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Riisgaard, Lone

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What is a Worker?

Framing People in the Informal Economy as Part of the Trade Union Constituency in Kenya and Tanzania

Lone Riisgaard, Roskilde University, Denmark

ABSTRACT

This article investigates the ongoing efforts of trade unions in Kenya and Tanzania to enlarge their constituency by reconceptualising the notion of workers to include people in the informal economy. How this process plays out is of immense importance as it challenges established understandings of who a worker is; this in turn poses very difficult questions about rights, representation and the distribution of power both internally in the union movements and in society at large. Based on original interview data, the article unpacks this highly contested and politicised process. The article shows how union efforts reflect different ways of tackling the need to constitute people working informally as workers and union members in order to increase the social base, and thereby increase political clout. However, these processes are juxtaposed with the urge to maintain traditional boundaries and protect established privileges and power structures, both internally in the unions and externally in the fragile compromise inscribed in the existing tripartite structures.

KEYWORDS

informal workers; informal economy; trade unions; Kenya; Tanzania

Introduction: The Making of a New Working Class?

In a context of declining trade union membership, casualisation of industrial and service jobs, and a large and persistent informal economy, trade unions in Kenya and Tanzania are taking new measures to reframe people working in the informal economy¹ as part of the trade union constituency. This coincides with a growing international push towards inclusion of people working informally, for example in social protection frameworks, in public legislation more generally and, as we focus on here, in the trade union movement.

In other words, the group of people whom trade unions have “traditionally” claimed to represent – a working class consisting of formally employed workers – is being re-interpreted in order to allow for the incorporation of a new and very heterogeneous group. How this process plays out is the object of analysis in this article, which investigates the considerable increase in activities aimed at the informal economy in the last five years or so by trade unions in Kenya and Tanzania in their attempts to reconceptualise whom they represent and hence who is to be

¹ In line with the ILO (2015), a broad definition of the informal economy is adopted which includes self-employment in unregistered businesses, wage employment without a written contract (but possibly working for a formally registered enterprise) and unregistered businesses.

designated as “a worker”.

The article is based primarily on thirty-two interviews with trade union representatives and officials (at federation, union and branch level) in Kenya and Tanzania, as well as eighteen interviews with other stakeholders such as non-governmental organisations (NGOs), international trade union federations and members of informal economy trade unions. Interviews and follow-up questions took place between April 2018 and July 2000 in Dar es Salaam and Nairobi. The focus is on three specific sectors – micro trade, construction and transport – where informal work is prevalent, although union efforts in other sectors are also addressed where relevant. Documents such as policy papers and constitutions are also used for analysis. Finally, the article draws peripherally on 110 interviews and twenty-four focus group discussions conducted with informal economy associations (see Riisgaard, Mitullah and Torm, 2021).

In the following section the research design is presented, concepts clarified and the analytical framework outlined. This is followed by a discussion of how the working class has traditionally been conceptualised within the trade union movement and how a very specific representational model has followed in its trail. How this has played out historically in Kenya and Tanzania is then traced before moving to an analysis of how the trade union movement currently intersects with the informal economy.

Research Design and Conceptualisation

The people in the informal economy who are recruited by trade unions in Kenya and Tanzania do not always engage in traditional employment relations as they include people working on their own and even some who hire a helper or two. As will also be shown, trade unions, in their attempts to redefine their constituency, emphasise the designation of this heterogeneous group as “workers”; therefore, in this article when referring to this group we also employ the term “informal workers” but critically discuss the implications that such designations might have. When the broader terms “people working informally” and “people in the informal economy” are used, they include all actors in the informal economy although the lines are certainly blurry. As rightly emphasised by Bieler and Nowak (2021) the formal/informal distinction is itself a dichotomy stemming from a particular Western experience but which nonetheless plays an active role in shaping both government and trade union policies in Kenya and Tanzania.

Kenya has had a relatively strong trade union movement with highly centralised power structures; legally, the country has taken small steps towards increased direct involvement of civil society actors, including informal economy associations. Tanzania, on the other hand, has a weaker and less centrally controlled union movement, and civil society is increasingly controlled by the ruling party. Nonetheless, as we shall show, the growing inclusion of informal workers into the trade union movement follows rather similar trajectories in the two countries. Hence, the exploration of the two country cases can help us understand the dilemmas involved in this ongoing process and also point towards some broader implications of such a reconceptualisation of the trade union constituency.

