions of equality and to enhance the fulfilment of the State's social responsibilities. Under no circumstance should the omissions vis-à-vis Bogotá's waste pickers, as found in the Bidding Process No. 01 of 2002, be repeated again."*

This legal decision, considered by the ARB as the cornerstone on which to build the defense of waste picker rights, allows for an analysis of Colombia's constitutional order and its rationale, as well as of the mechanism of action of protection—in particular—and the players that were involved in it. The Political Constitution of Colombia, enacted in 1991, promotes the establishment and guarantee of a just social order, which in turn implies, from a human rights perspective, that all citizens of the country should be able to exercise those rights. This is embedded in paragraph 2 of Article 13 of the Constitution, which says: "the State shall promote the conditions to make equality real and effective, and shall adopt measures that benefit discriminated and marginalized groups." This, and other rulings of the Constitutional Court, clearly recognized the vulnerability and conditions of inequity experienced by the waste picking community, together with the need to implement policies designed to overcome these inequities.

Constitutional Rights as a Legal Strategy

The judicial actions and rulings, amongst others, are mechanisms used to secure and guarantee the formation of the aforementioned just social order. Specifically, actions of protection constitute judicial recourses that seek the immediate protection of rights guaranteed by the Constitution against any transgression by public authorities or individuals. This 2003 ruling, as well as those that followed, is inscribed within the doctrine of Social Constitutionalism, which confirms the formal equality ingrained in classic liberalism by recognizing that there are conditions of inequity that arise from historical processes of social and ethnic discrimination, class hierarchies, etc. These discrepancies play an important role in denying the full exercise of rights to some segments of society. If these discrepancies become restrictions for the full

exercise of rights by a specific social group and undermine the establishment of a just social order, then the State along with society must undertake measures to reduce or eliminate such restrictions, or allow these groups in “conditions of inequality and inequity” to achieve the necessary conditions for their rights to be fully and effectively exercised. Affirmative actions respond to this logic.

Outcomes

The law has worked in the case of Colombia’s waste pickers, especially as a means to reduce poverty²⁰ and as a gateway to open opportunities to favour the waste picking community. Waste pickers of Colombia have achieved a significant victory. For the past 11 months, the Colombian waste pickers and allies have been fighting a US\$1.37 billion public bid that would have taken the role of recycling from the informal workers and handed it over to private companies for a ten-year period. Remarkably, this entire process has been spearheaded on behalf of the ARB by a waste picker, Nohra Padilla who has worked as a waste picker recycling materials since age seven. She has become not only an exceptional leader in the region, but also a citizen who advocates for her rights, and those of her waste picker comrades, like a professional lawyer would.

These efforts resulted in a major victory by Bogotá’s waste pickers in December of 2011, when Order 275 of the Constitutional Court not only halted a billion-dollar bidding process for waste collection and city sanitation, but also ordered, for the first time ever, that the municipal government implement a model of solid waste management that fully integrates the city’s entire waste picking community.

However, the court gave the ARB three months (ending March 31, 2012) to present the municipality with a concrete proposal on how they wanted the waste picking community integrated. With the support of WIEGO²¹ and other allies, ARB and the Waste Pickers Trade Union Pact formulated a technical, operational, economic, and political and social proposal for the management of Bogotá’s public waste service that included the entire waste picking community. This was submitted to the Constitutional Court. Two days later, the District in charge of managing the public service of the city presented their official proposal, which contained schematics for inclusion drawn directly from the ARB proposal but didn’t incorporate all the demands to create a complete agreement among both parties. Thus the waste pickers will continue legal action aimed at securing their sustainable livelihoods through a properly negotiated agreement with the help of the Constitutional Court.

²⁰ This was stated in a July 2011 presentation at a CiViSOL Seminar in Colombia by Adriana Ruiz Restrepo, a lawyer who has performed as a legal advisor to waste pickers in the last several years. Her work, combined with the organizational empowerment of ARB, forged the remarkable legal victories summarized in the article.

²¹ Women in Informal Employment: Globalizing and Organizing is a global action-research-policy network that seeks to improve the status of the working poor, especially women, in the informal economy. See www.wiego.org.

Legal Strategy and Historical Process					
Year	Institutional Framework	Legal Strategy	Process	Sentence	Outcomes
2002	The national government legislated, through article 28 of Decree 1713, <u>that all waste was property of the government</u> , transferring in the process the benefits to the private companies in charge of delivering public sanitation services.	Legal action in defense of the right to work; utilizing the argument of discriminatory treatment towards the tertiary sector and in favour of private interests linked to the capitalist economy		Regulatory Decree 1505 (2003)	The National Government replaced “property over the waste” with “responsibility over the waste.”
2003	A bidding process was tendered by the municipal government in 2003 for the collection of waste in Bogotá; this process sidelined the rights of waste pickers to participate (because of stipulations about capital and seniority).	Principle of legal trust and defence of the minimum vital requirements	The Constitutional Court would recognize that this bidding process had violated the waste pickers’ rights	Constitutional Court Ruling T-724 (2003)	The municipal authorities implemented several affirmative action policies that reduced the vulnerability of waste pickers.
2003	National Code of Transit proposed the ban of all animal-pulled vehicles from city streets.	Action of Protection	The Constitutional Court would defend the right to a minimum vital	C355 (2003)	The article stipulated the ban was struck down, and instead the Court proposed the gradual, concerted, and programmatic replacement of animal-pulled vehicles.
2008	The National Law 1259 of the Ministry of Environment prohibited the extraction of waste from garbage bags found in public spaces, the transportation of waste in inadequate vehicles, and the commercialization of waste in conditions that were not fit for such an activity.	Legal action to demand the enforcement of rights	Conditioning of the Law by the Constitutional Court	Ruling C-793 (2009)	It was established that this law cannot be enforced if it is detrimental to the work of waste pickers.
2009	The municipal Government of Cali decided to end the transfer of waste to open-air landfill sites, hurting the livelihood of thousands of waste pickers who worked there.	Legal action to demand the enforcement of rights	Constitutional Court	Ruling T-291 (2009) ²²	The ruling ordered the municipal authorities to develop an integral process whereby the social and economic inclusion of waste pickers would be pursued.
2010	The Public Service Special Administrative Unit (UAESP) decided to close down the Doña Juana sanitary landfill and began a bidding process of US\$127 million	Based on the T-724 ruling, the ARB considered that this bidding process did not have enough and effective affirmative actions to favour the waste-picking community, (a transgression of what was ordered by the aforementioned	1. “A case of contempt for the law” against the UAESP and the municipality of Bogotá, before the 43 rd Municipal Penal Court 2. Request to the Court for the stoppage of the bidding process because it lacked the minimum	Ruling 091 of May, 2010, and Ruling 268 of August, 2010	1. Bidding process was suspended by the Constitutional Court through Ruling 091. 2. Guarantee given as an enabling prerequisite that the proposers in the bidding process present themselves, including a second-level organization of Bogotá’s waste pickers, and include two new criteria for qualifying in the bidding process. ²⁴ 3. The Court requested the integration of at least

²² (...) *The Terms of Reference should establish conditions for collecting and taking advantage of waste that would allow waste pickers to participate in an effective way in this activity, in accordance with what was indicated in the motive segment of this Court Order. This participation cannot be promoted just by incorporating waste pickers as employees, but rather, the possibility for waste pickers to continue their performance as “waste entrepreneurs” should be provided for.*

	Constitutional Court ruling)	percentages of waste pickers' shareholding in the companies participating in the process ²³		3,000 waste pickers into the new working scheme of the bidding process.
				4. The Attorney General's Office discharged the then director of the UAESP and disqualified her from holding public office for 10 years.
2011/12	Bidding process for the collection, sweeping, and removal of waste in the city of Bogotá, which involved a US\$1.37 billion contract for 8 years; 4 private companies were already part of the pre-bidding process	Based on the T-24 and 268 rulings, it was argued that this bidding process did not have enough or effective affirmative actions to favour the waste-picking community	It was argued before the Court that the seniority of the waste picker organizations was not recognized, and that there was a lack of equity in the terms of reference for shareholding in the allocation of profits.	Ruling 183 (August 2011) Ruling 275 (December 2011)
				1. The Constitutional Court ordered the UAESP to stop the "Bidding Process for the Household Sanitation Service of Bogotá." 2. The Court ordered the redefinition and redesign of the scheme whereby the activities of the waste-picking community are recognized and normalized, and said this should be submitted by March 31 st , 2012.. While elements of the subsequent ARB proposal were incorporated into the official district proposal, further court action is needed in 2012 for the waste pickers to secure their livelihoods.

Conclusion

Despite these victories, the model of solid waste management based on the privatization of services is a global trend that for decades has been gaining ground in countries with the largest populations of waste pickers, and for a century in "developed" countries. Since the beginning of the new millennium, the ARB has been continuously striving for legal recognition. However, no legal victory has yet been able to guarantee the permanence of the waste picker trade in Colombia. Despite the 2011/2012 success in integrating the waste picking community into the official solid waste management scheme in Bogotá, waste pickers must continue to fight for themselves within the framework of a constant process of empowerment, and this will necessitate a return to the courts.

²⁴ These dealt with the following: 1) the shareholding of the organization of second-level within the tenders in the bidding process; and 2) the magnitude of the solid waste to be taken advantage of within the recycling project, emphasizing the amount of labour force to be employed.

