

Handling Disputes Between Informal Workers And Those In Power



Organising In The Informal Economy:
Resource Books For Organisers

Number **5**

This series of resource books on Organising in the Informal Economy was written in response to requests from unions and associations for practical ideas on how to go about organising workers in the informal economy. It is an attempt to share more widely the experiences of those already organising informal workers.

The project was initiated by the International Coordinating Committee on Organising in the Informal Economy (ICC) composed of representatives from the Self-Employed Women's Association (SEWA) of India, StreetNet International, Ghana Trades Union Congress (GTUC), Nigeria Labour Congress (NLC), HomeNet South East Asia, Confederacion Revolucionario de Obreros y Campesinos of Mexico (CROC) and the General Federation of Nepal Trade Unions (GEFONT).

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Overview

Organising in the Informal Economy: Resource Books for Organisers

The Books

There are six books in the series:

1. Recruiting Informal Workers into Democratic Workers' Organisations
2. Building and Maintaining a Democratic Organisation of Informal Workers
3. Handling the Day-To-Day Problems of Informal Workers
4. Collective Negotiations for Informal Workers
5. **Handling Disputes between Informal Workers and those in Power**
6. Collective Action for Informal Workers

The Aims

This series of resource books aims to assist anyone who has the task of organising workers in the informal economy. It hopes to give organisers practical ideas on what needs to be done and how to do it.

Using the Books

The resource books provide ideas, guidelines and examples that you can draw upon when organising informal workers.

Use them:

- **as an organising guide:** draw on the ideas, checklists and experiences
- **for information:** read, and share your knowledge with others
- **to generate ideas:** create new ways of doing things
- **as a planning tool:** use the steps and strategies to help you plan
- **to educate and empower:** in informal discussions, workshops or training sessions.

Three key organising principles

- Win real, immediate concrete improvements in workers' lives
- Give workers a sense of their own power
- Alter power relationships

“Be passionate, committed, innovative and creative in your efforts toward the organisation and mobilisation of workers in the informal economy”.

(Kwasi Adu-Amankwah, Secretary-General of Ghana Trades Union Congress, September 2006, addressing the ICC Conference on Organising in the Informal Economy)

Issues and Challenges: Informal Workers in Different Sectors

Sector / group	Priority issues	Organising challenges
Street, market vendors and hawkers	Right and space to vend Facilities- storage, shelter, toilets, water Protection against police harassment Safety and security Competition –protection against bad effects Access to credit	Not regarded as workers by selves and others Controlled by politicians, “mafia” Fear of harassment by authorities, police Competition amongst selves and formal sector Time spent on organizing means loss of income No forums for bargaining
Home-based workers	Equal income, benefits as factory workers Identifying employer End to exploitation by middlemen Access to regular work Access to markets (own account) Access to credit (own account)	Isolated in homes, invisible Time-double burden of work and home care Fear of losing work Restrictions imposed by religion, culture Children working Unprotected by labour law or disguised status
Garment workers	Living wage Right to Organise Excessive overtime Security of employment	Women workers are seen as ‘seasonal’, ‘supplementary’ wage earners Harassment of trade unions Often small workshops

Waste pickers and recyclers	<p>Access/right to recyclable waste</p> <p>Integration into municipal systems</p> <p>Work higher up the recycling chain</p> <p>Fair prices for recyclables</p> <p>Recognition and improved status</p> <p>Health and safety</p> <p>End to exploitation by middlemen</p>	<p>Low status and self esteem</p> <p>Fear of losing work</p> <p>Fear/dependency on middlemen</p> <p>Competition amongst selves</p> <p>Time to meet means loss of income</p> <p>Child labour</p> <p>Not protected by labour law</p>
Agricultural, forestry and fish workers	<p>Right to land and land use</p> <p>Right to natural resources</p> <p>Regular work</p> <p>Access to resources and equipment</p> <p>Access to credit and markets</p>	<p>Scattered locations</p> <p>Isolated and far distances</p> <p>Child labour</p> <p>Not protected by labour law</p> <p>Seasonal or intermittent work</p>
Domestic workers	<p>Recognition as workers</p> <p>Protection against dismissal, abuse</p> <p>Freedom of movement</p> <p>Freedom to change jobs (migrant)</p> <p>Less hours, more rest</p> <p>Better living conditions</p>	<p>Isolated and invisible in homes</p> <p>Fear of employers and losing jobs</p> <p>Dependency on employer for housing etc</p> <p>Not protected by labour law</p> <p>Lack of time: long hours</p> <p>Fear of authorities (migrant)</p>
Transport workers (urban passenger)	<p>Access to routes and passengers</p> <p>Protection against harassment</p> <p>Health & safety/ accident protection</p> <p>Parking and facilities</p> <p>Petrol and spares prices and fares</p> <p>Competition-protection against bad effects</p>	<p>Mobility</p> <p>Competition between selves and formal sector</p> <p>Control by politicians, “mafia”</p> <p>Threats by employers</p> <p>Fear of harassment by police/ authorities</p> <p>Time for organizing means loss of income</p>
Women workers all sectors	<p>Safe and affordable child care</p> <p>Income protection during/after childbirth</p> <p>Physical security</p> <p>Sexual harassment protection</p> <p>Equal income for equal value work</p> <p>Access to higher income earning work</p>	<p>Fear and lack of confidence</p> <p>Cultural and religious barriers</p> <p>Often in scattered locations</p> <p>Dominated by men in sector</p> <p>Lack of time</p> <p>Child care and home care</p>
All sectors	<p>Better and more secure income</p> <p>Improved working conditions</p> <p>Social protection</p>	



1. Introduction

In This Book

This book looks at some of the mechanisms informal workers can use to settle collective and individual disputes, especially for those informal workers falling outside the framework of labour law. You will find information on how you might adapt methods used by trade unions of formal workers to resolve disputes, such as mediation and arbitration. The book also looks at how informal workers have used, and can use, legal strategies for resolving disputes, and how to do this in a way that fully involves members. At the end of the book are some learning activities for you to use with groups of leaders and organisers.

