

TUC (GHANA)/WIEGO INFORMAL ECONOMY LEGAL PROJECT
REPORT FROM STAKEHOLDERS' POLICY DIALOGUE
HELD ON TUESDAY 3 DECEMBER 2013 AT CLEAVER HOUSE, ACCRA

1. Background

The Ghanaian economy has not been an exception to the growing informalization of work that characterizes most developing economies. Slow expansion of the formal economy has caused many Ghanaians to engage in unorganized and unregulated activities in order to eke out a living. Over 80 per cent of economic activities in Ghana are estimated to be informal in nature.

Yet the policy environment has been slow in recognizing the contribution of the largest sector of the economy. There are either no policies regulating certain informal activities or policies supporting their growth have often not been implemented or supported with adequate resources to promote effective implementation. In the absence of policies, or because of the ineffective application of policies, law enforcers have often regarded such informal activities illegal. There are also harsh laws prohibiting engagement in some informal activities as in the case of street vendors within some local assemblies.

The Ghana TUC/WIEGO Informal Sector Project seeks to identify and address laws impacting on the work of informal sector workers. It focuses on street vendors, kayayei and domestic workers. The first phase of the project began in 2011 with research and consultation with the workers. The research identified legal provisions and practices which impact negatively on the working conditions of the workers. A stakeholder conference was held in 2012 to share the findings of the research and engage policymakers and enforcers on issues that emanated from the research.

The project continues to use evidence from consultation and research to engage policymakers to influence existing laws and structures in favour of the selected informal sector workers. This is a report from third policy engagement session held with Accra Metropolitan Assembly on Tuesday 3 December 2013.

2. Participants at the Policy Dialogue

The policy dialogue was attended by a total of 20 participants including 14 representatives from the Accra Metropolitan Assembly, the project team, StreetNet and TUC. Included in the AMA team were the legal officer and Solicitor, the Presiding Member and Chairpersons of relevant committees. The Secretary-General, Mr. Kofi

Asamoah of the TUC, and the WIEGO Country Coordinator in Ghana, MS. Dorcas Ansah, were also present (see full list in the appendix).

3. Methodology and Key Issues

Presentations and discussions were employed during the meeting. A presentation of the project background was made by Ms. Clara Osei-Boateng, who highlighted key issues as follows:

a. Application of AMA 2010 By-law

- The AMA 2010 By-law that criminalizes street vending was made with little input from vendors.
- The cost of market stalls is unaffordable. This is partly the result of sub-letting through middlemen/market queens.
- Most relocation markets do not have adequate social amenities. This explains why vendors abandon them shortly after relocation.
- The AMA by-law criminalizes both the seller and the buyer, but often only the seller is arrested when the law is violated.
- Law enforcers (police & AMA Guards) are often selective and arbitrary. They allegedly arrest vendors selling expensive wares only.
- AMA Guards take advantage of street vendors – some demand financial (and sometimes sexual) favours from vendors.

b. Arrest and Prosecution

- Judges are not happy with enforcing the law on street vending but are compelled to do so.
- The hearing of cases are too fast for defenders to even think through their options.
- Judges in Ghana have discretionary authority. Applications of the law are sometimes harsh.
- The highest sentence for selling is 10 penalty units. However, often the complainants add assault. So after assault is added the penalty is higher (sometimes reaching over 20 penalty units).

The background presentation was followed by proposals from the project team. The proposal presented by Mr. Charles Bawaduah noted the following issues:

- That, given the economic background of some of the vendors, the fine of 10 penalty units may be too high and needs review.
- That there should be no option of imprisonment since the activities of street vendors are strictly not criminal per se. This also calls for a review of the by-laws.
- The team noted that there is discrimination in the enforcement of the AMA by-Laws since only the vendors are normally prosecuted while the buyers (drivers and passengers) are often left to go unpunished. This practice not only defeats the very purpose of the by-laws but is also unconstitutional.
- The team also noted that charges based on the provisions of the by-laws are often joined to provisions of the Criminal Act, 1960, and the Motor Traffic Act (assault and impeding traffic flow), thereby leading to the imposition of very harsh sentences for those convicted. The team is advocating for a stop to the practice.
- The team noted that the processes of arrest and prosecution are often carried out in a very swift manner, thereby preventing the suspects from enjoying or exercising their right to a fair trial under article 14 of the Constitution (1992) – e.g. the right to a lawyer of their choice, the availability of legal aid and the legal implication of any plea.
- The team also noted target groups are often subjected to extortion, assault, and maltreatment in the hands of AMA guards under the guise of enforcing the AMA by-laws.