²³ This allowed for the establishment of meagre percentages, such as 0.1 per cent or 0.5 per cent, for waste picker participation. Moreover, the association was established with a grassroots organization, and not with second-level waste picker organizations. It was argued that this approach overlooked representative and organizational processes, and as such, and as affirmative action, this association turned out to be insignificant and inefficient.

ANNEX II

WIEGO Case Study for 2013 WDR

Rights of Domestic Workers: The Struggle for an ILO Convention

Chris Bonner and Karin Pape, WIEGO

Background

In 2008 the Governing Body of the International Labour Organization (ILO) placed “Decent Work for Domestic Workers” on the agenda of the International Labour Conference (ILC), 2010 and 2011. As long ago as 1948 there was a commitment by the ILO to provide protection for domestic workers, but this was not strongly pursued by the ILO tri-partite constituents: governments, employers and labour. In 2007, however, there was a new initiative that set in motion the process of standard setting. The vigorous campaign launched by the International Domestic Workers Network (IDWN), with trade union organizations, especially the Global Union Federation (GUF), International Union of Food Agriculture, Hotel, Restaurant, Catering and Allied Workers Associations (IUF), the International Trade Union Confederation (ITUC), the Worker’s Bureau of the ILO (ACTRAV) and other allies, and the support gained from governments and some employers, led to the adoption of two international standards, Domestic Workers Convention, 2011 (C.189) (ILO 2011a) and Domestic Workers Recommendation, 2011 (R 201) (ILO 2011b) at the 100th Session of the ILC, June 2011.

The ILO is a specialised agency of the United Nations. International labour standards are legal instruments that lay down principles and minimum rights at work. They take the form either of Conventions, which are international treaties that can be ratified by the Member States and become binding on government, or of Recommendations, which are non-binding guidelines. These are agreed upon by the three ILO constituents through tri-partite negotiations and a vote at the annual ILC. The adoption by the ILC of the ILO’s strongest instrument, a Convention, with its accompanying Recommendation represents a milestone in the struggle of domestic workers to achieve their demands for recognition of domestic work as work and domestic workers as workers, with rights equal to all other workers, for better working conditions that take into account the nature of their work situation, social protection, and protection against abuse and exploitation.

Domestic workers perform work in or for a household(s) within an employment relationship, carrying out a range of tasks such as cleaning, cooking, gardening, child and elder care. Although there are no precise statistics on the number of workers, the ILO estimates a minimum of 52.6 million domestic workers worldwide, but with the true figure being closer to 100 million. Women, generally from the poorest sections of society, make up 83% of domestic workers (ILO 2011c). Many are migrants, internal or international, and child domestic labour, especially for girls, is common.

Despite the extent of domestic work and its significance as a source of employment, especially for poor women, in many countries labour and social protection laws completely or partially exclude domestic workers. Migrant workers are even more likely to be unprotected, and are often subjected to harsh and discriminatory immigration laws, forcing many to work under the radar. Where legal protection is in place, employers ignore it and governments fail to enforce it.

This lack of rights for domestic workers, *de jure or de facto*, reflects the low status and value placed on domestic workers and their work, which is often seen as ‘just what women do’. This is in turn reflected in the poor, in some cases slave-like, working conditions of domestic workers. They suffer low wages, long hours and for live-in domestic workers little or no rest time, being constantly ‘on call’. Occupational health and safety hazards, sexual harassment and other forms of abuse are common. They are often dismissed on the whim of the employer: for live-in domestic workers this can mean loss of accommodation and for migrant workers the right to stay in the country.

Their isolation and invisibility, long hours, restrictions on movement, poor incomes have all served to limit the extent of organization and representation amongst domestic workers, and access to collective bargaining. Attaining recognition, rights and protections through legal change at local, national and international levels therefore assumes great importance. Crucially, legal change and the struggle to achieve this can provide not only for rights, standards and protections, but can also act as a catalyst for organizing, and thus a means to gain representative voice.

The Legal Struggle

Despite these organizing obstacles, domestic workers over the years have organized and organized domestic workers have a long history of struggle for recognition as workers and thus inclusion in the labour laws of their respective countries. Often their organizations are fragile and operate in isolation from other domestic workers’ organizations. It was only in November 2006 that this began to change. Around 60 representatives from domestic workers organizations worldwide, met for the first time in Amsterdam at a conference hosted by the Dutch Union Confederation, FNV. They were joined by participants from the IUF, ITUC, ILO, Women in Informal Employment: Globalizing and Organizing (WIEGO) and other Non- Governmental Organizations (NGO) Their main demand was that domestic work is recognized as work and that domestic workers are recognized as workers—with all the rights that go with it. They also expressed a need for an international minimum standard, an ILO Convention for domestic workers. However, their priority was to strengthen domestic workers’ organizations at all levels, including internationally. This would be the pre-condition for any achievements with regard to legal protection. (IUF, IRENE 2008)

For the first time, a GUF, the IUF, offered support and provided an organizational space for domestic workers’ organizations. The IUF and WIEGO, decided to work together, facilitating the formation of the IDWN and supporting the Convention Campaign. The beginning of this international movement of domestic workers was a push factor for the Workers’ Group in the ILO and ILO ACTRAV, together with supportive governments, to fight for a standard setting item at the ILC for domestic workers. Some governments and the Employers’ group favoured other topics or thought that a non-binding recommendation, was more appropriate, and thus

opposed the move. Further in the process other allies supported the domestic workers, in particular international NGOs such as Human Rights Watch, Anti- Slavery International, Migrant Forum Asia and international church groups.

To be involved in the ILO process means not only participating in two ILC sessions but actively participating in the preparations. The table below outlines the many steps to be taken. The three week negotiations at the ILCs follow strict rules, with formal participation restricted to official delegates. However, informal negotiations take place in coffee bars, during lunch and on the corridors-places where domestic workers representatives were very active.

Table 1: Steps towards an ILO Convention: the process

January 2009	The International Labour Office (Office) sent a law and practice report along with a questionnaire to Member States. Governments have to consult with workers' organizations and employers' associations.
August 2009	Deadline for submission of replies to the Office.
January 2010	The Office sent a second report, examining the replies received, to Member States.
First Discussion and Vote at the June 2010 ILC	A decision was taken on the form of the draft ILO instrument(s) at ILC - whether a Convention or a Recommendation or both. Decision was to have a Convention and Recommendation.
August 2010	The Office sent a third report containing draft instrument to Member States, the final version of which was sent to Member States in March 2011
November 2010	Deadline for submission of comments to the Office on the third report by Member States.
March 2011	The Office sent two reports to Member States: one examining the replies received on the third report, and the other containing the text of the revised draft instrument(s).
Final Discussion and Vote at the June 2011 ILC	A Convention and Recommendation was discussed and adopted by the ILC on June 16th, 2011.

Source: Adapted from ILO 2009.

Domestic workers tried to influence the course of events at every stage. Their Campaign was built around the given ILO process. Due to the support of the IUF, domestic workers were able to learn about the process and to get access to main players in the ILO at international and national level. In particular, they lobbied governments and trade unions extensively to respond to the ILO questionnaire and the reports. The result was an exceptionally high number of responses, proof of the success of this strategy (see ILO 2010). Learning from prior experiences of ILO processes, IDWN gathered demands from domestic workers, and published a "Platform of Demands" (IDWN 2010). This was distributed at the 2010 ILC, together with summaries, prepared by researchers, of data on numbers and working conditions of domestic workers. (IDWN 2010, Tokman 2010). The ITUC, which acts as the Secretariat for the workers' group,

distributed a briefing note, which re-iterated the demands of domestic workers and put them into appropriate ILO “language). Some of the most difficult issues were: the form of the instrument (Convention or Recommendation), its scope (i.e. inclusion of undocumented migrant workers), regulation of working time (including overtime and stand-by time), labour inspection in private homes, inclusion into minimum wage regulations, access to social protection, regulation of agencies and equal treatment of migrant domestic workers.

IDWN and allies organised and participated in numerous activities in many countries. They used commemoration days like 1 May, International Women’s Day and others to go public with the Convention demand. Representatives of domestic workers’ organizations approached Ministries of Labour, trade union and employers’ associations. They succeeded on getting domestic workers on the agenda of tripartite meetings. In some African countries domestic workers were interviewed by radio stations and the shows were broadcasted on the buses when people went to work. And there were some immediate successes: for example, in Jamaica the minimum wage for domestic workers was raised by 10%; Indonesia and Malaysia signed a Memorandum of Understanding to improve the conditions of Indonesian domestic workers in Malaysia.

A key strategy of the IDWN was to get domestic workers’ representatives included into the trade union delegations of their respective countries, so that they could speak for themselves and negotiate on equal terms their own instrument. The importance of this strategy is that, whilst observers from NGOs (including GUFs) can attend the ILC and provide background support, voting rights and most speaking rights are the preserve of official delegates. In 2010, some twenty representatives from domestic workers’ organizations were sitting side by side ILO-experienced trade union representatives from their countries. There was an even larger number in 2011. The domestic worker delegates participated actively in the Workers’ Group, influencing negotiations by putting forward their views and demands. The tri-partite negotiations process is highly structured and for workers and employers in the tri-partite committee only their official spokespersons can speak. The worker spokesperson (Vice-Chair of the Tri-partite Domestic Workers’ Committee) therefore appoints a group (Bureau) to advise her. As an official delegate, the Chairperson of IDWN was nominated to serve on the Bureau. Some domestic workers delegates were able to speak on behalf of their national trade union delegation in the ILO Plenary Sessions.