The challenge

Most informal workers do not have access to mechanisms to resolve disputes – either as individuals or collectively. A majority of informal workers is excluded from the provisions of labour law, and so excluded from formal dispute resolution mechanisms available to formal workers and their unions. And, even when informal workers are able to negotiate collectively, many of these negotiations are not with employers but

with public authorities and others where there are no formal dispute resolution channels in place.

What do we do when negotiations fail? What do we do when those with authority and power refuse to negotiate and resolve issues? And how do informal and unprotected workers defend themselves when authorities threaten their rights and their livelihoods? If we decide that using power through strikes and other forms of collective action is not possible or not strategic, are there other ways we can struggle to get a satisfactory resolution to a dispute and win something for our members?



2. Using Labour Law Procedures

Some workers who work informally are officially covered by the labour laws of their country. But their employer ignores the law and they work under informal conditions. However, they have a right to challenge their employer and to use the dispute procedures provided for under labour law.

As an organiser, one of the first things you need to do is to become familiar with all laws, regulations, agreements and common practices covering the workers you are organising. If your members do fall under labour law then you may be able to use the procedures laid down in the labour law to try and resolve a dispute between your members and their employer.

Dispute procedures

In different countries, dispute procedures open to formal workers and their unions are different. But three methods are commonly used to

resolve disputes without going to court:

- Direct negotiation or continued negotiation between the disputing parties.
- Using a person to mediate, or act as a common bridge between, the disputing parties.
- A person is appointed to judge or arbitrate the dispute on the basis of the evidence presented. The arbitrator makes a decision on the dispute.

In South Africa, for example, the labour law lays down procedures and steps for resolving individual and collective disputes. The South African Domestic, Service and Allied Workers' Union (SADSAWU) has successfully used the dispute procedures to take up cases of dismissal and abuse.



**Definition
Mediation**

A third party assists those in dispute to reach an agreement through negotiation. This is sometimes also known as conciliation.

Arbitration

The parties to the dispute put their case before an arbitrator (judge) who makes a decision, known as an award. The judgment is binding on the parties in dispute.

Official dispute procedures in South Africa

1. Internal procedure in company, local authority, government

Depending on the issue, could involve:

- further negotiations
- hearing/judgment
- appeal

2. Conciliation (Mediation)

Held in Statutory Dispute Resolution Institution, Commission for Conciliation, Mediation and Arbitration (CCMA).

- Option to have private mediation.
- Option to strike for disputes of interest e.g. wages, but not disputes of right e.g. dismissal.

3. Arbitration

If not settled through conciliation/mediation/strike will go to arbitration.

4. Labour Court

Arbitration is final, but some issues may go to the Labour Court.



3. Applying The Laws Of Natural Justice

Informal workers may be excluded from labour law, but they still have rights as people and as citizens. The constitution of a country applies to all citizens (although some informal workers might find themselves excluded from some provision, for example, migrant workers). The laws of natural justice and fairness apply just as much to informal workers as to everyone else. Our problem is claiming the rights and ensuring the application of these basic principles.

Base your attempts to resolve disputes through peaceful procedures on the concept of natural justice. Use this as a framework to help you develop informal or semi-formal dispute resolving processes. Use it to guide you in disputes. Use the concept when arguing your case for fair treatment and for the proper handling of collective disputes and individual cases.



The laws of natural justice

“Justice should be done and be seen to be done”

This saying captures the concept of natural justice. Natural justice is about fairness. It is about legal principles that are so obvious that they should be applied to everyone without needing to make them into law. There are two main rules of natural justice:

- a person/group whose interests will be affected by the decision should be given a hearing before that decision is made.
- the decision maker should be unbiased.

From these rules come guidelines for fair procedures (procedural fairness) to follow during disputes, grievances and complaints:

- Give adequate notice of a hearing or meeting to the person/group affected so there is time to prepare. State the time and place. Make sure there is no undue delay.
- Give the person/group the charges (terms of dispute) in writing.
- Do not hear the case/dispute in the absence of the other party, unless exceptional circumstances.
- Make all relevant documents available to both sides.
- Give both sides the opportunity to put forward their position and argue the case.
- Allow parties to be represented.
- Give each party the opportunity ask questions and contradict the other side, including questioning witnesses.
- Take into account things that are relevant and ignore those that are irrelevant when making a decision.
- Make sure the decision maker is objective and has no material interest in the outcome of the procedure.



