

**TUC (GHANA)/WIEGO INFORMAL ECONOMY LEGAL PROJECT
REPORT FROM STAKEHOLDERS' POLICY DIALOGUE WITH MAGISTRATES
HELD ON 12 DECEMBER 2013 AT CLEAVER HOUSE, ACCRA**

1. Background and introduction

The TUC/WIEGO informal economy law project seeks to influence laws that impinge on the rights of three groups of informal workers; namely street vendors, domestic workers and kayayei. In 2011, the project conducted research and engaged membership-based organizations representing these categories of workers. Among issues raised in the report was the “unfair trial” of street vendors who violate the Accra Metropolitan 2010 By-law, which prohibits selling on certain streets within the metropolis.

As a follow up to recommendations from research and consultation, the TUC has been engaging with key stakeholders to collectively find remedies to the concerns of the workers. Three policy dialogues have been held since 2012 with the Accra Metropolitan Assembly (AMA). This report covers policy dialogue with magistrates within AMA who apply sanctions in the by-laws to alleged violators.

2. Participants

A total of 10 participants were at the policy dialogue session. They included five Magistrates from the Magistrates and Circuit courts, staff of TUC and members of the project legal team as shown in Table 1.

Table 1: List of Participants

No	Name	Position
1	Charles Boateng	District Magistrate
2	Worlanyoh Kotoku	District Magistrate
3	Grace Gunubu	District Magistrate
4	Linda Amisah	District Magistrate
5	Mavis Kwano	Magistrate
6	Bede Tuku	Legal Officer (Project Team)
7	Rose Kwei	Desk Officer, Informal Sector- TUC
8	Kennedy Achakomah	Education and Training Officer, TUC
9	Togbe Adom Drayi II	Head, Organisation Department, TUC
10	Charles Bawaduah	Legal Officer (Project Team)

3. Methodology

The meeting began with a background presentation and the purpose of the meeting by Togbe Adom Drayi II. He indicated that, by all intents and purposes, the TUC had been championing the cause of voiceless groups and that the street vendors, domestic workers and Kayayei or head porters should not be an exception since they make significant contributions to the Ghanaian economy. He added that the TUC had been engaging stakeholders to address legal impediments in the way of these workers since 2011. The project began with research and consultation with the workers, following which three policy dialogue sessions were held with the Accra Metropolitan Assembly (AMA) and worker groups on the matter. Engagements with the AMA have sought to address the application of the 2010 by-law prohibiting street vending on some streets within the metropolis. As magistrates who apply sanctions in the law, the meeting was to deliberate on the application of sanctions to alleged violators.

The background presentation was followed by two presentations on research findings, which provoked discussions/comments and the way forward.

4. Presentations

The presentation mentioned that the project is a collaboration between TUC-Ghana and WIEGO to influence laws which impinge negatively on the work of street vendors, domestic workers and kayayei. The project began in 2011 and would run until September 2014. The salient issues raised by the presentation were as follows:

- The total strength of street vendors is unknown; most are women and migrants from hinterlands who have worked in poor working conditions.
- The AMA 2010 By-law criminalizes both the seller (vendors) and the buyer, but only the former is often persecuted.
- Law enforcers are often selective, but this is difficult to prove. Some demand favours.
- In the arrest and prosecutions:
 - There are lengthy and harsh sentences, including high penalties that have economic implications on vendors who earn low income.
 - Cases are compounded to include assault charges, even though there is no concrete proof sometimes. So when a penalty for assault is added to the 10 penalty units for selling, it is mostly over 20 penalty units.

- Prosecutors prevail upon accused persons to change their plea from innocent to guilty to get proceedings done quickly. They often advise that the plea of innocence could make the case lengthy.
- Vendors are sometimes arrested and charged as a group when indeed they were carrying out their individual activities.
- Other key issues from the research:
 - There are limited consultations with vendors when making the by-laws.
 - Some by-laws are not adequately implemented and others are strict - e.g. the AMA By-law 1995, which made provision for streets to be designated for vending was not effectively implemented while the By-law 2010 has strict regulations and punitive actions.
 - The high cost of market stalls are not affordable to most vendors, especially where middle men buy and sublet.
 - Most designated streets or relocation markets do not have adequate social amenities.
- The TUC, in view of the issues above, made the following recommendations:
 - Alternative sentences should be considered by courts, including community sentences;
 - Penalties must not exceed five penalty units given the nature of offence;
 - Courts should ensure accused persons get counsel;
 - Cases of “assault” and “selling illegally on the street” should be dealt with separately;
 - Accused vendors should be prosecuted as individuals and not in groups.