Empirically the article addresses new processes that are of potentially immense importance for people working informally (in terms of voice and representation) and for the trade union movement (which would gain numerical strength and better reflect the realities on the streets). These processes have only been sparsely covered in the academic literature on Kenya and Tanzania, although related studies have been conducted. For example, studies on single union cases include Spooner and Mwanika’s (2017) analysis of transport in Uganda, Steiler’s (2020) study on domestic

workers in Tanzania, Rizzo's (2017) examination of transport in Tanzania, Jason's (2004) analysis on construction workers in Tanzania and Jimu's (2010) work on union engagement in Malawi. Schminke and Fridell (2021) compare the transportation, market and textile sectors in Uganda, while Fischer (2013) offers a policy-level analysis of Tanzanian trade unions. The International Labour Organization (ILO, 2019) provides a global overview of different trade union strategies and challenges while more general reflections on trade unions' possible involvement with people working informally can be found in Gallin (2001) and Bonner and Spooner (2011). However, overall the issue suffers from a lack of scholarly attention, in particular comparative and theoretically informed analysis.

Conceptually, this article draws on several analytical strands. One is based on the work by Boltanski (1984) on how "the cadre" (referring to mid-level management) objectified itself as a new social group in France during the period 1936–1945. Boltanski takes as his analytical object the historical conjuncture in which the cadre formed themselves into an explicit group "by examining the *social effort of definition and delimitation* which accompanied the group's formation" (Boltanski, 1984: 472, emphasis in original). By objectifying itself (that is creating values, a name, spokespersons, a system of representation and so on) it helped realise existence as something taken for granted.

In the contemporary Kenyan and Tanzanian context, attempts at objectifying a social group comprising people working informally are being undertaken by various internal and external actors. The objectification of social groups by people within the informal economy mostly relate to specific sectors or occupations like daladala/matatu (minibus) workers or micro traders; these efforts rarely seek to encompass the broader informal economy. The larger project of unifying the very heterogeneous group of people encapsulated by the term "informal economy" (which is by no means agreed upon) has, however, so far mainly been undertaken by external actors. Lately, this endeavour has been taken on by the trade union movement – a movement that until recently delimited itself as something different from (if not in outright competition with) people working informally. Other actors also court people in the informal economy; hence trade union endeavours are not to be seen in isolation from, for example, recent government (De Soto inspired) celebrations of the crafty micro entrepreneurs in Tanzania or the massive promotion by the ILO and the donor community of "social protection for all" and "transition towards formality" agendas.

In contrast to Boltanski's analysis of the objectification of the cadre, the efforts of trade unions to re-objectify the social group whom they claim to represent is an emerging, ongoing and highly contested process. Nonetheless, the concepts of social efforts of definition and delimitation are relevant in examining current trade union developments as they help us unpack the process by prompting questions like: How are traditional versus "new" members designated? What repertoire of themes is used to constitute the informal worker? To which existing social groups are they placed (symbolically) in affiliation or in opposition? How are dispersion principles (for example, dispersion in wealth or employment relations) overcome? In other words, how is an aggregate to be conceptualised in its unity when it combines social groups that are in most respects very different from one another (Boltanski, 1984)?

These questions can help us understand the dilemmas involved in this ongoing reconceptualising and also point towards broader implications with regard to issues of rights, representational structures and class understandings; attention must therefore also be paid to how this re-objectification process relates to socioeconomic and political contexts. This resonates with the analysis of informality by Bernards (2017) and his argument that the political organisation of what he calls "subaltern populations" (referring broadly to people in the informal economy) have

been and remain crucial in the hegemonic project of states.

Segmentation of the workforce plays a crucial role here, and to flesh out in more detail how definition and delimitation occur in a trade union context we also draw on the concept of boundary drawing discussed by Silver (2003). Building on Marx and Polanyi, she reiterates the insight that labour movements are continually made, unmade and remade and hence cautions against seeing the working class as a fixed entity. While unions and the working class are not necessarily the same thing, current attempts to redefine the trade union constituency can have implications for class formation and should be placed in the context of historical reconfigurations.