4. Negotiating A “Private” Dispute Procedure

If labour law does not cover your members, but you have a negotiating relationship with an authority or employer, there is nothing to stop you from demanding a dispute procedure. In this way you could have a formal dispute procedure, but through a “private” process, rather than one laid down in law. Apply the laws of natural justice. Borrow ideas from procedures used by formal workers, or laid down in the law.

As with all negotiated agreements, you should try and make sure this is recorded in a binding agreement. Alternatively, the informal procedures you may already use when there is a dispute (such as recording the dispute in writing, calling for a dispute meeting, agreeing on an outside intervention) might, over time, become “common practice” and later form the basis of a formally agreed procedure. Of course, as is the case with all agreements with elected authorities, when politicians and political parties change, there is always the danger that the new power will ignore what was agreed before!



Experiences:

Example of a “private” dispute procedure for informal workers

Dispute Procedure: submitted to Durban City Council, South Africa

1. Step 1: Declaration of Dispute:

The aggrieved party shall declare a dispute in writing and shall furnish full particulars of the issues in dispute to the other party (the answering party). Such notice shall set out the nature of the dispute and the proposed terms of settlement.

2. Step 2: Answering Statement:

Within two (2) working days of receipt of the declaration of dispute the answering party shall serve on the aggrieved party an answering statement in which it shall respond in detail to the allegations in the statement of dispute and shall further set out a statement of that party's position in regard to the solution desired.

3. Step 3: Meeting of the Parties:

The aggrieved party shall convene a meeting with the other party. In the event of the meeting failing to resolve the dispute the matter shall be referred to the Economic Development Committee of the Durban City Council.

4. Step 4: Meeting with the Economic Development Committee:

The parties shall request a meeting with the Economic Development Committee, which meeting shall be convened within five (5) working days of the meeting of the parties held in terms of Clause 3 above. In the event of the meeting still failing to resolve the dispute, the meeting shall endeavour to agree on a mutually acceptable procedure for the resolution of the dispute, such as mediation, arbitration or any other agreed procedure.

5. Step 5: Unilateral Action:

In the event of the meeting contemplated in 4 above failing to resolve the dispute or agreeing upon a course of action to deal with the dispute, the aggrieved party may pursue any appropriate action to resolve the dispute.

6. Step 6: Arbitration and Mediation

In the event of the parties agreeing to submit a dispute to arbitration or mediation, the arbitrator or the mediator shall be mutually acceptable to both parties. The terms of reference of the dispute to be referred to such person, as well as who will pay any costs incurred, shall be mutually agreed by both parties prior to the commencement of the arbitration or mediation exercise.

(Self-Employed Women's Union, South Africa, 1996)



5. Adapting Common Procedures For Informal Workers

In the absence of formal dispute resolving mechanisms organisers working with informal workers will have come up with “new” and “private” methods of resolving disputes. You will need to look at informal and semi-formal ways of reaching a settlement. But are the ways so new? Can we not draw on the basic procedures above and adapt them to our own circumstance? Can we not use the laws of natural justice to argue for a fair procedure?

Mediation

You can use mediation to help you resolve disputes in the informal economy. You can use it in many different ways, ranging from a structured mediation process to using an informal “go-between” to help you speak to your opponent indirectly. Of course, this is a voluntary process and so it requires your opponent to agree to the mediation or to speak to the “go between”. Below are some examples of the different ways you can use informal mediation.



Experiences:

A structured mediation process in Sri Lanka

City police gave vendors one week to leave their sites located near a busy taxi rank in the centre of Colombo, Sri Lanka. They threatened to remove them by force if they did not comply. The municipality had built a new market place located a distance from the main transport hub. It told vendors they must move there. The vendors refused to move because they would no longer be able to make a living. The vendors' association had spent several weeks negotiating to retain their sites, but both parties refused to change their position. They now had a dispute on their hands.

Workers felt that the municipality was using its power unfairly. They did not want confrontation and violence. They wanted to reach an agreement peacefully with the municipality. But both parties had become so angry in the negotiations that they could no longer talk to each other without becoming emotional and shouting! Leaders of the association suggested that perhaps a mediator could assist them to break through the blockage. A mediator could help them speak to each other and find a creative solution to the problem.

The leaders approached the municipality and proposed that Professor S. Narayan, a respected academic involved in research on urban planning, be asked to act as a mediator in the dispute. The municipality first suggested to use one of its own consultants, but eventually agreed to the professor because she was seen as someone knowledgeable but neutral.

They agreed on a date and venue for the mediation. On the appointed day the teams from both sides met with the mediator. She explained the process and asked each party to put forward, and motivate, its position. She then asked to meet with the association on its own, followed by a similar meeting with the municipality. In the separate meetings she talked openly and confidentially with the representatives. She coaxed from them suggestions to resolve the problem and established the blockages. She went back and forth between the two groups carrying key messages, making suggestions to try and help the parties towards a compromise, but never breaking confidentiality. From time to time she brought both groups together to summarise the positions and to test how close to agreement they were.

Eventually, she was able to draft an agreement that both groups could "live with".

- Vendors could continue to vend in the immediate vicinity of the taxi rank.
- The municipality would issue licenses for all vendors currently trading in the area.
- Vendors would pay a site fee that would be negotiated from time to time, but in principle would be affordable.
- Vendors would ensure that the pedestrian thoroughfare was kept free and that traffic would not be obstructed.
- Vendors would undertake to keep the street tidy and clean, and would engage the services of informal waste collectors to assist with refuse removal.
- The municipality would provide toilet, water and storage facilities.
- The new market area would be used for a tourist craft market.
- Should either party break the agreement, they would have seven days to restore its provisions, failing which the agreement would become null and void.