During the negotiations researchers allied to the IDWN, were able to provide quick and relevant information to negotiators; writers supported domestic workers in preparing speeches; media consultants and journalists wrote stories for the press and for web sites and blogs; others facilitated strategy discussions or kept records. What was important was that these activities supported rather than overtook domestic workers’ leadership role and facilitated their objective of speaking for themselves.

At the end of many long negotiating sessions, the tri-partite committee came to an agreement on the text of the Convention and Recommendation. Most governments had been supportive in 2011, and the employers’ group had surprisingly, given their hostility in 2010, managed to muster majority support amongst its members. Accordingly on June 16th 2011 a large majority voted in favour of both the Convention and Recommendation.

The main achievement of the Convention is that domestic workers are unconditionally defined as workers. With this international treaty (if ratified by national governments), they enjoy the same protection by national labour laws and regulations, including inclusion into social protection schemes, as any other workers. Some articles provide special protection for certain categories of domestic workers, for example live-in domestic workers or migrant domestic workers. Additionally, the Recommendation provides a comprehensive framework and guideline for governments implementing legislation in line with the Convention. If applied, it would lift millions of domestic workers out of the informal economy.

Analysis of the Legal Struggle

The challenges faced by domestic workers in the struggle for a Convention were organizational, political and technical, spanning process and content.

Challenge #1 Organization and Leadership. Domestic workers are not strongly organized into trade unions, nor do they generally hold positions of power when they are included in the mainstream trade union movement: they are small, have limited resources to contribute, are not seen by unions as wielding economic or political power and are primarily women in a generally patriarchal institution. As official participation in the standard setting process by workers is restricted to trade union national centres, this posed a barrier that had to be overcome, and was done so successfully by IDWN.

Challenge #2 Activating and Managing Support. Support from a wide range of groups was critical to success, but challenging to obtain. There was considerable official support from the trade unions and from some governments from the beginning, but this had to be activated. They had to be persuaded to respond to the reports and questionnaires, to adopt and promote supportive positions to engage with domestic workers' organizations, and for trade unions to provide practical assistance, most importantly to include domestic workers in ILC delegations. More hostile governments posed an even greater obstacle.

A bigger challenge came with employers who were mostly hostile to a binding Convention, particularly during the 2010 negotiations. Seemingly this hostility was ideological and/or based on self-interest, as there is no collective industry interest to defend, making this difficult to penetrate, but not impossible as the results show. Alliance building with NGOs, and collaboration with ILO offices, ITUC and GUFs internationally and in regions, was less difficult, as the basic support for domestic workers was there. However, relationships had to be managed in order to keep a unified position and to ensure that rivalry over leadership and resources did not sow disunity.

Challenge #3 Understanding and Engaging the ILO process. ILO processes are quite technical and bureaucratic and can be hard to understand or engage with. The challenge was to ensure women domestic worker representatives could effectively engage in the process and 'speak for themselves'. The training given, materials produced, the opportunities for participation and leadership provided through the IDWN saw domestic workers capably handling complex documents, discussions, processes and public speaking. Pooling the knowledge and experience of domestic workers with the technical know-how of allies and the ILO office was a powerful combination.

Challenge #4 Contested Demands. The nature of domestic work and the fact that it takes place in private homes meant that many of the demands were highly contested, the key one underpinning all others was whether the instrument should be strong, a Convention, or weak, a Recommendation or both as demanded by workers. As noted above, contested provisions included those relating to working time, migrant workers, social protection, agencies and privacy.

Challenge #5 Implementation. The ILO Convention does not translate immediately into concrete gains for domestic workers. It is not legally enforceable unless ratified by governments, obliging them to ensure national law complies with its provisions and subjecting them to the ILO reporting and monitoring system. To get to this point it has to first pass through processes involving employers, government officials and elected officers and through parliaments, and once ratified be incorporated into national law- another lengthy process. Even if successful legislative changes are made, the problems of implementation and real improvements for each and every domestic worker will remain.

Lessons /Conclusion

Achieving an ILO Convention will not directly change the situation of domestic workers in their working lives, but provides a platform and legislative springboard on which to build, requiring intensive and sustained efforts by domestic workers and their allies. However, what domestic workers have demonstrated is that the ILO process can be an important catalyst and tool for global organizing, providing a common issue and focus around which workers can campaign, build global solidarity and strengthen organization on the ground. It can provide a forum for the representative voice of those previously unheard to be heard. In the case of domestic workers their status as “employees” was an important factor in gaining access to standard setting in the ILO, and garnering the support of trade unions. Own account informal workers are excluded from standard setting processes as they apply only to those in an employee-employer relationship. However, many non-standard setting discussions at the annual ILC are relevant to informal workers and there is space for informal workers to raise their voice and demands using many of the strategies employed by the domestic workers, adapted to their circumstances.. Three major lessons stand out:

- a) Direct participation by those workers who are the subject of, or affected by, the discussion impacts positively on the attitudes and positions of potentially hostile governments and employers. It also builds the confidence and capacities of worker leaders, especially women, and helps strengthen their organizations.
- b) Building a strong relationship and collaborating with the trade unions at international and national level, including the ILO-ACTRAV, in order to gain support, influence and access is critical. A structured relationship with a GUF such as the IUF can be particularly helpful.
- c) Well managed collaborations and alliances with a range organizations allows for a pooling of resources, skills, knowledge, including that of domestic workers themselves. They extend points of influence and leverage, raise awareness more widely and

potentially increase pressure on those with power to influence the outcome of the negotiations.

As the Campaign for an ILO Convention demonstrates, it was only through the nascent international movement of domestic workers joining forces with the broad trade union movement and other allies that this successful outcome was achieved. Now, an even stronger movement is needed to put the ILO Convention into practice widely.

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ANNEX III

WIEGO CASE STUDY for WDR 2013

The Self-Employed Women's Association of India: A National Trade Union and International Role Model

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Abstract

This short case study covers the genesis of SEWA, the scope and scale of its activities, and its impact at the state level in Gujarat and in India more broadly. It also looks at the impact that SEWA has had and is having internationally as a role model for other organizations of informal workers and the types of support it provides to such organizations. It concludes with a discussion of the organizations in other countries that are using the SEWA approach, including the strengths, limitations, and challenges of adopting the SEWA approach in other contexts.

I. GENESIS OF SEWA

In 1971, a small group of migrant women cart pullers in the wholesale cloth market of Ahmedabad City in western India approached the Women's Wing of the Textile Labour Association (TLA), headed by a woman lawyer named Ela Bhatt inspired by Mahatma Gandhi, to ask whether the TLA might be able to help them negotiate higher wages. Ela Bhatt accompanied the women to the wholesale cloth market where she met another group of women who were working as head loaders, carrying loads of cloth to and from the wholesale market. The head loaders described their work, including their low and erratic wages. The head loaders were paid on a per trip basis by the merchants—not according to the distance traveled or weight carried. Because no records were maintained of how many trips they made, they were often not paid the full amount they were owed.

Under the auspices of the Women's Wing of the TLA, Ela Bhatt decided to organize a public meeting for the head loaders in the cloth market to discuss their problems. During the meeting, she told the women that they should organize if they wished to address their problems: the women agreed to organize themselves into a group and each paid 25 *paisa* (quarter of a rupee) as a membership fee. Following the meeting, Ela Bhatt wrote an article for a local newspaper detailing the problems of the head loaders. The cloth merchants countered with their own news article in which they denied the allegations and claimed that they treated the head loaders fairly. The TLA Women's Wing responded by reprinting the merchant's claims of fair treatment on

cards which they distributed to the head loaders to use to hold the merchants accountable: thus turning the merchant's rebuttal to the head loaders' advantage (Sebstad 1982).

Word of the head loaders' moral victory spread quickly. Soon, a group of used-clothing dealers approached the TLA Women's Wing with their complaints. Again, Ela Bhatt called a public meeting to which over 100 used-garment dealers and other women came. During that meeting, a woman from the crowd suggested they form an association/union of their own. Thus, on an appeal from the women and at the initiative of Ela Bhatt and the TLA Women's Wing, the Self-Employed Women's Association was born on December 3, 1971.

Ela Bhatt soon began organizing two other overlooked and largely-female segments of the textile industry - home-based garment makers and quilt-makers (who made patchwork quilts from textile waste called *chindi*)—as well as street vendors. By 1975, membership in the SEWA Union had grown to 2,750 women from five trade groups of which the largest was street vendors (400 members) followed by head loaders, garment makers, used-clothing dealers, and bidi rollers (300 members each). In 1976, after the state government mandated minimum wages for agricultural workers, SEWA also began organizing agricultural laborers in several villages in Ahmedabad District.

This sequence of events not only illustrates why and how SEWA was formed but also why and how SEWA operates even today—more than forty years later.²⁵ The SEWA approach, in a nutshell, is to meet with specific groups of working poor women to better understand their work and working conditions, to identify with them one or two key common work-related issues that need to be addressed, and to galvanize them to organize around these key issues and develop joint strategies. Over the years, these joint strategies have taken two broad forms: what SEWA calls “struggle” (union-type collective bargaining, negotiations, campaigns, and advocacy) and “development” (direct interventions and services of various kinds).