Indeed, looking at historical developments in Kenya and Tanzania, the perception of “the working class” as a fluid concept resonates well. For example, in the years following World War 2, trade unions attempted to break down exclusionary boundaries by calling for an extension of “workers’ rights” to include all workers in the empire (Cooper, 1996), thereby actively aiming to expand the terrain of the labour movement to encompass rural regions. This also illustrates how boundary drawing is an intrinsic element of objectification: who a worker is and for whom workers’ rights is a legitimate claim necessitates delimitation of who a worker is not. Boundary drawing is often done in an implicit way, but whether practised by unions, employers or governments, the construction of a collective consequentially always leaves some groups out. Again, however, these boundaries are continuously made and remade: African trade unions sought to break down existing boundaries and exploit the universalistic discourses of the colonial powers (Cooper, 1996; Silver, 2003). The reactions by colonial and postcolonial states to these attempts to expand the labour movement are also telling. Citing Cooper (1996), Silver (2003: 23–24) describes how capitalists and governments sought to demarcate a relatively small primary sector of urban workers with special workers’ rights – set apart from the rest of society in order to avoid the potential for uncontrollable unrest that fluid boundaries might have caused.

Exclusionary boundary drawing is therefore highly political. It can also be seen as a reaction to a system-level problem of historical capitalism (Wallerstein, 1995, in Silver, 2003) where continued profit-making can only coexist with social contracts as long as those rights and benefits are given to a small fraction of the workers. Hence, the current struggle over who should represent the vast workforce in the informal economy (estimated by the ILO [2018] to be more than 90 per cent of total employment in Kenya and Tanzania) is potentially also a struggle over defining and delimiting who the working class is and, crucially, who should be able to legitimately claim workers’ rights.

The “Traditional” Working-class Concept and the Social Dialogue Model

Closely related to the issue of definition and boundary drawing is the question of how to forge unity and solidarity within a collective. As discussed by Lindberg (2014: 136), solidarity in the trade union movement is typically based on mutual self-interest of a defined group, most often created around “a shared position in the organisation of production”. In other words, the identity as a worker, as part of the working class, has traditionally been bound up with a particular position in the relations of production (Lindberg, 2014; Webster, Britwum and Bhowmik, 2017). This understanding is most often connected with a perception of a worker as an employee. Not surprisingly then, the forging of solidarity between formal and informal workers can be challenging – not least when clear employment relations are often hard or at times even impossible to distinguish in the informal economy.

Interestingly, the view of the working class as consisting of formal employees is based on a

historical exception and has also been contested, for example, by advocates of social movement unionism (Waterman, 1993; Munck, 1999). Hence, the formalised full-time employment relationship is a historical phenomenon that developed in the North Atlantic region during the nineteenth and twentieth centuries. However, this relationship, along with the forms of collective action and representation that evolved with it, is gradually losing out to more insecure and precarious employment relationships (Breman and Van der Linden, 2014; Bieler and Nowak, 2021).

This specific interpretation of trade unionism was transferred to developing countries where it encompassed the large public sectors and parts of capital-intensive private production. However, it failed to reach the informal economy, which accounted for the vast majority of employment in those countries; as such, trade unionism has always been limited to a select few in developing-country contexts (Kabeer, Sudarshan and Millward, 2013).

Being based in this historical and geographical exception also creates other challenges. Hence a particular institutional model of labour relations and trade unionism became dominant in many Northern countries and widely promoted through the ILO's model of the tripartite structure of social dialogue where unions (as representatives of workers), employers and governments negotiate. This model has been (with varying success) transplanted across the world but, insofar as unions represent formal workers only, in the context of a large informal economy this creates an institutional model in which only a minority are invited to the negotiation table.