The teams agreed to recommend this to their members.



Experiences:

Using go-betweens to mediate in South Africa

Outside the FNB stadium in Johannesburg, vendors used to sell food to the football crowds. Now they sell food to construction workers who are busy rebuilding the stadium in preparation for the soccer World Cup in 2010. The mainly women vendors have set up simple stalls made from tin, plastic and old wood outside of the gates of the site.

The women cook food daily. They sell it to the construction workers in the morning and during the workers' lunchtimes. The women have many problems. They have no accessible water or toilet facilities. There is no refuse removal, storage facilities or security for their goods. But the major problem is the constant threat to their livelihood, i.e. to their right to sell food to the construction workers.

"Thabo Mbeki and overseas people will come to watch the soccer world cup and they will never buy food from you, and therefore you must go" was the construction company management's message to the vendors. The company told them that the food they sell might be unhygienic. It then decided to restrict the flow of construction workers in and out of the workplace by opening just one gate.

Most workers are members of the South African Rail Hawkers Association (SARHA). They had no channel to deal with this "dispute" on their right to vend. They mandated their leaders to find a way to talk to management. They decided to approach the union representing the construction workers in the company, the National Union of Mineworkers (NUM), to enlist the support of the shop stewards. They asked an NGO worker and activist to act as a go-between and set up a meeting with the union, which he did. The vendor representatives met with a shop steward who promised to support their struggle for the right to sell food to construction workers.

But, as is often the case, management came up with a new trick: it opened a canteen inside the construction site. It sells food at a cheaper price than food sold by the vendors. However, the women have a big advantage. They give credit to workers. This means that they only have to pay for their food every two weeks on payday. The struggle goes on.

(Interview with vendor at FNB stadium, Johannesburg; and Cheche Selepe, activist and go-between, July 2007)

Structured mediation process

The first example, illustrates how a structured mediation process usually works. It actively engages workers and the "opponent" in the process. The two **parties agree to mediation** and agree upon a **mediator** acceptable to both. They meet at an agreed **time** and **venue**. The mediator acts as a bridge between worker representatives and the "opponent". S/he usually opens the mediation by facilitating a **meeting between the two groups** to set out the issues and agree the process. S/he then meets with each group **separately** to discuss

concerns and suggestions; to try overcome blockages, and to narrow the differences between the parties so that they can eventually compromise and **reach agreement**, which is recorded in writing. If the process fails then the groups can take further steps. They may agree on the next steps, or they may decide to go their own way.

#Informal mediation processes

The second example illustrates how you can use an informal “mediator” or “go-between” where you cannot engage directly with the opponent. In this case, you have to find someone who your opponent is willing to speak to. This could be someone who is considered to be ‘educated’ and therefore acceptable, or someone with social standing such as a priest, a lawyer, a teacher. It could be an individual with power and authority, making it difficult to refuse. It could be an organisation with power such as a trade union. Use this as an interim measure, and as a way of building the confidence and skills of workers so they can, in future, be more directly involved in resolving their own dispute.

#Using a mediator: possible benefits and problems

Benefits	Problems
Can help parties to “speak” to each other when negotiations have become emotional / angry or when workers do not have access to the other party	Person mediating has too much power. S/he decides what to report to the parties about their opponent
Can bring in new ideas and options	There is pressure to compromise and settle without a new mandate
Can help diffuse conflict	May be expensive where professional person is used
Can help parties compromise and save face	Worker representatives may feel disempowered by skilled professional
It is voluntary and workers can opt out and decide on a different route at any time	A final decision/agreement may not be reached. There is no compulsion.
Can be quick	

Arbitration

If we take a dispute or issue to a court of law, a judge (or magistrate)

will hear the case. We end up with a binding decision or judgment. This makes it more difficult for the opponent to ignore, change or manipulate the settlement- something that frequently happens. But using the law is not an option for most informal workers. The law excludes or does not support them, and it is slow and expensive. As an organiser you will have to find alternative ways to get to that firm decision. One way is to set up an arbitration process. Arbitration operates in a similar way to a court, but it is voluntary and less formal. You can use different variations of the arbitration process, ranging from a formally run arbitration, to one that is very informal. Arbitration relies on the other party agreeing to the process and, importantly, to both parties accepting the decision of the arbitrator.

#“Formal” arbitration process

As arbitration is often a private and voluntary process, there should be no technical or legal reason why informal workers’ organisations cannot use a fairly formal arbitration process to resolve their disputes. In some countries there is an Arbitration Act that sets out the powers of arbitrators and governs the arbitration process. Check this out. You might be able to use such laws to give legal status to the arbitration.

If you decide you want to use a formal or semi formal arbitration process to resolve a dispute you will first have to get your opponent to **agree to arbitration**. You will have to be clear what arbitration is; what it will involve; why it is a useful way to resolve the dispute; what it is likely to cost. You will need to develop a good motivation on how arbitration will be beneficial for your opponent. Armed with this, and your knowledge of the **laws of natural justice**, you will be ready to persuade her/him to agree to arbitration, and to agree a **fair procedure**.

