

TUC (GHANA)/WIEGO INFORMAL ECONOMY LEGAL PROJECT
REPORT FROM EXPERTS WORKSHOP
HELD ON SUNDAY 30 SEPTEMBER AT MIKLIN HOTEL, ACCRA

1. Background

The Ghana TUC/WIEGO Informal Sector Project seeks to identify and address laws impacting on the work of street vendors, kayayei and domestic workers in Ghana. The first phase of the project began with research and consultation with the workers. The research identified legal provisions and practices which impact negatively on the working conditions of the workers.

To assist the workers address these issues, the project team held a workshop with legal experts on 30th September 2012 at Miklin Hotel, Accra.

2. Participants at the Workshop

The workshop was attended by nine participants made of 6 females and 3 males as shown on Table 1 below.

No.	Name	Organisation	Title
1	Elizabeth Hagan	Labour Department	Acting Chief Labour Officer
2	Adwoa Sakyi	IUF Africa	Regional Women's Coordinator
3	Effiba Amihere	National Labour Commission	Director of Legal Department
4	Charles Bawaduah	Project Team member	Legal Practitioner (former TUC (Ghana) Legal Officer)
5	Bede Tukuu	Commission for Human Rights and Administrative Justice (CHRAJ)	Senior Legal Officer
6	Teresa Abugah	TUC (Ghana)	Head of Women's Desk
7	Togbe Adom Drayi II	TUC (Ghana)	Head of Organisation Dept
8	Rose Kwei	TUC (Ghana)	Informal Sector Desk Officer
9	Clara Osei-Boateng	Project Team member	Researcher

3. Methodology and Key Issues

Presentations and discussions were employed during the workshop. Clara Osei-Boateng presented the background of the study each and activities undertaken so far. Key findings of the study were shared to elicit legal advice. Key issues discussed are as below:

3.1. Street vendors

- i. Participants observed multiple reasons for street vending which points to multifaceted approach to solving the problem rather than the antagonistic stance of Assemblies. They noted instances where vendors have deserted designated streets as has been the case with newly constructed markets. Whereas vendors have in some instances cited poor infrastructure at designated markets for their action, there are times they had done so with no legitimate reason.
- ii. Participants noted street vending remains illegal activity by Assemblies' Bye-laws. However, the illegality is by the creation of the law; thus amending the law in favour of the activity would remove the criminality. For instance, it queried what constitute a prohibited street as stated in the Bye-law.
- iii. Lack of consultation between the Assemblies and vendors was noted a challenge. For instance the legal experts doubted the involvement of vendors in the processes that led to the passage of the Bye-law on street vending.
- iv. It was also noted that the Accra Metropolitan Assembly (AMA) 2010 Street Vending Bye-laws did not indicate a repeal of the AMA 1995 Bye-law which mandates the Assembly to designate a street for vending. Participants considered a proposal for the project team to engage the Assemblies on designating specific streets for specific days in the week for street vending
- v. Participants considered proposing a registration process for vendors to allow for regulation. Vendors must be registered with the Assembly to be eligible for spaces in the designated streets
- vi. It was noted that while the Bye-law targets the buyer and the seller, a review of the court cases bring forth cases involving sellers alone. This it noted as selected justice. The meeting noted that buyers have been incentives for vendors to remain on the streets.

- vii. Participants agreed with vendors about the high cost of stalls. Most street vendors are petty traders with capital of less than GH¢500, yet the cost of market stalls have hovered at GH¢1000 and above. It bemoaned the involvement of middlemen which leads to increase in the price of stalls as they seek to make profit.