The “representational problem” has not gone unnoticed, and looking at the larger international policy terrain – and also at the external partners of the Tanzanian and Kenyan trade unions that are pushing for involvement with the informal economy – two competing institutional models are advocated. One model – heralded by the ILO and generally favoured by the trade union movement and business associations – is that existing employers' and workers' organisations extend membership to people in the informal economy so that they can be represented via existing structures and participate in social dialogue, in particular about how to transition into formality (ILO, 2013, 2015).

The second model seeks to transform the existing tripartite structure to a 3+1 model in order to enable people in the informal economy to represent themselves on an equal but separate footing with formal enterprises and workers. This agenda is being pushed by some transnational advocacy groups like Women in Informal Employment: Globalizing and Organizing (WIEGO; see e.g. Alfors and Moussié, 2019). This approach questions whether the vision of full formalisation is possible and instead emphasises approaches that allow for participation of people working in the informal economy (in their own right) in policy design and implementation.

Taking this perspective a bit further, it can be argued that the focus on formalisation, which is at the core of attempts to incorporate people in the informal economy into existing tripartite structures, is a vision based on a very specific historical and geographical experience. In effect, what we observe on the ground is often increased informalisation; and in both Kenya and Tanzania, the informal economy shows no sign of diminishing. The insistence on formalisation (and its related social dialogue model) as the only solution is thus in this view in effect suppressing, as it excludes large sections of society from representation (Riisgaard, 2020).

Historical Definitions and Delimitations of the “Working Class” in Kenya and Tanzania

In his analysis of how the informal economy has been governed in Kenya and Tanzania, Bernard (2017: 1837–1839) emphasises how both governments have sought to situate themselves as the

legitimate protector of people in the informal economy. Nonetheless, as illustrated by Fischer (2011, 2013), Bernards (2017) and Shiraz (2009), the sharp delimitation of organised formal workers from the majority working in the informal economy has not always been so clear-cut. In the early days of the Tanzanian union movement, certain groups in the informal economy, such as casual dockworkers and domestic workers, were organised in unions together with formal workers. Likewise in Kenya, these groups were also included in the early stages of the union movement (Shiraz, 2009; Bernards, 2017). A more inclusive concept of “unions”, “workers” and the “working class” were thus prevalent in the pre-independence era.

In the post-independence era, trade union movements became strongly attached to the ruling parties, not least in Tanzania where nationalisation secured state control over the economy (Fischer, 2011, 2013; Bernards, 2017; Rizzo, 2017). The close attachment prevented unions from pursuing independent politics and severely restricted their ability to represent their members while also limiting their constituency to the minority of workers – those in the formal sector. Although the unions in both countries gained formal independence with liberalisation in the 1990s, attaining actual independence has been an uneven and gradual process. As formulated by Fischer (2013: 147) in her analysis of Tanzanian unions: “Since then, they have been swinging between continued control by the government and efforts to establish themselves as autonomous civil society organizations.”

In sum, the formal sectors of the economy have increasingly been identified as the legitimate terrain for trade union activity to the exclusion of informal sectors. Boundary drawing and dividing tactics have been employed by both governments and unions: governments have sought to restrict political influence and attempts at broadening claims for workers’ rights beyond the relatively small group of formal economy workers, while the unions have sought to protect established privileges by largely accepting this delineation – at least until recently.

Trade Union Engagement with the Informal Economy

The self-designation of “informal workers”

An impressive heterogeneity exists within the informal economy now targeted by trade unions. This includes various types of wage employment, work on commission, own-account work and even engaging others to work (on a very small scale) for wages, on commission or unpaid. When these people were asked to self-designate, not surprisingly a multitude of identifications occurred, including but by no means limited to the category of worker. Most often people would self-designate as an entrepreneur or a small business person; occupation-specific designations would often be used such as *machinga* (hawker) or *boda boda* (motorcycle taxi) driver (Riisgaard et al., 2021).

In the micro trade sector – where people mainly work on their own, some with a helper or two – the majority saw themselves as small business people, some of whom would nonetheless be in hidden employment relations with a retailer supplying the goods they sell. *Boda boda* drivers were most often also own-account; however, they would often be economically tied to the motorcycle owner given that most vehicles are hired with the option to buy over an agreed time period. *Daladala/matatu* (minibus) conductors and drivers come closest to a regular employment relationship, but even here the setup is such that the crew work on their own while having to meet a daily target for the vehicle owner, and dividing any surplus between them while paying off touts and stage assistants. Finally, people working in construction – both masons and helpers – engage

in complicated employment structures where larger contractors hire layers of smaller contractors, work gangs and individuals.