The next thing is to **decide on an arbitrator**. Both sides will want someone who they think will be sympathetic to their viewpoint. Be ready. Compile a list of possible arbitrators. Try and include people who are sympathetic to workers but who are still objective, and who do not stand to gain from the outcome. You will also have to agree upon the

terms of reference for the arbitrator. This means clearly stating at the outset what issues are in dispute and what the arbitrator must decide upon.

Next you will have to agree **who can be present** at the arbitration. It is usually a disadvantage if the other side engages a lawyer to lead their case, whilst workers represent themselves. Of course the opposite can be true and organisers and workers have been known to beat the professional lawyers

Prepare well for the arbitration. This will mean you have to have facts and figures about the dispute; dates and times of events leading to the dispute; information to support your case and well prepared arguments; witnesses who are well briefed; all necessary documents. You and your team will need to practice your arguments before you go to the hearing. It is advisable to get assistance from someone familiar with arbitrations to advise and train you on arbitration. This could be a unionist, an NGO, a sympathetic lawyer or arbitrator.

The **proceedings** should follow the rule of natural justice. The arbitrator will run the proceedings along the following lines:

- S/he may want to hold a **pre arbitration hearing** to get both sides to agree on what are the key issues for arbitration. S/he will try to narrow these down.
- In the hearing, you will put forward your case first if you declared the dispute - **opening statement**
- Your opponent will then state her/his case- **answering statement**
- You will then lead your **evidence and witnesses**
- The other side can ask you and your witnesses questions-**cross examine**
- The **other side** will put forward their evidence and witnesses
- You will have a chance to **cross examine**
- Both sides will make **closing statements**
- The arbitrator makes a **decision** or judgment called an award, in **writing**. This is usually **binding** on both sides.

Because this is a formal process, and may involve paying the costs of the

arbitrator, make sure you have followed the necessary decision making procedures in your organisation before taking this route. Be sure you yourselves are also committed to accept the outcome, even if you may lose.

Informal arbitration process

Often it is more suitable to use an informal arbitrator to make a decision on a disputed issue. If both sides agree to abide by the decision of a respected third party, then this can be a quick and decisive way to settle a dispute. The danger is that your opponent might see this as a way to get out of the dispute, and treat the decision of the arbitrator as “informal”, ignoring it when the heat dies down. Be prepared for this and find ways of making sure the decision is respected and implemented.

With an informal arbitration, you can choose anyone as arbitrator provided they are trusted and respected by both sides. This could be a trade union leader, an NGO worker, a lawyer, a priest, a councillor, a business woman, a social worker and so on. And provided that both sides have equal opportunity to put forward their case, and the laws of natural justice are applied, the hearing can be run informally, according to the wishes of the arbitrator.

Using an arbitrator: possible benefits and problems

Benefits	Problems
Is an objective way of deciding on the issues in dispute	Power to decide is handed to the arbitrator
Provides a clear and binding decision	Worker representatives may feel disempowered by skilled professional
Is usually quick	May be expensive where professional person is used
Parties can save face. They do not have to back down	Opponent may have more resources and skills to develop and present their case
Protects worker leaders/ organisation. They are not to blame if the decision is unfavourable!	Opponent may not take informal arbitration seriously and may not implement the arbitrator’s decision
	Is final, and so prevents workers taking further action if not satisfied



6. Using The Law To Resolve A Dispute

“Legal cases are helpful to the street vendors in two ways: one, that specific case can be used for many vendors and two, where a case involves a large number of street vendors or many areas where they vend”.

(Manali Shah, SEWA, Senegal, 2007).

If negotiations, dispute resolution mechanisms and/or collective action are not possible or fail to achieve results, you may consider taking legal action. Sometimes going the legal route is really useful, not just for winning the case, but also because it carries with it status, has a high profile, and can be used to mobilise and organise around. It can, however, raise false expectations. Workers often have great faith in the law to provide a fair and just outcome. If it fails to meet their expectations it can demobilise them and even turn them against the organisation.

You must therefore consider all angles very carefully before embarking on, or promising, a legal strategy to resolve a dispute. Before you even begin, ask the following questions to find out whether such a strategy

would be appropriate, possible and useful. Would the benefits be more than costs or problems?

Before deciding on a legal strategy

Firstly, think about why you are considering a legal strategy:

- You need to defend your members against an attack on their rights?
- You want to prevent negative change?
- You want to advance the position and interests of your members?
- You see an opportunity to take up the case of an individual that will have implications for the wider community of informal workers?
- You are desperate and can see no other way forward?
- Your members are insisting on going to court and you cannot persuade them against this route?

It is important to be clear on the objectives and intended outcomes of your legal strategy. It is not helpful to be pushed into a legal course of action because you are desperate to take away pressure on you, or because workers insist on going ahead despite indications that it will not succeed or benefit the organisation.

Secondly, use the checklist below to answer key preparatory questions. Involve your members in the discussion. Use those with knowledge and expertise to assist you in answering the questions.

 **Check List 1:**
Before embarking on a legal strategy

Are there laws and/or loopholes in laws we can use?	
Have others used this law /legal strategy successfully?	
Are there sympathetic and/or public interest lawyers willing to assist?	
What would it cost to go ahead?	
Can we raise the necessary resources?	
Is there a prospect of success?	
Is there no other way?	
Will the strategy have positive spin-offs e.g. member mobilisation?	
Will the strategy have negative spin-offs e.g. demobilisation of members?	