II. SCOPE & SCALE OF SEWA

Over the years, in pursuit of these twin strategies, SEWA has diversified and become a family of organizations, which is often depicted as a “banyan tree” which has grown into a “banyan tree forest”. The banyan tree grows and puts out roots which then grow into another tree, still attached and yet separate, and so on: if the conditions are right, the banyan tree can become a whole forest. At the same time, SEWA retains all the qualities of a movement, continuously changing the society in favor of its members. The movement is based on Gandhian principles of truth, nonviolence, and communal harmony with a particular emphasis on the dignity of labor and a faith in women's leadership.

In the early 1980s, SEWA began expanding the scope of its operations to other states in India. Established in 1982, SEWA Bharat (literally, SEWA India) is the registered federation of SEWA organizations nation-wide. Over the past three decades, with support and guidance from SEWA

²⁵ The most recent history of SEWA has been written by Ela Bhatt (Bhatt 2006). Two earlier histories of SEWA were written by Jennefer Sebstad (1982) and Kalima Rose (Rose 1992).

Bharat, eight SEWA organizations in eight states, in addition to Gujarat state, have been established.

SEWA offers its members a range of organizing strategies and development services. First and foremost, as a trade union, SEWA offers all of its members some combination of the following, tailored to their main occupation or trade:

- **Organization:** into trade groups or cooperatives or producer groups.
- **Local leadership development:** opportunities and training to become local leaders.
- **Collective bargaining:** trade-wise or issue-based.
- **Policy advocacy:** trade-wise or issue-based.

In addition, SEWA offers the following development services to its members on an on-going basis:

- **Financial services:** savings, loans (including housing loans), insurance (including disaster relief), pensions
- **Social services:** health, child care, and education (adult literacy).
- **Infrastructure services:** housing plus water, sanitation, electricity, and (in remote areas) transport.
- **Capacity-building services:** training in technical skills, leadership and other skills.

Since employment is central to SEWA member's needs, one of SEWA's main activities is to increase its member's productivity and help them adapt to changing markets. Thus, SEWA offers its members the following services and organizes them into companies, which they manage and own, and cooperatives:

- **Enterprise development services:** skills training and product development.
- **Marketing services:** local, state, national and export-marketing services.

Organizing is the central strategy of SEWA and takes several forms. In addition to organizing its members by trade into trade unions, SEWA helps its members to form cooperatives, other forms of local associations, as well as state and even national federations. All members of SEWA belong to a relevant trade group and are voting members of the SEWA trade unions; many also belong to one or more other SEWA membership-based organizations - cooperatives, producer groups, companies, and (in rural areas) savings-and-credit groups. Two types of these other organizations - cooperatives and rural groups/associations - are federated into separate state-wide or national organizations.

The cooperatives and companies which are part of the SEWA family are ways for members to pool their capital and skill to enter new markets and to learn to manage a larger, more effective

and collective business. There are over a hundred SEWA companies and cooperatives in handicraft production, agriculture production, animal husbandry, salt production, or other productive activities. Some of the cooperatives are of service providers, including cooperatives of SEWA-trained grassroots women who provide health and child care services.

In sum, the SEWA family of organizations includes::

- SEWA Trade Unions in each State
- SEWA Bank and other micro finance organizations
- SEWA Cooperative Federation and District Associations
- SEWA Health and Child Care Cooperatives
- SEWA Insurance
- SEWA Housing Trust
- SEWA Marketing Companies
- SEWA Academy.

Reflecting SEWA's commitment to building sustainable local institutions, these organizations are managed, and owned as membership-based organizations: cooperatives of SEWA members provide health and child care services; the insurance scheme developed by SEWA Social Security has been transformed into an insurance cooperative; Gram Haat and the Trade Facilitation Centre are owned and managed by SEWA producers; and SEWA Academy provides communication services through a cooperative of SEWA members trained in video technology. In the rural areas, in particular, SEWA seeks to link producers directly with consumers: thus developing the local economy.

In 2011, SEWA had a total membership of 1,347,305 members across India of which 823,883 were in Gujarat and the other 523,422 were from SEWA's in eight other states. The members are drawn from multiple trades or occupations and from all religious and caste groups.

In 2006, given its size and the scope of its operations, SEWA was officially recognized as a national trade union federation. As a recognized national trade union federation, it became a founding member of the International Trade Union Confederation (ITUC) established in November 2006. In 2010, the General Secretary of SEWA was elected as one of the vice-presidents of the International Trade Union Congress.

III. IMPACT OF SEWA

Membership

SEWA has been able to help the majority of its members increase their employment and income; build and secure their asset base, including housing; and improve their nutritional and health status. In the process, many of its members have gained awareness, self-confidence, and bargaining power (both individual and collective). And, in the process, membership-based organizations have been built and local women leaders have been mobilized and trained.

Both SEWA's members and the organization itself are frequently buffeted by crises: predictable crises across a woman's life cycle that place financial stress on poor households; unpredictable widespread crises that often affect rich as well as poor households; and major underlying economic, social, and political changes. In response, SEWA has designed programmes to address the risks that working poor women face, including life cycle risks, floods and drought, sudden factory closures, communal riots, and accidents of various kinds. All these programs are designed to help SEWA members return to secure work: for example, SEWA's relief services include health and child care services which help people get back to work and SEWA's rehabilitation efforts are designed to generate local employment.

Wider Environment

Informed by its members and through the organized strength of its membership, SEWA pushes for structural changes in the wider environment. Some of these structural changes relate to the informal economy as a whole, such as legal recognition of the informal economy; legal recognition of SEWA as a trade union; and representation of informal workers in mainstream institutions at the local, state, national and international institutions. Other structural changes relate to specific trade groups, such as increased wages or piece rates; worker benefits and social protection measures; licenses to buy and sell goods; access to new and improved markets. And some of these relate to specific issues of concern to SEWA members such as housing; infrastructure services (water, electricity, transport); land and other natural resources.

In shaping the wider policy environment, SEWA also seeks to change public understanding and appreciation of working poor women and their work and, thereby, to change the values, norms and practices within society. This change may and should take place at different levels: husbands, families, and communities learn to value the contributions and understand the views of their wives, mothers, sisters, and neighbors; employers learn to value the contributions and understand the needs of their wage workers or their sub-contracted workers; and society learns to value the contributions and understand the needs of working poor women.

In SEWA's work, the wider environment is seen to include policies, institutions, and norms. Policy is interpreted quite broadly by SEWA to include: formal policies adopted by government or other institutions; guidelines and procedures for official schemes or programmes; laws and legal decisions; informal 'rules of the game' governing market transactions; and collective bargaining agreements. Institutions are seen to include rule-making institutions of various kinds, both formal and informal, in the economic, political and social arenas. And norms are seen to include public perceptions and social norms as well as the dominant neo-classical

economic models of labor markets and economic policy: what Ela Bhatt, the founder of SEWA, refers to as “mindsets”.²⁶

Of particular concern to SEWA is the fact that the working poor, especially women, do not have voice in most of the institutions that set the rules that affect their lives and work. This lack of voice—this exclusion from decision-making - has translated into lack of visibility in mainstream policies. Some of the relevant rule-setting and policy-making processes from which SEWA’s members, other working poor women, have been excluded include: local councils; municipal, state, and national planning bodies; tripartite boards; minimum wage and other advisory boards; economic sector-specific business associations; local, state and national labour federations. Thus, SEWA’s strategy to impact policy includes gaining representation in key relevant institutions and, thereby, giving voice to the policy needs of its members and other working poor.

International Movements

SEWA has played a pioneering and influential role in three international movements: the labor movement, the women’s movement, and the micro-finance movement. With its unique perspective and experience, SEWA has been able to shape the directions of these movements: encouraging the labor movement to organize informal workers, the women’s movement to focus on women’s identity and needs as workers, and the micro-finance movement to include savings and insurance as well as loans as financial services.

IV. SEWA-INSPIRED ORGANIZATIONS OF INFORMAL WORKERS

Over the past two decades, an international movement of organizations of informal workers and their support organizations has emerged. Much of the impetus and inspiration for this growing movement has come from SEWA.

During the 1980s, SEWA began establishing linkages with membership-based organizations of home-based workers and street vendors as well as support NGOs working with these groups of workers. In the mid-1990s, at two separate meetings in Europe, these organizations under SEWA’s leadership came together to form two international alliances: one of organizations of home-based workers, the other of organizations of street vendors.

From its founding in 1994, the alliance of home-based worker organizations was centrally involved in the campaign to pass an International Labour Organization (ILO) convention on homework (industrial outwork carried out in homes). Following the standard ILO process, a two-year preparatory process and two votes (one preliminary, the other final) at successive annual International Labour Conferences, the International Convention on Homework (C177) was passed in 1996.

²⁶ For more details on how SEWA influences the wider environment, and for a summary of the influence it has had on the wider environment, see Martha Alter Chen, *Towards Economic Freedom: The Impact of SEWA* (Ahmedabad, India: Self-Employed Women’s Association, 2005).

