

WIEGO and Ghana TUC Law Project
Discussions and Recommendations from the Legal Team

Dated: 19 September 2013

ATTENDANCE

1. MR. CHARLES BAWADUAH ESQ. Legal Practitioner
2. MR. BEDE TUUKU ESQ. Senior Legal Officer CHRAJ
3. MRS. ELIZERBETH HAGAR Chief Labour Officer

SUBJECT

The subject for discussion was to consider the relevant Laws and practices that affect the target groups (Domestic Workers, Kayayeis and Street Vendors) and to make proposals, suggestions and/or express views to ameliorate the conditions that the target groups find themselves in by reason of the application and/or enforcement of the laws, rules and practices that affect the activities of the target groups.

STREET VENDORS AND KAYAYEIS

The team discussed the AMA (Street Hawkers by-Laws) 2011 and made the following observations.

- That given the economic background of some of the vendors the fine of 10 penalty units may be too high and need 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 is not only defeating 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 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.

Current position	Proposal
<ol style="list-style-type: none"> 1. Punishment for offences 10 Penalty units or option of 3 months' imprisonment or both (section 9) 2. Only vendors are punished 3. Offence under AMA by-laws charged together with criminal Act 4. AMA guards-extortion of alleged offenders 	<ol style="list-style-type: none"> 1. 5 penalty units without option of Imprisonment 2. Both vendors and buyers should Be prosecuted 3. Charges should be separated 4. Disciplining of guards

REGULATING CONTRACT AGREEMENTS BETWEEN DOMESTIC WORKERS AND EMPLOYERS

Written Statement of particulars of Employment in Schedule 1 of the Labour Act, 2003 (Act 651) could be looked at and a similar one specifically tailored for domestic work included in proposed amendments to the Act. It may include the requirement for:

- Specific hours of work required in private homes
- Additional duties, if any
- Requirement or record keeping by employer
- Responsibility for payment of workmen's compensation
- Responsibilities of Private Employment Agencies, where applicable
- Mandate of the Labour Department/District Assembly – designate clearly the Labour Department's oversight responsibility
- Ensuring that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

This also requires a conscious focus on training and capacity building of the Labour Inspectorate, in particular, for effective monitoring and identification of issues and appropriate interventions.

This also calls for identification of other relevant partners/collaborators, education/sensitization on domestic work, mandates and roles of stakeholders, to ensure effective collaboration to maximize protection of this category of workers.

For young domestic workers (15 but below 21 years old), special provisions on training/apprenticeship, in line with the training and apprenticeship provisions of the Children's Act and the Child Rights Regulations could be considered.

As an interim measure administrative arrangements could be made to ensure that domestic workers are adequately protected.

Public-Private Partnership

Facilities available within the system for skills training, entrepreneurship development and marketing of produce should be identified and target groups linked to such.

Department of Cooperatives, National Board for Small Scale Industries, District Assemblies/BUSAC Fund, etc., other micro-credit schemes – need to be identified and roped in to maximize impact, particularly as the nation is considering the need for accelerating the formalization of the informal economy.