Having identified some possible positive and negative spin-offs from using a legal strategy, consider more carefully the potential benefits and possible problems. Read the following summary, drawn from the experiences of workers’ organisations, to give you ideas.



Experiences:
Benefits and problems with legal strategies

Possible benefits

- Builds member optimism and enthusiasm
- Gives focus and something to organise /mobilise around
- If successful can have immediate and long term benefits for members
- It can have benefits for other workers in similar positions
- Gives publicity and status to workers and the organisation
- Raises self esteem of workers

Possible problems

- Members are over confident of success
- Members rely on the case and cease to struggle
- Organisers focus on the technical, legal aspects and forget their focus on building organisation
- Members become disillusioned with failure in court
- Members blame the organisation if they don’t fully succeed
- Members lose interest because it takes so long
- It is very expensive and leads to financial problems for the organisation
- Takes time away from other organising activities



TIP: Try to avoid getting tied up in legal thinking. Always think as an organiser. How will this strategy help build the organisation? How can we use the law as an organising tool?

Taking a collective decision

The decision to go ahead with a legal case is a big one, and as an individual organiser it is unlikely that you will take this decision alone, or just with the workers directly involved. Legal strategies are high-risk strategies for your organisation and for its finances. Leaders need to take the final decision collectively, through the appropriate decision-making structures. If you have considered all the angles, costs and benefits of a legal strategy, and still feel you should move forward, prepare yourself to argue the position with the leadership in your structures. Be prepared to report to workers honestly on the decision of the organisation. This can be extremely difficult if the organisation decides not to take up the case. You will need strong leadership qualities to handle the anger and frustrations that are likely to emerge and be directed at you!

Involving members

It is absolutely essential that members are fully involved in the decision to take up a legal case and before, during and after the case. Failure to consult regularly can lead to members becoming disillusioned, demobilised and angry, especially if you lose the case.

Refer to the checklist below at every stage in the process to remind yourself of this key principle.



Check List 2: Involving members in legal strategies

Before the case	✓
Members identify a genuine need for this case	
Members collectively assess the implications of taking up the case and their opinions are respected	
Members take a democratic decision on the case	
Workers receive regular reports	
When preparing for the case	
Worker representatives are part of the planning and preparation team	
Worker representatives help choose lawyers	
Worker representatives are included in meetings with lawyers	
Workers build arguments and brief lawyers	
Lawyers address general meetings of workers	
During the case	
You manage the lawyers	
Workers show strong support by attending court hearings en masse	
Workers themselves give evidence in court	
Organisers/leaders give regular, honest progress reports to workers	
Workers are part of the ongoing decision making around the case	
Simple and concise pamphlets are regularly prepared and circulated to members	
Publicity is arranged through press, general assemblies, demonstrations	
Enthusiasm is maintained- long, drawn-out processes are avoided	
After the case	
Full, honest, clear report back meetings are held	
Case outcome is simply and clearly summarised for members	
Judgment is publicised widely, especially where gains are made	
Workers are encouraged to stay positive and prepare for ongoing struggle, especially where the case is lost	
Members go out to tell other workers of the victory and lessons learned. They use this to educate, recruit and mobilise	

Managing funds for legal cases

Money can be the source of conflict and suspicion. To avoid this leaders and organisers should handle money honestly, transparently and professionally. Because legal cases often require big sums of money, raised from outside sources or sometimes from member contributions, the dangers of corruption and mismanagement are high. If there is a financial settlement that involves distributing money to workers, the same dangers arise. Avoid these dangers:

- Draw up and approve a budget.
- Issue receipts for any money collected.
- Appoint a qualified bookkeeper who issues regular reports.
- Make sure all payments have supporting documents.
- Include reports on income and expenditure in your regular progress reports to members.
- Draw up and approve criteria and procedures for distributing money obtained as a result of a settlement.
- Keep clear records and issue receipts when paying workers.

Choosing a lawyer

“NASVI has engaged with lawyers in different states of India who have become familiar with the way the laws affect street vendors. We usually identify pro-poor and human rights lawyers to work with, and we invite them to workshops and meetings about street vendors’ problems, send them all NASVI materials, and even invite them to join NASVI.”

(Arbind Singh, NASVI Coordinator, Senegal 2007)

Your choice of a lawyer or legal team is important. First check if there is a public interest law firm, or an NGO that focuses on defending and extending the rights of poor and vulnerable citizens. Such institutions are usually staffed with sympathetic and committed lawyers. They may provide free legal services and/or assist with fundraising to pay for the case. Failing this, look for lawyers and legal firms that have a reputation as committed human rights lawyers, and those who have taken up similar cases. You will usually get this information from your own or other organisations. Talk to the leaders, organisers and workers who were directly involved in cases. Follow up by reading reports from the

press, organisations and law firms.

Look out for the following qualities in a lawyer and her/his legal firm:

- Strong reputation for work in this area
- Respected by workers' organisations, authorities, employers
- Sympathetic to the poor and vulnerable in society, and committed to improving their lives
- Willing to speak and listen to workers not just their leaders
- Gender sensitive and able to encourage women workers to speak out
- Able to explain things clearly to workers and patiently answer questions
- Has respect for, and is willing to use, the knowledge and views of workers
- Charges fair legal fees, and will consider reduction of fees



TIP: Don't be in awe of your lawyer. Lawyers are just people doing a job. Approach them with confidence. Challenge their opinions. View the lawyer as part of a team that brings different, but equally valuable, skills, knowledge and experiences to solve a common problem.