Based on these issues, four proposals were made as contained in Table 1:

Table 1: Table 1 TUC's Proposal to AMA

No	Current Situation	Proposal
1.	Punishment for offences 10 penalty units or option of 3 months imprisonment, or both	5 penalty units without option for imprisonment
2.	Only vendors are punished	Both vendors and buyers should be prosecuted
3.	Offence under AMA By-law charged together with Criminal Code	Charges should be separated
4.	AMA guards extortion of alleged offenders	Guards must be disciplined

The Solicitor of the AMA gave an official response to the issues raised by pointing out that, as Chief Prosecutor and the drafter of the 2010 By-law, there was a need to put issues into perspective. Key issues raised in his response were as follows:

- The AMA used one month to educate citizens on the provisions in the 2010 By-law.
- The By-laws mention specific streets where vending is prohibited. These are mainly ceremonial streets (such as the High Street, Tetteh-Quarshie to Old Parliament House, etc.). Though vendors are not persecuted for selling on streets, other than those ceremonial streets mentioned in the law, they have refused to comply. He mentioned that vendors, at the start of the implementation of the law, complied for only a week and resumed activities on the prohibited streets (participants at the session noted these ceremonial streets are rather lucrative because of slow traffic movement which allows them to sell).
- The law is made to regulate human behavior. Even so, first time offenders are often warned and discharged by the Chief Prosecutor or judges, if they get to the courts. Recalcitrant vendors are, however, sentenced.
- Most offenders are charged under the Criminal Act because they cause damages or obstruct guards from carrying out their duties.
- The AMA has only received information about extortion of vendors by guards through rumours; no official complaint has been made by vendors to call for investigation.
- Prosecutors have always given back exhibits to offenders (This assertion contradicts the reviewed case studies. In most cases, food items seized as exhibits were sent to Osu Children's Home for charity).
- Most vendors have sponsors who often come to their rescue when arrested.
- As a Prosecutor, he deals with those presented to him as offenders and therefore cannot be blamed for selective justice if only vendors have been prosecuted. As yet, no buyer has been arrested and brought to his attention for prosecution.

- On the proposals, the prosecutor mentioned that elimination of imprisonment option is not possible. That would mean that those who cannot afford a fine would have to go scot-free.

An interesting discussion ensued after the prosecutor's response with some of the representatives from the AMA (in particular the Assembly members) supporting the research findings and calling for review of the By-law. The discussions introduced additional recommendations for consideration. These included:

- 1 Replacement of the custodian sentence with a community sentence.
- 2 Development of large open markets at designated parks or designated streets on special days.
- 3 Elimination of the operation of middlemen/market queens to keep the cost of market stalls within affordable range for vendors.

While the AMA agreed to consider 2 and 3, the AMA Prosecutor mentioned that inadequate infrastructure in Ghana makes community sentences difficult to enforce. The Chief Prosecutor noted that there are no places to keep offenders for effective supervision.

4. Conclusion and Way Forward

The session was concluded with the suggestion from the AMA to the TUC to officially present the proposals to the AMA for further deliberation at their General Assembly meeting. They mentioned that commitments of this nature needed to be made by the General Assembly. The AMA committed to invite the TUC (project team) to the General Assembly meeting that would sit to consider the proposal.

The Secretary-General of TUC gave a closing remark, noting the expansion and importance of the informal economy in Ghana. He stressed the need for stakeholders to work together to improve conditions of work for operators in the sector.

5. Appendix:

Table 2: List of Participants

No.	Name	Organization	Status/Position
1	Desmond Addo Biney	AMA	Presiding Member
2	Barbara Quaye	AMA	Head, Records
3	Gideon Oteng Baah	AMA	Administration
4	Yaw Twumasi-Ankrah	AMA	Legal Officer
5	Benjamin Barfo- Bonney	AMA	Solicitor
6	Mildred Rose Frimpong	AMA	Gender Desk Officer
7	Hon. Sylvia Opoku-Manu	AMA	Chairperson, Women & Children's Committee
8	Derick Myers	AMA	Chairperson, Revenue
9	Hon. Wisdom Yao Yamenvi	AMA	Chairperson, Social Services
10	Dan Akushey	AMA	Finance & Administration Sub-committee
11	Isaac B. Ansah	AMA	Chairperson, Welfare Committee
12	Hon. Seth Raymond Tettey	AMA	Chairperson, Disaster
13	Kofi Asamoah	TUC	Secretary-General
14	Rose Kwei	TUC	Desk Officer, Informal Sector
15	Togbe Adom Drayi II	TUC	Head, Organisation Dept.
16	Juliana B.Afari	StreetNet	Vice President
17	Clara Osei-Boateng	Project Team	Researcher
18	Bede Tukuu	Project Team	Legal Officer
19	Charles Bawaduah	Project Team	Legal Officer
20	Dorcass Ansah	WIEGO	Country Coordinator