Furthermore, and as also noted by Lindell (2010) and Rizzo (2017), our research reveals significant diversity not just in employment relations, but also in access to resources, status and decision-making power among informal workers even within the same sector (Riisgaard et al., 2021). Consequently, there is considerable variation in the concerns and interests of people, which complicates the forging of broad-based solidarity in the informal economy and between formal and informal workers. As we shall see in the sections below, the forging of unity and solidarity seems to be one of the key challenges when re-objectifying the trade union constituency, taking on slightly different dimensions depending on whether workers are own-account workers or in more or less explicit employment relations.

The trade union landscape

In both Kenya and Tanzania trade unions are organised mainly on an industrial basis, meaning that there are relatively clear demarcation lines between what occupations are organised by different unions. Nonetheless, in the last decade there has been some pressure on customary distinctions as established unions have splintered or met competition from new unions.

The Trade Union Congress of Tanzania (TUCTA) it is the only national federation on the Tanzanian mainland, and in 2017 it represented twelve trade unions with a total of around 592 000 workers (DTDA, 2018). TUCTA has experienced increased competition from new unions: in 2017, eleven independent unions were registered. However, these independent unions only counted around 15 000 workers and hence TUCTA still represents around 98 per cent of all trade union members (DTDA, 2018). Nonetheless, trade union density is estimated at only 2.4 per cent, and this overwhelmingly represents the formal sector as only an estimated 17 865 members were from the informal economy.

In Kenya, the Central Organization of Trade Unions (COTU) is the dominant federation, with forty-five affiliated unions and 97 per cent of total union membership. In addition, the newer Trade Union Congress of Kenya (TUC) hosts three unions and there are an additional nine independent unions. In total around 2.6 million workers were members of registered unions in 2018, achieving a union density of around 15 per cent of the total (formal) employment (DTDA, 2020). This is relatively high in an East African context, particularly when compared to Tanzania, and COTU is considered one of the strongest African unions. Of the total trade union membership, however, only an estimated 0.4 per cent (11 540 members) are from the informal economy.

Representation of people in the informal economy in tripartite institutions

In Tanzania, as a response to massive retrenchments in the 1990s, the National Employment Promotion Act of 1999 gave a seat to a representative of an informal sector association on the National Employment Advisory Committee. There is, however, no evidence of the committee currently being active on informal sector matters (Kinyondo, 2021). Hence, in practice TUCTA is the only player recognised institutionally to represent workers in issues regarding the labour market or social protection. The largest informal economy association – VIBINDO² – is at times invited

² VIBINDO = Jumuia ya Vikundi vya Wenye Viwanda na Biashara Ndogondogo (Community Groups of Industry and Small Businesses). Often referred to as the VIBINDO society, it is an umbrella association for

for consultation on issues regarding the informal economy such as, for example, the creation of a health insurance scheme targeting members of informal economy associations. However, this only takes place in an ad hoc manner and only the tripartite construction made up of trade unions, employers' organisations and government is guaranteed by law (Riisgaard, 2020).

In Kenya, people in the informal economy are mainly represented indirectly in social dialogue institutions. However, since 2012, they do have direct representation in the Micro and Small Enterprises Authority (MSEA), via four national sectorial association representatives from manufacturing, trade, services and agri-business. At the National Labour Board, the interests of people working informally are represented by the Secretary General of COTU and the Director of MSEA, while at other tripartite institutions they are represented only by COTU (Otieno, 2018; Indimuli, 2021).

Otieno (2018) notes that, due to the lack of a legal framework that institutionalises tripartite social dialogue in the informal economy, most of the dialogue that does take place is bipartite. An example of this is the Kenya National Alliance of Street Vendors and Informal Traders (KENASVIT),³ which engages government agencies directly with regard to, for example, issues of harassment, licences or construction of new markets (see also Riisgaard et al., 2021).