3.1.1. Court Cases Involving Street vendors

- viii. Participants noted as unfortunate that most of the court sentences but was quick to add that the Judges acted within the law. It noted that judges have discretionary powers in Ghana.
- ix. Participants observed some sentences very harsh given the level of income and the impact of the activity on the society. It observed inconsistencies between the sentence limits set in the Bye-law and the court judgments. Whereas the Bye-law 2010 sets a highest of 10 penalty points for offenders, most cases exceeded. In some cases however, it was observed that offenders were additionally charged of assault , hence the higher sentence
- x. The experts noted that the trial of the offenders is often too swift to allow them to obtain legal advices. In some cases, it noted that vendors were arrested and tried within hours.
- xi. Although defendants have the right to be represented, they often cannot afford the legal cost. The Legal Aid Department faces human resource and logistical constraint and unable to provide the needed support.
- xii. The legal experts noted that most of the defenders have never come in contact with the law. Such people get disoriented and confused and thus heed to the advice of the police officers or prosecutors to plead guilty. Most of the offenders they noted had pleaded guilty out of frustration and ill-advice from the police or the guards. They are sometimes made to believe that pleading guilty would soften their sentences and of course shorten the proceedings. They observed how intimidating the court processes can be for the vendors' particular for those who would be making appearance for the first time.
- xiii. The legal experts noted the complexity of making laws in Ghana. Bills are introduced by parliamentarians. It is however easier to make schedules.

3.1.2. Recommendations

- i. The project team to hold a meeting with Accra Metropolitan Assembly (AMA) to discuss the issues identified. The meeting would be extended to leaders of the two MBOs representing the vendors
- ii. The legal experts to develop a schedule to be attached to the AMA Bye-law on street vending. The schedule is to provide vendors with alternatives.
- iii. Project team to hold a consultation with the two MBOs on the action points.
- iv. Project team to organize public education and advocacy targeted at judges.
- v. TUC (Ghana) to consider setting up a Legal Desk to provide legal assistance to the workers through court proceedings

3.2. Kayayei

- i. The team did not find strong evidence of laws impinging negatively on the work of kayayei. The poor working and living conditions were viewed social rather than legal. It was noted that kayayei like other workers that provide services for fees are covered by the contract law.
- ii. Also the cases of child kayayei and trafficking were noted to be adequately covered by the Children's Act and the Trafficking Act. Like many issues in Ghana, the challenge is weak enforcement.

Recommendations

- i. Participants noted that the state under chapter 6 Article 37 of the Constitution is expected to protect the rights and dignity of vulnerable groups. Thus the project team could advocate for the state to provide kayayei with basic amenities such as sheds with toiletry facilities and security within the central business districts where they operate.
- ii. Project team to meet with kayayei and discuss recommendations for their inputs

3.3. Domestic Workers

- i. Domestic workers were noted to have been covered by the Labour Act. However the definition of a domestic workers as stated by the Act was noted inadequate given the practice in Ghana
- ii. Participants found Section 44 of the Labour Act which exempts domestic workers from provisions on standard working hours and rest periods discriminatory. It believed that standard working hours of 40 per week should apply to all workers. This does not prevent employers for negotiating for extended hours if their circumstances demands so; in which case the overtime law would apply.
- iii. Participants reviewed the proposed Regulation by the Legal Advocacy for Women in Africa (LAWA) but found most of the issues repetitive. It noted that most of issues raised in the Regulation are repetitive of provisions in the Act. While it accepted the provision for amendments in Section 44, it rejected the proposed 45 hours per week as indicated in the Regulation. The experts believed domestic work is like every work in Ghana and should have the same standards.
- iv. Participants examined Section 79 (1) of the Labour Act which states that “*two or more workers employed in the same undertaking may form a trade union*”. It was noted that since most domestic workers are the only employee within the household it is impracticable to form a union for collective bargaining purposes. However, this does not preclude them from forming associations for solidarity purposes.

Recommendations

- i. The team to submit to the National Taskforce on Domestic Workers proposed amendments on the standard working hours and definition of domestic workers
- ii. TUC (Ghana) to organize domestic workers into associations
- iii. Project team to hold consultation with domestic workers to discuss recommendations