Legal Strategies

Organisers are most often involved in **defensive** legal strategies. They need to defend members against violations of their rights, or to claim their rights. Many organisations have also initiated **proactive** strategies, to extend rights and protections to workers in their sectors, or to informal workers generally in their countries. This is usually an issue for national organisations or networks/alliances of organisations.

Defensive and proactive strategies often **link**. For example, a successful court case that prevents local authorities evicting vendors in one part of the city may help vendors in another part, or in another city. A successful initiative to extend labour law to a particular sector in the informal economy will be the basis of future protection of workers. It is important for you to be aware of possibilities and opportunities: to recognise and take advantage of extending local gains more widely and to seek ways to initiate or contribute to national strategies and campaigns.

Organisations use different legal approaches depending on the urgency of the issue, the legal system, legal precedents and possibilities for success. Approaching the courts for an interdict or injunction is one of the more common defensive legal strategies. Organisations use this strategy in a crisis situation where workers' livelihoods are threatened, such as when vendors are threatened by eviction from the streets or waste collectors from landfill sites. Authorities have to be stopped in their tracks!



Experiences: Defensive legal strategies

Street photographer wins an interdict (injunction) in South Africa

In Durban, municipal police were constantly harassing people trading on its streets without permits. The Legal Resources Centre (LRC) found out there was no law preventing vendors without permits from trading. It decided to take up the case of Mr. Khehla Hezekiel Vilakazi, street photographer.

The judge agreed with the LRC. He granted an interdict stating that:

“the Municipality and its law enforcement officers are interdicted from interfering in any manner whatsoever with (Khehla Hezekiel Vilakazi) so long as he is engaged in photography for reward on the sea-shore under the control of the Municipality;

the Municipality and its law enforcement officers are interdicted from confiscating or impounding the photographic equipment in the possession of (Vilakazi).”

(StreetNet International, Press Statement, 25 October 2006)

SEWA, India, uses public interest litigation to defend the rights of women vendors

“On the day of hearing, when the whole court room was jam packed with the street vendors from all the areas of the city, the Judge asked all the counsels if they agreed that this was an issue where both parties needed to sit down and talk; they all agreed. He then stated that, in the mean time, the vendors should be left alone. There was a moment of stunned silence in the courtroom. Then, advocate of the AMC (Ahmedabad Municipal Council) protested, citing the large number of vendors in the city (46000) and saying that it was impossible to let them sit where they wanted. But the judge's response was final as he waved a hand and cut off the advocate of the respondent mid speech. ‘N-O. No No-one shall be disturbed’.”

This was the result of public interest litigation filed by SEWA on behalf of women vendor members in Gujarat State. Vendors across the whole state could continue to vend without disturbance whilst the parties worked out an acceptable compromise.

(StreetNet International meeting, Senegal, 2007)

Informal transport union in Zambia uses the courts to gain registration

A newly formed union of informal workers, the Zambia Bus and Taxis Workers Union (ZBTWU), applied for registration as a union. Government denied this on the grounds that there was no association in the industry serving as an employer for the purpose of collective bargaining. The union asked the Zambia Congress of Trade Unions (ZCTU) to intervene. The General Secretary appealed to the Minister of Labour and Social Security to reconsider his decision. Again this was refused. The union now faced the danger of outright repression or a slow death because it did not have the status or protection that registration would bring. The union, with the backing of the ZCTU, challenged the Minister in court. After several months, the union won the case and is now a registered union of informal bus and taxi drivers, and is affiliated to the ZCTU.

(International Transport Worker's Federation, ITF, 2006, Organising Informal Transport Workers. Global Research Project. Overview Report: Mike Chungu, WEAZ, July 2007)

Waste pickers challenge interdict and defend their livelihood rights in South Africa

“She drags the makeshift cart across the streets, hurrying to get to the waste dump on time. She is tired and the work tedious, but it is the only way she can earn a living to support her family. And such is the tale of the many “reclaimers” who work on the various dumps in South Africa. They eke out an existence by recycling the various materials they find and depend on the income to support their families.

Maria Motale and 138 other reclaimers work on the waste mine at the Marie Louise Landfill Site in Dobsonville, Soweto. They recover waste material such as paper, plastic, glass, materials, tin and cardboard for resale. They are all unemployed and were reclaiming recyclable waste material from the dumpsite with the permission of Waste Tech and the Greater Johannesburg Metropolitan Council (GJTMC).

When Waste Tech became PIKITUP, the latter brought an application to evict all the reclaimers from the waste dump. PIKITUP unilaterally cancelled the verbal agreement that the reclaimers had with Waste Tech and then outsourced the reclaiming of waste material to one of its own employees who in turn offered to buy waste material from our clients at a reduced rate per day. The rate offered was far less than what our clients had been earning from the resale of recyclable waste material per day.

Initially our clients were forcibly removed from the Marie Louise Landfill Site and stopped from reclaiming recyclable waste material without a court order. We then brought a spoliation order against PIKITUP and City of Johannesburg.