However, KENASVIT also sits on the board of MSEA; with the MSE Act of 2012, the institutional system in Kenya has thus taken a step (albeit a small one) towards direct representation of people in the informal economy and towards a 3+1 model, although this is limited to informal actors considered to be micro businesses. In Tanzania, the legal system in practice stays within the traditional tripartite model.

Policies and practices at the confederation level

In 2004, TUCTA recommended the inclusion of what they refer to as informal workers in its affiliated unions but without clarifying how or why this should happen (Fischer, 2013). As explained by a former Deputy Secretary General of TUCTA, in the 1990s the key problem occupying the unions was dwindling numerical strength, as their formal members became informal due to privatisation and retrenchment. He also explained that the union was ill-prepared for this turn of events given its post-independence history of political affiliation and sole focus on the formal economy.

Nonetheless, two early initiatives were carried out focusing on informal work – both initiated and financed by external actors. In the late 1990s the Kenya Plantation and Agricultural Workers Union (KPAWU) in cooperation with a Swedish trade union started some activities for casual agricultural workers. In addition, from 2001 TUCTA together with federations from Uganda, Rwanda and Kenya was involved in the ILO SYNDICoop project, which aimed to strengthen the capacities of unions and cooperatives to organise in the informal economy (ILO, 2009; Fischer, 2013). As noted by Fischer (2013: 148); however, “This project was an externally stimulated attempt to venture into the informal economy and should not be read as representing a general spirit of change among unionists”.

This conclusion was corroborated by a former Deputy Secretary General who noted,

small informal sector businesses. It comprises some 300 associations representing around 60 000 members, predominantly micro traders.

³ KENASVIT comprises twenty urban alliance affiliates representing around 400 000 members.

The issue is the mentality. It required a change of mentality... So people looked at that one [the informal sector] and said, this is a big mountain of work to do – and you get peanuts out of it. It's a headache (Interview, former TUCTA Deputy Secretary General, 2019).

Jason's (2004) study of informal construction workers in Dar es Salaam also confirmed the reluctance of unions to include informal members. Although a few activities did take place, they were isolated and largely externally driven.

The ambiguity towards the informal economy is still evident today and activities are still to a large extent externally driven. There has been a considerable increase in activities aimed at the informal economy in the last five years or so. However, despite declared intentions, neither TUCTA nor COTU has a policy on how the inclusion of informal workers should take place, even though both have had externally funded attempts at creating exactly such a federation-level policy. In comparison, the National Organisation of Trade Unions (NOTU) in Uganda finalised their federation-level strategy for cooperation with the informal economy in 2014, detailing principles and strategies for collaboration (NOTU, 2014). So far, actual engagement in Kenya and Tanzania has been undertaken autonomously by a small handful of unions in each country, most often in collaboration with external actors, while the majority of affiliated unions do not engage informal workers as all (Riisgaard, 2021).

External partners play an influential role by facilitating and funding peer learning, training and engagement activities. The ILO has been a key driver and reference point for union engagement with the informal economy, but NGOs and partner unions also play an active role. Notable here is the International Transport Workers' Federation (ITF) and their sponsor union programme, running since 2013, in which they pair up unions that have been successful in recruiting informal workers with sister unions in other countries.

The following account of a project with TUCTA funded by the Friedrich Ebert Stiftung (FES), aimed at developing a federation-level policy on engagement with the informal economy, illustrates the strong external push as well as the highly politicised nature of trade union engagement. Since 2016, FES has funded a survey, an external consultant and a handful of dialogue meetings. Out of the dialogue meetings grew a new umbrella coalition of informal sector associations named Chama Cha Wafanyakazi Wa Sekta Isiyo Rasmi Tanzania (TAISETU, Tanzania Informal Sector Trade Union). The associations include diverse occupations such as boda boda drivers, street vendors and fishmongers. The coalition claims to have collected more than 100 000 signatures; with those they applied for recognition as a trade union in 2018 with the hope that they could then become a TUCTA-affiliated union (Interviews, TAISETU members and representatives, 2018).