To help with the campaign for the homework convention, SEWA and its allies requested a researcher (this author) to compile and analyze existing data on homeworkers worldwide in order to highlight the extent and contribution of homework. With the passage of the ILO Convention on Homework in 1996, SEWA and HomeNet recognized the power of statistics and of ‘the joint action of activists and researchers.’ This recognition led to the creation in 1997 of the global action-research-policy network called Women in Informal Employment: Globalizing and Organizing (WIEGO) which seeks to build and strengthen sector-specific networks of informal workers, improve statistics and research on informal workers, and promote more appropriate policy responses to the informal economy and informal workforce. Since its founding in 1997, WIEGO has worked closely with SEWA in building and supporting organizations and networks of informal workers.

In 1995, SEWA organized a meeting at the Rockefeller Foundation Study and Conference Centre in Bellagio, Italy of representatives of street vendor organizations from a dozen cities around the world as well as activists and lawyers working with street vendor organizations. At that meeting, the participants drafted the Bellagio International Declaration of Street Vendors which calls for action at four other levels: by individual traders, by traders’ associations, by city governments, and by international organizations including the United Nations, the International Labour Organisation (ILO) and the World Bank. The participants also called for the establishment of an international network of street vendor organizations to be called StreetNet. In early 2000, a StreetNet office was set up in Durban, South Africa.

In November 2002, after several regional meetings of street vendor organizations, StreetNet International was officially launched. The aim of StreetNet is to promote the exchange of information and ideas on critical issues facing street vendors, market vendors and hawkers (i.e. mobile vendors) and on practical organizing and advocacy strategies. Membership-based organizations (unions, co-operatives or associations) directly organizing street vendors, market vendors and/or hawkers among their members, are entitled to affiliate to StreetNet International. As of late 2011, StreetNet International had over 30 affiliates from over 30 countries, including: local associations or trade unions, national federations or associations, and regional alliances.

Over the past decade, SEWA has also inspired or co-founded national and regional networks of homeworkers and their allies (called HomeNets) in South-East and South Asia; national networks of street vendors in India and Kenya; and international networks of domestic workers and waste pickers. The founding of HomeNet South Asia took place at a regional meeting of organizations of home-based workers and their supporter in Kathmandu, Nepal which also led to the Kathmandu Declaration on Home-Based Workers for the South Asia Association for Regional Cooperation (SAARC). It also serves on an international coordinating committee that has organized three regional and two international conferences of organizations of informal workers; and as advisor to an international steering committee that organized the first international conference of organizations of waste collectors held in Bogota, Colombia in March 2008.

V. ADOPTING THE SEWA APPROACH

The networks and organizations of informal workers listed above have adopted the SEWA approach in varying ways, to varying degrees, and with varying success. What accounts for this variation? What are the strengths, limitations, and challenges of adopting the SEWA approach to other contexts?

To begin with, SEWA itself has supported these networks-organizations in various ways and to varying degrees. The different ways in which SEWA has been involved include: co-founding the organization, providing technical assistance largely through exposure visits to SEWA; collaborating on joint projects, campaigns, or advocacy; or serving on the governing body of the organization/network. See Table 1.

Table 1 Modalities of SEWA engagement with other organizations

ORGANIZATIONS	MODALITIES			
	FND	TA	COLL	GOV
International Networks				
StreetNet International	*	*	*	*
Global Alliance of Waste Pickers	*	*	*	*
International Domestic Workers Network			*	
Regional Networks				
HomeNet South East Asia		*	*	
HomeNet South Asia	*	*	*	*
HomeNet Eastern Europe		*		
National Networks				
KENASVIT			*	
NASVI	*	*	*	*

Notes: FND = founding; TA = technical assistance; COLL = collaboration; GOV = governance; KENASVIT = Kenya Association of Street Vendors and Itinerant Traders; NASVI = National Association of Street Vendors in India.

There is no simple co-relationship between the degree/nature of SEWA's engagement and the strength of the network/organization. Among those organizations which have received the full range of support from SEWA, all have done reasonably well - but some better than others. Other networks/organizations have grown without much support from SEWA. But these have received support from other like-minded organizations, including WIEGO but also UNIFEM (for two regional HomeNets), International Union of Food and Allied Workers (for the International Domestic Workers Alliance, and Unitarian Universalist Service Committee (for KENASVIT).

What other factors account for the relative strength and effectiveness of the organizations? Firstly, there are factors internal to the organization. Leadership is key: the background and

experience of the leaders, their stature within and outside the organization, the degree of their identification with the concerns and needs of the membership. Leaders also need management, policy analysis and advocacy skills as well as organizing capacity. The ideology of the leaders—and the organization as a whole—is also critical: whether they seek to provide services to and/or organize the working poor for collective action, whether they seek to organize the working poor around their identity as workers or some other identity, and whether they seek to promote the joint strategy of “struggle” and “development”. Also important from the SEWA perspective is whether they recognize and promote women informal workers as workers and as leaders of their organizations.

Secondly, external factors can also serve to strengthen or limit the effectiveness of the organizations. The first and foremost external factor is whether governments in the countries where the organizations are based promote democratic processes and the rule of law. A related factor is what legal system the countries follow. A second key external factor is how governments view informal activities, units, and workers: are they seen as legal or illegal? as contributing to the economy or as a drag on the economy? A third factor, closely related to the first two, is whether workers in general and informal workers in particular are allowed to organize. And, if so, whether informal workers are recognized as workers and whether their organizations are recognized as organizations: with a right to a representative voice in relevant collective-bargaining and policy-making processes.

While some of the networks/organizations inspired by SEWA remain weak, most have been able to leverage resources on behalf of their members and to influence policies, especially when they collaborate together. A recent rapid assessment carried out by WIEGO estimates that 20 membership-based organizations of informal workers, including SEWA and other partners in a global project called Inclusive Cities for the Working Poor, have leveraged a combined total of USD 64 million in government resources on behalf of nearly 800,000 informal workers (out of a total of 2.2 million members of these organizations). To leverage these resources, the MBOs provided information on existing programs to their members, lobbied governments for new programs, maintained membership lists and presented them to program administrators to ensure their members were included, and negotiated contracts and other agreements with governments and third parties.

Further, the networks of domestic workers, home-based workers, street vendors, and waste pickers, acting collectively by sector and in solidarity across sectors, have been able to secure two international conventions (for homeworkers and domestic workers); policies, laws, or legal judgments in support of street vendor and/or waste pickers in several countries; and growing recognition worldwide of the economic and social contributions of these groups of workers and informal workers more generally.

Most importantly, together these organizations have helped create a global movement of workers in the informal economy that now has the support of several national and global trade union federations that have begun to organize or otherwise support informal workers, including the AFL-CIO, the Ghana Trades Union Confederation, FNV (a Dutch federation of trade unions), the Hong Kong Confederation of Trade Unions, and the International Union of Food and Allied Workers (IUF). Drawing inspiration and guidance from SEWA, this movement continues to

identify and network organizations of informal workers and to inform and influence policy debates on the informal economy.

ANNEX IV

WIEGO Case Study for 2013 WDR

Defending the Rights of Street Traders: The Case of Warwick Junction in Durban, South Africa

Mahendra Chetty (Legal Resources Centre) and Caroline Skinner (WIEGO and African Centre for Cities, University of Cape Town)

Context and background to the case

In South Africa a third of all those recorded as working, work in the informal economy—39% of employed women and 29% of employed men (Budlender, 2011:2). A dominant sector within South Africa’s informal economy is trade (ibid). In metropolitan areas, for example, 29% of all informal workers work as traders. Despite the predominance of informal trade both in South Africa and internationally, there are very few good examples of inclusive urban planning for street traders²⁷. For many years the Warwick Junction, a precinct in the inner city of Durban, was looked to as best practice of street trader management and support. The area contains the city’s primary transport node and has thus long been a natural market for street traders, with between 6000 and 8000 street and market traders operating there. In 1997 the city council launched a project to redevelop the area with a particular focus on trading and employment opportunities. The project initiated substantial capital works that were carefully designed with informal workers needs in mind. The redevelopment was characterised by high levels of consultation. This has led to unprecedented self regulation among street traders indicating a sense of ownership of the area. For these and other reasons the Warwick Junction became an award winning example of integrating street traders into urban plans²⁸.

To the surprise of many, in February 2009 the Durban / eThekweni Municipality announced its plans to build a shopping mall in the Warwick Junction. The proposed site for the mall was the Early Morning Market (EMM) a fresh produce market, in the centre of the Junction that was due to celebrate its centenary in 2010. The plans entailed a redesign of the whole district ensuring that the foot traffic, estimated at 460 000 commuters a day, was directed past the formal rather than the informal traders so threatening the viability of all street and market traders in the Junction.

A major civil society campaign opposing the development ensued. Central to this campaign was a series of legal cases pursued by a public interest, nonprofit law firm—the Legal Resources Centre²⁹ (LRC). By April 2011 the City Council finally rescinded its 2009 decision to lease the

²⁷ See Skinner 2008 for an overview of street trader management trends in Africa.

²⁸ See Dobson and Skinner, 2009 for a detailed documentation of the Warwick Junction Project

²⁹ The Legal Resources Centre (LRC) is a human rights organization in South Africa who uses law as an instrument of justice for the vulnerable and marginalized people and communities. The Centre was established in 1979 and was

market land for the mall development noting that there was ‘little prospect of the legal challenges relating to the current proposal being resolved’. This was a major victory for the traders. This briefing note outlines the background to the case and the role of litigation in securing the rights of Durban’s street traders.