Advocate George Bizos SC, argued the matter in the High Court. PIKITUP then brought another application to interdict our clients from reclaiming waste material from the

dumpsite. We opposed the application and were successful”.

“The City of Johannesburg and PIKITUP were prevented from unilaterally evicting our clients from the waste dump and ordered to pay the cost of both applications, totalling R26 000,00 (\$ 38 000). Our clients continue to recycle material from the Marie Louise Landfill Site.”

(Legal Resource Centre, Annual Report, 2004, Johannesburg)



Experiences: Proactive legal strategies

Ghana TUC negotiates extension of labour law to informal workers

Tripartite negotiations to improve the outdated and fragmented labour law were held in Ghana. One of the Ghana TUC's key objectives was to extend important protective elements secured by formal workers to informal workers. The resulting New Labour Act of 2003 contains special provisions relating to temporary and casual workers. These allow them to benefit from the provisions of collective agreements, such as equal pay for work of equal value, access to the same medical provisions available to permanent workers, full minimum wage for all days in attendance (even if the weather prevents work) and public holidays. In addition, a temporary worker employed by the same employer for a continuous period of six months or more must be treated as a permanent worker.

(Kofi Asemoah, Deputy General Secretary, GTUC, 2004)

NASVI provides education and information on the law

“NASVI (National Alliance of Street Vendors of India) collects judgments relevant to street vendors, and keeps these in their Documentation Centre so that they can be easily available. They also produce legal documents, which are easy to understand, and have translated the National Policy on Street Vending into the indigenous languages of India. They give copies of court records and judgments to members of their affiliate organisations, and publicize results of their litigation in the public media.”

(StreetNet International Meeting, Senegal, 2007)

Homeworkers in Thailand propose a new law

Homenet Thailand drafted legislation for homeworkers and submitted this to the Commission of Labour in Parliament. The proposed law:

- Provides for a broad definition of homemaker
- Sets up a stakeholder committee to develop policy and law, to set remuneration and rules on health and work environment, and to look to the development of homeworkers
- Provides for a homemaker's development fund to support businesses set up to perform homework, and for the development homeworkers' organisations
- Sets up a dispute resolution committee and a labour inspector to ensure compliance with the law

(Homenet Thailand, The Promotion and Protection of Homeworkers Act (draft), 2004)



7. Preparing For Disputes: General Guidelines

As we have seen there are many different options and ideas for settling disputes. In all of these, preparation is very important. It can mean the difference between success and failure. The checklist below can help guide your preparation for most dispute resolution methods.



Check List 3:

Preparing for a dispute resolution process

	✓
I am clear what the issues in dispute are	
I have carried out a full analysis of the risks, benefits, costs, possible outcomes of taking the dispute forward, together with workers and leaders	
I have a mandate from members to go ahead with the dispute	
I have followed the decision making procedures in my organisation, and have the mandate to proceed	
Sufficient resources are available, and procedures to deal with funds are in place	
I have investigated whether there are any existing dispute procedures, in law, agreements or in general practice	
I have found out what laws, regulations apply	
I have read about, and talked to others, about similar disputes	
I have identified appropriate and sympathetic people to work with e.g. lawyers, mediators	
I have taken advice from relevant people/organisations	
I have a full written record of all events leading up to the dispute	
I have collected all the necessary documents that might be needed for evidence	
I have spoken to and briefed workers and others who can tell the story or act as witnesses	
I give regular reports to members involved	
I am working with a team of members	
I have made sure that women are included in the team and that their concerns are covered	
We have practised how we will present our case	
I have not raised unrealistic expectations with members	
I am making sure that workers are empowered in the process and that we do not lose control to “experts”	
I have mobilised the members and other workers and organisations to support us	



Learning Activities

Activity 1: Choosing a dispute resolution method

Aim

To help you choose and plan for the most appropriate dispute resolution method

Task

In small groups:

1. Share your experiences of a dispute that you have been involved in.
2. From your experiences, choose one dispute that you think could have been resolved more successfully if you had used another method. Or choose a current dispute.
3. Describe how you would go about resolving this dispute:
 - What method or procedure will you use?
 - Why is this procedure the most suitable?
 - What steps will you take to prepare for the dispute?
 - What problems might you encounter?
4. Summarise your answer to question 3 on a flip chart. Choose someone to report.



Learning Activities

Activity 2: Developing a dispute procedure

Aim

To provide an opportunity for you to develop a dispute resolution procedure

Task

Work with a partner from your organisation:

1. Identify an employer, authority or other person/group that you get into disputes with, or might do so in the future.
2. Using the laws of natural justice, and drawing on ideas in this book, draft a proposed dispute procedure to be negotiated with the person/institution you have identified above.
3. Write up the key points of your proposed procedure. Pin your procedure on the wall. Share and compare your proposal with others in the group.

Resources and References

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www.streetnet.org.za/english/collectivebargaining.htm

Web sites

www.wiego.org

www.wiego.org labour law page to add ref

www.ituc-csi.org

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www.ifwea.org

www.cawinfo.org

www.global-labour.org

www.ditsela.org.za

www.domesticworkersrights.org

www.waronwant.org

Resource Centre

The Development Institute for Training, Education and Support for Labour, DITSELA, in South Africa has a large collection of local and international trade union education materials. These were used extensively in preparing the books. For access to these resources contact info@ditsela.org.za

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