As it turned out, recognition was declined and it is clear from conversations with high-level TUCTA representatives that even if it had been recognised, it would not have been accepted as an affiliate of TUCTA. Apart from the failed attempt at establishing a new union for informal workers, the process also produced a highly contested draft policy paper titled "A Twin Track Strategy to Organize the Informal Economy into Trade Unionism in Tanzania" (TUCTA, n.d.). The strategy is explained as containing both an approach where affiliated unions organise informal workers directly into existing trade unions and an approach where informal workers are allowed to form their own informal economy trade unions with a view to being accepted into TUCTA.

The proposed policy stirred up a great deal of internal commotion and dissatisfaction. While promoted by TUCTA's General Secretary, the policy proposal was firmly rejected when presented to the board of TUCTA (Interviews, TUCTA official, 2018). In short, the cases illustrate how the majority of the leaders of TUCTA-affiliated unions were strongly against the idea of having

informal workers organise in separate unions. TAISSETU not only challenged existing demarcations between established unions, but more fundamentally questioned the existing boundaries between the workers to whom entitlements are awarded and those to whom they are not. The situation also raised difficult questions about voting rights and who should be allowed to have a say in future decision-making within the trade union movement. How this is dealt with at the affiliate level is discussed later but, in general, there is a fear that informal workers might eventually outnumber formal ones, as expressed by this TUCTA representative:

We are still structuring to see which way is more favourable, like how they will contribute and involve them in meetings. But mind you, if we allow all of them to join the normal union they will overshadow the union because imagine all 20 million informal people join the union while at the moment we are only 3 million. I think they will take over because informal are always informal; even if you will formalise them they can't be formal as normal formal. You need to be careful and have them a little bit separate (Interview, TUCTA representative, 2018).

The quote illustrates well the dilemma between the need for unity and the urge to delimit by emphasising difference. Thus, alongside the efforts to define informal workers as part of the trade union constituency and thereby enlarge the social base, a degree of separation is considered necessary in order not to unsettle the established political order within the trade union movement. As will be discussed, this emerged as a common dilemma within the union movement in both countries.

In Kenya, an official federation-level strategy on how to engage with the informal economy is also pending, which seems to mirror the difficulties experienced in Tanzania. In recent years, COTU has sought to ensure inclusion of informal workers in its outreach activities, especially May Day and Labour Day events, but also in sensitisation campaigns around, for example, HIV/AIDS. COTU also allows some informal associations from the market next to their Nairobi office to use their premises for meetings. Engagement does not follow any structured procedure though, as there is no policy direction on how to engage the informal economy. In fact, according to a COTU official, the incentive to engage informal workers was most often driven by external partners.

According to a COTU board member, the lack of an agreed-upon policy at times complicates engagement. It has, for example, meant that decisions on (and even discussion of) application for COTU affiliation by the newly recognised Kenya Matatu Workers Union (MWU) has so far been stalled.

Yes, so with me I wrote to COTU; they've not responded... It's up to them, but for me I'm moving on well as far as we are with the ITF; we are doing our functions well (Interview, MWU representative, 2018).

The stalled application is also illustrative of the existence of several competing unions within the same sector. Fragmentation has been particularly prevalent in the transport sector in both Kenya and Tanzania. Formerly strong trade unions have been splintered by breakaway unions and, in addition, competition has arisen from new unions explicitly for informal workers (for example, the aforementioned MWU in Kenya, and the Tanzania Road Transport Workers Union, TARWOTU). In both countries, the federations seek to guard the principle of "one sector one union" but, it seems, with limited effect.

The designation as “informal workers”

Notwithstanding the complexity of employment relations (or lack thereof), the idea that people in the informal economy (excluding, as mentioned, most employers) should be defined as and should self-identify as workers was generally taken for granted by the trade unions interviewed. It was recognised, however, that this self-identification does not always occur naturally but rather is something that comes with being educated on affiliation to a particular social group:

And we were working with those SACCOs [savings and credit cooperative organisations], like, familiarising them with the labour laws, and even convincing them that these are workers... For them, you know, the perception that they are in *jua kali*⁴ ... they don't see themselves as workers (Interview, COTU official, 2018).