The rationale for a shopping mall as opposed to an informal market

As noted on a busy day, the Warwick Junction houses as many as 8000 street and market traders. The majority of these traders are women. The incomes generated through these activities support large households located in poorer parts of the city. Further the city council had won kudos, through winning both local and international awards for its initiatives to support informal traders in the Warwick Junction. Given this context, when the City announced its plans to grant a 50 year lease of land to a consortium of property developers—Warwick Mall Pty Ltd—a key question in the minds of many was ‘why this about turn in the City Council’s approach?’ Analysis suggests two critical issues. First, the role of private property developers (who were in this case politically well connected) in driving the mall plans. Second, Durban was due to hosted a number of 2010 Soccer World Cup events. Removing traders ahead of the event was part of a plan to ‘spruce up’ the city.

Warwick Mall (Pty) Limited is a black economic empowerment consortium. The company who established the consortium—Isolenu—specializes in township town centre redevelopment. Warwick Mall (Pty) Limited was registered in 2006 demonstrating that the developers have been planning this for some time. Given the high foot traffic in the Junction, for private retail this is a very lucrative and thus desirable site—a case of formal retail following informal retail. The consortium approached the city with the mall proposal—in effect an unsolicited bid. This indicates the role of large scale property developers in driving this development. In addition the City notice of the intention to grant a 50 year lease of the EMM site to the Warwick Mall (Pty), Limited stated that there will be a once-off rental of R22,5 million (eThekweni Municipality, 2009:1). Later in the notice it stated that the Municipality would contribute R24 million to the construction of a taxi bay on the roof of the proposed mall. The developer was thus not only accessing a very valuable piece of public land but is in fact being paid by the city to do so. The City was thus facilitating private property developer interests. The consortium was well connected to local politicians.

In justifying the proposed development the City Manager noted that the area was in need of redevelopment but also that, due to the Soccer World Cup, the city was able to access national funds to reconfigure transport interchanges (Mercury, 4 & 15 June 2009). Bromley (2000:12) in his review of street trading, drawing on over two and a half decades of related research and international policy notes “Aggressive policing (of street traders) is particularly notable just before major public and tourist events, on the assumption that orderly streets improve the image of the city to visitors”. The City Council documents outlined that Phase 1 of the development would be completed before the commencement of the games. Although the City did not

an important player in the anti apartheid struggle. Currently it over 60 staff based in four regional offices who work in a variety of focus areas including women and children, social security, land, housing and planning. They have been directly involved in a range of precedent setting cases in the post apartheid period. The centre is a nonprofit organisation that relies on donor support. Over the years the LRC has received funding from international and domestic donors, the private sector and individuals. For more details see www.lrc.org.za.

explicitly state that traders do not fit into the image of Durban they wanted left in the minds of 2010 visitors, their actions certainly suggested this. This is part of a broader global trend where traders are often not considered to be part of a ‘modern’ city³⁰.

Key actors opposing the City’s plans

There was a groundswell of opposition to the proposal. There has been a long history of street trader organizing in Durban in general and in the Warwick Junction in particular. Street trader organizations were supported by the Congress of South African Trade Unions³¹ and the South African Communist Party in the KwaZulu-Natal province who publicly opposed the proposals. Durban is also the head quarters of the international alliance of street trader organizations or StreetNet. Civil Society groups meet weekly under StreetNet’s campaign ‘World Class Cities for All’. Urban practitioners and academics also joined the campaign—writing letters to the press, arranging public debates and giving technical assistance.

Legal strategy, process and outcome

On behalf of a number of traders operating in the Early Morning Market, the Legal Resources Centre (LRC) wrote to the City Manager on 2 July 2009 indicating their intention to oppose the demolition the market. Their objection was based on the threat to their clients’ livelihoods, the absence of any meaningful consultation on the proposals but also the fact that the market building was protected under National Heritage legislation. The LRC then requested a number of documents from the city that would allow them to interrogate the city’s decision making process. Since the LRC had outlined its intention to institute legal proceedings, the city had to halt its plans to evict EMM traders by the 31 July 2009, until the matter was resolved. This gave the traders an important respite but also meant the development was unlikely to be able to be completed before the World Cup events.

The very next day—July 3, 2009—the city issued a directive to the barrow operators stating that they were forthwith required to apply for permits to haul their barrows through the market. Barrow operators are central to the operation of the market. They ferry goods from suppliers to traders and from traders to customers. The LRC, again at no cost to the barrow operators, launched an urgent application on their behalf. The Court ruled in favour of the barrow operators, striking down the city’s attempts to curtail their livelihoods. This victory proved to be the catalyst for the subsequent legal challenges against the city.

In August 2009, traders complained of harassment by the municipal market officials, particularly in the form of the confiscation of the goods off their table, if whatever reasons a trader was not physically at his or her stall. Section 4(4) of the bylaws requires every stand holder to be in personal attendance and section 5(3) requires table-holders to be in personal attendance at the table allocated at the Early Morning Market. The practice was even more pernicious in that the

³⁰ WIEGO scans news on street traders on a bi-weekly basis (see www.inclusivecities.org). From these scans it is clear that street trader evictions are a daily occurrence. Just on the African continent, between December 1, 2011 and January 31, 2012 street traders were evicted in major urban areas in Liberia, Malawi, Nigeria, Rwanda, South Africa, Uganda, Zambia and Zimbabwe.

³¹ The majority of COSATU members are formally employed making this an interesting case of solidarity between formal and informal workers.

trader, absent from her table, faced the prospect of paying an admission of guilt fine without any guarantee that the goods confiscated would be returned in the same condition as at the time they were taken away. The requirement in the bylaw of first obtaining written permission from an official prior to leaving one's stall is draconian and reminiscent of the oppressive apartheid laws. An urgent application was brought after a trader's goods were confiscated and the Court granted an interim order setting aside the various sections of the bylaws which allowed the municipal officials to harass and confiscate the goods of a trader where he or she was not present at their stall.

In the meantime the LRC prepared a comprehensive set of court papers. A challenge to review the decision of the municipality to grant the lease for the Early Morning Market was filed in August 2009. The applicants were fresh produce sellers, barrow operators; chicken sellers and bovine head cooks. The review of the city's decision was based on administrative law and constitutional principles, ranging from aspects of procedural fairness in terms of the requirement to consult with a party likely to be adversely affected by an administrative decision; to arguments on the importance of preserving the site as a heritage landmark in terms of the UNESCO Recommendations Concerning the Preservation of Cultural Property Endangered by Public or Private Works of 1968.

In preparation for the application to review the city's decision the LRC had to interrogate in great detail the Council's internal decision making process. The decisions of the municipality were attacked on grounds that they were procedurally unfair, and made without genuine and meaningful engagement with traders and people who worked in and around the market, and with members of the public who would be affected by its closure. One of the grounds of attack against the attempts to demolish the market was premised on infringements of the Local Government: Municipal Finance Management Act read with the Supply Chain Regulations and Asset Transfer regulations. In particular, the municipality appeared to short-circuit the normal procedures and time-fames associated with public tenders, and followed the provisions of section 36 which allows for a breach of the regular tender processes, under certain special circumstances³². Despite National Treasury writing to municipal manager in March 2009 noting "the manner in which the granting of the lease to the developer ... amounts to an unsolicited bid", the Municipal Manager's report motivating for the approval of the lease to Warwick Mall made no mention of the cautions. Section 37(2) provides that the municipality may only accept an unsolicited, if a whole list of conditions are met, including that the *'product or service offered in terms of the bid is "demonstrably or proven unique innovative concept"*. Moreover, no details were provided as to why the bid was not open to other competitors or the potential benefits to the city for following this shortened process.

Apart from the heritage and environmental arguments raised, the traders and barrow operators attacked the decision to close the market as a violation of the principles of fair administrative decision making, in that no rational justification exists for taking away the livelihoods of so many.

³² In January 2012 it has been estimated that the Ethekwini Municipality has notched up close to R1,3 billion in irregular expenditure, much of which was incurred using the section 36 process.

While the application to review the city's decision to grant the lease to private developers was under review, the traders association sought to obtain permission from the municipality for a celebration of the 100 year old existence of the market. The requirement to obtain permission arose in part from the market being a public space and reasons of fire and safety requirements. Despite knowing for almost two months of the intended celebration, the municipality refused to authorise the holding of the gathering, resulting in the traders again turning to the Court to uphold their rights, this time of freedom of association as protected under the Constitution. As with other initiatives by the traders, the municipality interpreted this with suspicion, contending that the traders would use the occasion to discredit the city, and gain even more public sympathy for their cause. The Court however was not convinced that the City had a rational and reasonable reason for limiting the right to associate and allowed the traders the opportunity to hold their celebration, which received even greater media coverage as a result of the court victory the night before.

The LRC's Court challenge to review the decision of the municipality to grant the lease for the Early Morning Market was filed in August 2009 and to date the municipality had not filed any opposing papers, nor sought to refute or clarify the allegations leveled against its administration. The matter is now in the process of being settled, which will bring to an end one of the more important victories for civil society in the last 10 years of our democracy.