In a deeper analysis and summary of the key findings and recommendations in the second presentation, Mr. Charles Bawaduah (Project Legal Officer) reemphasized the fact that the TUC has had engagements with AMA officials, legal practitioners and prosecutors. He also stated that the current by-laws and court cases were studied to arrive at the following conclusions:

- Some of the decisions (charges) were harsh/high. For instance, vendors who were arrested for selling sweets were sometimes sentenced with 10 penalty units. It was therefore suggested that, based on the research, it would be difficult for most offenders to pay, and that this could be reduced to five penalty units. It was emphasized that the TUC is not encouraging violation of the law(s) but rather believes in fair prosecution, especially for offences which are not criminal per se. It was suggested that communal labour could be used for those who cannot or

may not be able to pay to avoid prison sentence, or, at worst, that the prison sentence could be reduced from three (3) months to one (1) month.

- Another observation was that the law appears to be discriminatory when it does not deal with all sides involved in an offence (e.g. a buyer and a vendor are always involved but only the vendor is dealt with). It was indicated that an appeal has been made to the AMA to promote justice in that regard.
- Additional charges (e.g. assaults) are sometimes added beyond what is prescribed in the by-laws (e.g. illegally selling on the street). It was suggested the courts could deal with such separately.
- Another observation from the summary was that the period between arrest and conviction was so fast that the accused persons have no opportunity to seek legal advice. Added to that, some prosecutors were also found to advise the accused to plead guilty to enable quick adjudication. Indeed, a review of the cases showed that adjudication was prolonged when accused persons pleaded not guilty. The frustration with adjournment caused them to change their plea. In two cases cited, accused persons who pleaded guilty were quickly released on bail and those who didn't were kept for a week before bail was granted. It was suggested that prosecutors should allow them some time.
- It was also stressed that cases where vendors are arrested and charged as a group is not fair. This is because in such instances, when any of the 'accomplices' flee, the rest are remanded until the one who escaped is found.
- The issue of the AMA guards extorting vendors was also emphasized.

5. Discussion and comments

Legal aid was mentioned as an avenue where accused vendors could seek legal assistance to assist their cases. However, access to legal aid is challenging due to limited human and financial resources and therefore not reliable.

Another concern was that vendors were being tried as a group, but individual pleas are always taken. Accused vendors can be brought in as a group but the trial cannot be for the whole group, a judge asserted. And, even if not all the group members are present, you can lay charges against those present whilst looking for the others. They can be charged later, for it is not good to remand people whilst waiting for the rest of the group to be brought and charged. It was also argued that there was no way such matters should be delayed since cases are to be adjudicated expeditiously. That is why cases are always adjourned for people to go and seek advice. Also, the issue of

prosecutors turning round to advise offenders is common, and it was partly due to the fact that the police lacked the facilities to detain offenders, so they rush cases. Other concerns and comments were as follows:

- There are cases where police have easily convinced culprits to plead guilty for quick adjudication and others where guilty pleas have been reversed prolonging the case and involving accused being remanded.
- The police and some prosecutors bring people who do not yield to their demands to court, then involving lengthy proceeding, and so there is the need to deal with such cases with care.
- AMA cannot prosecute offences under the Criminal Act, but it should be done under their by-laws

6. Conclusion and the Way forward

In conclusion, the TUC expressed its appreciation to the judges for honouring the meeting and for the open discussions. It stressed that, as much as it supports laws that seek to bring sanity into the management of the economy, criminalizing street vending is too harsh. As stakeholders, the TUC hopes that judges in application of sanctions would consider the issues discussed.

The following are suggestions for the way forward:

- The TUC should provide support with legal assistance to vendors if need be.
- District courts are more friendly and vendors may not need to talk to lawyers and so can use those.
- Judges should not just accept guilty pleas. Some human face should be brought in and offenders should be asked if they have explanations.
- Sanctions should consider the economic situation of the street vendors. There may be a need to have empathy in some cases and to set them free or impose lesser sentences.
- Cases of vending are special cases and need not be tried under the wrong laws. Therefore cases must be separated and dealt with under right law (e.g. don't add traffic offence to assault and charge a person).
- There is a need to educate street vendors about their rights.
- There should be more education for AMA prosecutors and even the police.
- Judges and Prosecutors should further discuss issues relating to sanctions in the by-laws.