Conclusion

This case highlights a few issues that those operating in other contexts should be aware of. In terms of content, although socio-economic rights within the South African Constitution formed a backdrop to this case, the essence of the case was challenging the process by which the City awarded the contract to the developer, thus drawing on administrative law. This entailed close scrutiny of vast quantity of council documents the City was forced to furnish the legal team. It is unlikely that the case would have been won with reference to socio economic rights alone. With respect to the process, while on one hand the legal case was a key component of a major civil society campaign, on the other hand civil society support and input was key to the legal case. A local non-governmental organization active in the area both facilitated access to appropriate claimants for the LRC but also monitored daily developments in the market, so alerting the LRC to day-to-day harassment of traders. These traders were supported by a strong network of trader organizations that have been operating in the area for years and the broader civil society group that rallied around this issue. Finally a group of urban practitioners identified with this issue and gave professional expertise—advice on environmental impact assessment processes, heritage legislation, urban design and architectural inputs all of which informed the court papers.

Another key issue is the importance of access to free, high quality and responsive legal assistance for informal workers. As noted the claimants in the case were longstanding informal traders and barrow operators who supported large families on low incomes. These traders would not have been able to pay for legal representation. Through the LRC, these informal traders had access to a high level team of lawyers. This was important in matching the team of lawyers that the city employed to defend their actions. As is clear from the previous section, the city council

made use of a variety of tactics to harass traders, which if successful would have made the market dysfunctional. The LRC were very responsive and were prepared to submit urgent interdicts to the court at short notice, allowing for trading to continue while the application to review the city's decision was being processed. Due to the backlog of cases, it can take a few years before a legal case is heard and a final verdict delivered.

The Warwick case highlighted the plight of informal operators trading in public space who are subject to daily harassment by local authorities, across South Africa and the continent. The LRC, having engaged in detail with these issues through the Warwick case, plans to continue litigation in this area. Currently street trading across the country is regulated by local street trader bylaws. Although there is some variation between local authorities, the sanction for violation of bylaws—for example trading in an area designated a prohibited trade area—in most municipalities is confiscation of goods, a fine and/or imprisonment³³. Research has shown that, if a trader's goods are confiscated, it can take months for that trader to build up their stock to the same point again (Dobson and Skinner, 2009:67). As the sanction suggests, currently such violations, despite the fact that these are economic activities, are treated as criminal rather than administrative matters. The next case the LRC intends pursuing is to challenge the confiscation of street traders' goods on the grounds of the right to property. The Bill of Rights in the South African Constitution (Section 25) states 'no law may permit arbitrary deprivation of property'. If successful such a case could be potentially precedent setting across the country and is key to a securing acknowledgement that as economic activities, criminal sanction is inappropriate.

³³ The content of street trader bylaws are informed by the 1991 Businesses Act (amended in 1993), thus the similarity across local authorities.

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Note on the authors: Both authors were active in the civil society campaign opposing the Warwick Mall proposal. Mahendra Chetty, who heads the Durban LRC office, was the lead attorney in the legal case. Caroline Skinner, at the time the mall proposal was first touted, had just completed alongside Richard Dobson, a detailed documentation of the Warwick Junction project as a case of inclusive planning for street traders. This documentation in part informed the court papers and other campaign material.

ANNEX V

WIEGO Case Study for 2013 WDR

Street Vendor Movement Spurs Policy Development Leading to a Central Law: The case of Street Vendors in India

Arbind Singh

National Association of Street Vendors in India

Street vending as a profession has been in existence in India since time immemorial. However the numbers of street vendors have increased significantly in recent years. Today they have a huge presence in every urban area in India from the smallest town to the largest metropolis. The total number of street vendors in the country is estimated at around 10 million. Urban vending is not only a source of employment but also provides 'affordable' goods and services to the majority of urban population. The role played by vendors in the economy as also in the society should be given due credit but, instead, they are considered as unlawful entities and are subjected to continuous harassment by civic authorities and police.

The liberalization and globalization of the Indian economy in the 1990s speeded up urbanization as investments in large scale infrastructure projects began. However it also led to marginalization of the urban poor including street vendors. Though the urban poor contributed to the economic growth of the cities, they increasingly came to be seen as burden and a hindrance to smooth planning and development. Evictions became the norm and harassment in many forms began. The National Association of Street Vendors of India (NASVI) was formed in 1998 at that critical juncture. Since its founding, NASVI—and its members—have dealt face-to-face on a daily basis with the challenges coming in the wake of economic reforms and urbanization.

The National Policy for Urban Street Vendors 2004

One of the initial steps taken by NASVI was to conduct a survey on street vending in six cities in 2000. The report of this survey is titled *Hawkers in the Urban Informal Sector: A Study of Street Vending in Six Cities*. The study generated a lot of discussion in different circles as it highlighted the gradual exclusion of street vendors from the cities and increasing harassment by city and police authorities. In May 2000, the Ministry of Urban Development, Government of India organized a national workshop on street vendors. The study was presented in this workshop. The Union Minister for Urban Development announced that a National Task Force on Street Vendors would be set up under the Chair of the Union Minister of State. The specific task of this task force was to frame a national policy for street vendors. This policy was adopted by the Union Government in January 2004. The Policy recommended that states and local bodies register street vendors, issue identification cards, and amend legislation to mitigate the vulnerability of

street vendors. The key proposal was to form Town Vending Committees at the Town and Ward level with vendor representation to identify areas for vending and hawking.

Inclusive Policies

The biggest achievement of the Policy was that it brought into focus the livelihood of street vendors. The policy development also spurred vendor movements in different regions as the issue of the livelihood right of vendors started taking center stage.

- Some state governments came up with state policies that introduced innovative methods and practices—for example, the Madhya Pradesh government introduced the concept of Hawking Corners.
- Many Municipal Bodies took initiatives without waiting for their respective state governments to formulate policy—i.e., the Bhubaneswar municipal government in Orissa state set up designated vending zones
- The establishment of Town and Ward Vending Committees addressed the need of street vendors to be involved in decision making about the location of their vending sites: as one of the major sources of conflict in the country has been the refusal of street vendors to locate at places identified by the officials. Street vendors allege that that they are asked to relocate without exploring the potential of the site in attracting customers.

Role of the Police

Local authorities, notably the police, often do not use relevant sections of the law, in the same spirit with which they have been formed. *But rather use them as weapons to harass street vendors.* The National Policy 2004 recommended amendment of relevant sections of the Indian Penal Code 1860 (IPC) and Police Act. These are:

- Section 283 of the IPC: relating to *danger* or obstruction in public way or line of navigation.
- *Section 431 of the IPC 1860*: relating to mischief by injury to public road, bridge, river or channel
- *Section 34 of the Police Act*: “No person shall cause obstruction in any street or public place by exposing anything for sell or setting out anything for sell in or upon any stall, booth, board, cask and basket or in any other way whatsoever.”

Roadblocks for the Policy

As with other policies, the federal structure of the country became a reason for the slow, if any, implementation of the national policy. Despite the 74th Constitutional Amendment providing autonomy to municipal bodies, municipal bodies remain under direct control of state governments and always look up to the state governments for Government Orders (GOs). And many state governments never formulated a state policy.

Urban governance in India is a fairly new area of policy concern in India only recently has there been some attention paid to it. Like other policies, urban governance policies and programs are enmeshed in the (often) poor city administration. The multiple authorities governing Indian cities are, in turn, governed by different agencies at the State Level; and in certain cities like Delhi even the Union Government is involved in city governance.—Further, there are multiple urban authorities included the Municipal Bodies which are charged with the regulation of street vendors, the Development Authorities which have the planning authority including master plans, the Police, various land owning government line departments like Railways, Roads etc. In smaller towns the District Magistrate is the “father figure” of administration and the municipal authorities cannot take major decisions without his concurrence.

Responses from the states have not been satisfactory. The objective of the national policy was to regulate street vendors but most of the clauses in the various state policies are geared towards restricting /removing street vendors.

The national policy did make the point that appropriate regulations are the “need of the hour” and that new innovative appropriate methods of regulation have to be identified.

Suicides of Street vendors: Despair in cities across the country

Three suicides by street vendors rocked the country in 2005 and 2006. These suicides were a symbolic statement of the deteriorating situation of street vendors. Abdul Rafeeq Khan set himself on fire in Lucknow city, Uttar Pradesh on 11 May 2005 to protest the indifference of the Municipal Corporation to the 40-day vendors protests against tax collection by the contractor. Gopal Krishan Kashyap of Patiala city, Punjab burned himself in front of TV cameras on 24 January 2006. He had been protesting against the eviction of street vendors in the name of “beautification” of the city. Pappu Rathore of Gwalior city, Madhya Pradesh burnt himself to date on 28 January 2006 to protest the continuous removal of street vendors accused of “encroaching” on public land.

NASVI began to make demand for a Central Law for Street Vendors

There is little doubt that the 2004 national policy has not had the desired impact. Instead of finding innovative ways to improve its implementation, the government began talking about formulating a new policy. In response, NASVI began demanding a national law for street vendors.

Revised National Policy and Model Bill

To accommodate the concerns of NASVI for a national law, the government that came into power in 2004 set up a Group of Ministers (GOM) headed by the then Home Minister. The GOM felt that a Model Law must be drafted and sent to states for implementation. The Government of India came up with two options—a Revised National Policy and a Model Law. Both were sent to the state governments followed by a letter from the Prime Minister to all the Chief Ministers asking them to promote the livelihood of Street Vendors.

Unfortunately, the Bill as drafted by Ministry lacked a lot of the substance of the National Policy 2004. The main points that would protect the livelihood of the street vendors were dropped from the Bill, representing a major setback for street vendors.

After a 2010 meeting of its general body, NASVI started advocating vigorously for a comprehensive central law to protect the fundamental rights of livelihood of street vendors..

Street Vendors and Courts

The process of organizing also capacitated and encouraged the organizations of street vendors to take up legal cases in the courts to reclaim their rights and entitlements. There were many judicial announcements in favor of street vendors, including:

Bombay Hawkers Union 1985

For the first time, the Supreme Court required demarcation of Hawking and Non Hawking Zones..

Sodan Singh-1989 (Constitution Bench of Supreme Court)

For the first time, the Supreme Court recognized that vendors have a fundamental right to vend and earn their livelihood under Art.19 (1) (g) of Constitution which although is subject to reasonable restriction imposable by law made under Art. 19(6)

Sudhir Madan -2006

The judgment ruled that local authorities should provide space to hawkers as a right of citizenship.

GAINDA RAM -2011

The Supreme Court delivered a landmark judgment in which a detailed examination of the legal status of street vendors was made after taking into account the National Policy 2004 and 2009 and the Model draft Bill2009. The judgment directed the appropriate government authority to enact a law before June 2011to protect the fundamental right of vendors and hawkers to carry on their businesses.

NASVI INTENSIFIES DEMAND FOR A CENTRAL LAW

Right after the October 2010 verdict of the Supreme Court, NASVI started approaching the Ministry of Housing and Urban Poverty Alleviation (MHUPA) to press for central law. A ten member NASVI delegation met Kumari Selja, Minister of Housing and Urban Poverty Alleviation on 24 November 2010 to put forward their demands.

In February 2011, NASVI decided to launch a campaign and called upon street vendors to send postcards to the Minister of MHUPA demanding a central law. More than 100,000 postcards were sent to the minister in March, 2011.

NASVI took up the issue of central law with UPA President Sonia Gandhi who heads the National Advisory Council (NAC). The NAC wrote to the MHUPA on 10 March, 2011 for its view on the matter. The MHUPA replied on 30 March that the matter falls within the jurisdiction of the states and therefore the demand of NASVI for central law for vendors was not feasible.

NASVI raised the pitch of its campaign both on the advocacy front and on the streets. It obtained legal opinions of eminent lawyers substantiating feasibility of central law. It submitted a detailed report on rationale and reasoning for the central law to the NAC in April, 2011.

- The NAC deliberated on the issue in several meetings. In May, 2011, the NAC decided that NASVI's reasoning was convincing and in line with provisions and entries contained in the Constitution of India, and recommended a central law to the Government of India on 25 May, 2011.
- NASVI called upon all its member organizations in June, 2011 to post and fax memorandums to the Prime Minister. Hundreds of petitions were sent to Prime Minister's Office (PMO).
- Members of Parliament were also approached. Many MPs also wrote to the Prime Minister and the MHUPA Minister. A few of them also raised the issue in Parliament. On 1 July 2011, the MHUPA Minister wrote to PMO on the issue.
- NASVI urged all its member organizations to organize protests in their cities on 14 July 2011 mounting pressure on the government to initiate process of law making. The protests were held in at least 30 cities.

MHUPA STILL BELIGERANT

However, the Minister of MHUPA wrote to NASVI on 12 August 2011 reiterating her claim that the 'appropriate' government mentioned in the Supreme Court judgment was the different state governments.

On 9 August 2011 in a written reply to the Parliament the Minister wrote "all the States have been impressed upon by the Government for implementation of National Policy on Urban Street Vendors 2009 and enactment of a suitable State legislation following the Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009. The timeline for enactment of State legislations would depend on the actions taken by the respective State Governments".

'The Bones of Contention'

Under pressure, the MHUPA Ministry forwarded the issue of central legislation for urban street vendors to the Ministry of Law and Justice. The Law and Justice Ministry ruled that decisions with respect to demarcation of vending zones as should be a subject matter concerning to a

particular state or maybe with the Municipal Corporation. NASVI pointed out to MHUPA to make a reference to Section 2 (1) (a) Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill 2009 which contained definition of “appropriate government”.

NASVI argued that it is not a matter of municipal regulation, but of livelihood, employment and social security of the urban poor. Such a law would be covered by entry 20, 23 and/ or 24 of the concurrent list³⁴. This law is being contemplated essentially as a measure for social security and employment for street vendors and would also be covered under economic and social planning. The mere fact that street vending takes places in municipalities/local authorities which are covered by entries in the state list is not determinative. Since the proposed law deals with "workers", specifically unorganized workers (who include the self-employed)³⁵, this is also a "labour matter" which also falls in the concurrent list. Therefore, both Parliament and States would be competent to legislate in the said matter. Therefore it should be a Central law like NREGA or Unorganised Workers Social Security Act.

The National policies on Urban Street Vending 2004³⁶ and 2009³⁷ recognize that each State has its own Municipal and Police laws with clauses which breach the fundamental rights of street vendors. National law will prevail over all inconsistent state municipal laws to the extent they are inconsistent with the law for street vendors.³⁸ Hence, it will not be required to amend municipal and police laws by each and every State.

Officials of MHUPA kept telling me that a central law will not be able to allot land (pavement or other space) for street vending. However if we look at NREGA the issue of land is not as important as the work it offers. NREGA work is done on government and private lands (this could involve leveling of land of farmers, watershed management etc). Similarly the street vendors law could deem that public space or any other space can be leased for allowing street vendors.

³⁴ Entry 20- Economic and social planning, Entry 23- Social security and social insurance; employment and unemployment, Entry 24- Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

³⁵ Unorganised Workers Social Security Act, 2008

³⁶ National Policy on Urban Street Vendors (HUPA), 2004-

“6.2 The policy recommends that all States should amend the Police Act Rules/Regulations there-under and add a rider as follows:

“Except in case of street vendors / hawkers and service providers with certain reasonable regulations”

6.3 The Central Government should also amend the Section 283 and Section 431 of IPC and include the rider as mentioned above.

6.4 The state government should also remove the restrictive provisions in the Municipal Acts to make street vendors inclusive in the city plan/ cityscape.

³⁷ National Policy on Urban Street Vendors(HUPA),2009:

“7(ii) It shall be the responsibility of the Government of India to take steps to ensure that street vending activities are carried out in accordance with street vending laws and the same are not actionable under the Indian Penal Code and the Police Act. In this regard, the Government may initiate amendment in these laws if necessary.

7 (ii) It shall be the responsibility of State Governments/ UT administrations to ensure that institutional designs, legislative frameworks are put in place in conformity with the National Policy on Urban Street Vendors.

³⁸ Art 254 of the Constitution of India

Street vending is not an issue of urban planning alone. It is a livelihood issue. Street vending should be taken as a program for urban poverty alleviation. For long the issue of street vendors has been passed from one authority to another (centre to state and state to municipality, all in the name of decentralizing democracy!).

A comprehensive law which would set out necessary principles is possible only through a national legislation.

- The principles of natural markets should be central to determining the vending zones, weekly market, and the holding capacity.
- Law should prescribe minimum quantitative norms: i.e, numbers of Street vendors to be accommodated and percentage of public land which should be allocated for street vending. Earmarking of at least 2 % of street's space for street vending.
- Provisions for appellate authority for hearing and addressing grievances
- Recognition, strengthening and promotion of natural markets as well as weekly markets,
- Transparency provisions and procedure for confiscation and eviction with Panchnama system in place
- Decision through Town Vending Committee with vendors representation.
- Setting up of Grievance Redressal Mechanisms at all levels
- Reserved allotment of at least 2 per cent of the space for street vendors in all new residential or commercial zone

Towards Central Law for Street Vendors

- **The Turning Point:** On 18 August 2011, thousands of vendors surrounded the national parliament demanding a central law and a seven member NASVI delegation met the MHUPA Minister who agreed that the problems of vendors could only be solved through a law and also promised to forward NASVI document of reason and rationale to the Law and Justice Ministry. She also admitted for the first time that the Model Bill was a diluted one.
- NASVI continued its advocacy campaign and in October 2011, the Ministry of Law and Justice sought the opinion from the Attorney General of India. The Attorney General gave his opinion in favor of a central law for street vendors in Nov, 2011.
- NASVI organized a huge national convention of street vendors on cities on all themes on 19 November in Delhi. MHUPA Minister inaugurated it and announced that the government would bring in central law for street vendors as well as a scheme in 12 Five Year Plan.

- MHUPA organized a national consultation in Delhi on 23 December 2011 to brainstorm the contents and contour of the central legislation. NASVI joined it and pitched for the incorporation of key points in the proposed legislation. The draft law is currently being shaped by the MHUPA, Government of India.

On 23rd December 2011, the Ministry of Housing and Poverty Alleviation (MHUPA), Government of India, organized a national consultation in Delhi to brainstorm the contents and contour of the proposed central legislation for street vendors. NASVI took part in the consultation and advocated for the incorporation of key points in the proposed legislation. The consultation endorsed NASVI's demand for a central law. This represented a key moment for the street vendor movement in India at a critical moment with the threat of global retail giants will be allowed to open stores in India and with urbanization and exclusionary urban policies continuing apace. The struggle by street vendors for secure livelihoods will be successful only when the proposed law is enacted and implemented. This appears possible given the present level of organizing of street vendors in India.