The designation as worker is thus seen as a process of awareness-raising but also of inducing a sense of belonging:

Like, for example, when we are allowing them to come during the Labour Day they also feel part of the, the workers... They come and exhibit their wares, and we support them financially (Interview, COTU official, 2018).

On the other hand, the conceptualisation of a worker is associated with having an identifiable employment relationship that is registered with the authorities:

Firstly, these are businessmen, and we call them all boda boda drivers because they lend motorbike daily for TZS 7 000. So, the work they do for the owner, he has no information, and sometimes even their parking point the owners do not know about... Now we fight for them to be workers so that they can be identified because now you can't call them workers before they become formal [here in the sense of having a registered contract with the owner] (Interview, TARWOTU representative, 2019).

This conceptualisation comes closer to that which is traditionally associated with formal workers, and hence the full status of worker is something informal workers can achieve once they formalise. This leaves informal trade union members in a kind of transition position, not unlike that envisioned by the ILO-inspired formalisation discourse.

The issue of own-account work – and hence the lack of any clear employment relation – in particular creates challenges for the designation as a worker, as the traditional ties of union solidarity have been based on the common position in an employment relationship. In this case, however, the designation emphasised is one that insists on the commonality of having a job, as when a group of boda boda drivers and the Communication and Transport Workers Union of Tanzania (COTWU(T)) marched in Dar es Salaam on May Day in 2019 with banners that read: “A boda boda job is like any other job” (Kinyondo, 2021), or the insistence on being employed (even if self-employed):

Initially, they used to say we are *jua kali* ... but now we are telling them you are contributing to the economy of this country. You are an employee; you have employed yourself. You need to have all other rights that an employee ought to have; the only right you'll not have is the employer/employee relationship... But as [a] person you are able to keep record of what you get every day. You are able

⁴ Meaning “hot sun” in Swahili, *jua kali* commonly refers to informal small-scale craft or artisanal work.

at the end of the month [to] pay yourself; you are able to subscribe to NHIF, to NSSF,⁵ and when you retire you are able to also get your pension ... so right now they start understanding that they are employees but they have employed themselves, so now they know they are workers (Interview, AUKMW representative, 2019).

Interestingly, in the quote above, issues like regular payment, health insurance and pension, which have traditionally been considered the employers' responsibility, is considered to be the responsibility of the individual worker in the case of own-account work.

It is also interesting to note that alongside efforts to unify and to overcome dispersion principles (like own-account versus wage work) by insisting on inclusion under the concept of "worker" or being "employed", the repertoire of themes used to constitute the informal worker often at the same time insists on delimiting the informal and the formal worker. Recurrent themes include characterisations such as "unstable", "uneducated", "untrained", "unaware", "unregulated", "unidentified" and "mobile".

But what was also often emphasised by both Kenyan and Tanzanian unions was that informal workers are a category of workers for whom rights had not yet been established (as opposed to formal workers for whom rights were legally established although not necessarily enforced).

The problem we are having, there is not any labour law that is recognising the workers... we find those guys who are in the street just vending. If the police come and take their goods, what should they do? There must be a law that these are the workers and they are being allowed to vend in the streets. In order to take their goods, you must follow this and this and this, and if their goods are taken, you can go to this and this in order to find your rights. Because the labour law should say that the informal workers do not have [an] employer but they should negotiate with the authority, so even the framework of their negotiations should be seen in the labour laws (Interview, TUCTA official, 2018).

What seems clear is that the unions are attempting to forge a "new" unionisable working class by designating people in the informal economy as workers. Nonetheless, as we discuss below, in practice the unions often treat formal and informal members quite differently

Models and strategies for incorporation – the affiliate level

To overcome the practical challenges posed by recruiting informal workers (in terms of not having a clear employer nor often a fixed work location) unions have approached them primarily via the informal workers' own associations since this provides access to groups instead of individuals.

In some unions, like the Tanzania Union of Industrial and Commercial Workers (TUICO) and COTWU(I), existing informal associations are incorporated as branches of the union; most often the members will choose to have their association leaders become the union branch leaders. Dealing with existing associations also offers the advantage of maintaining existing collective structures and services instead of replacing them (Kabeer, Sudarshan and Millward, 2013; Riisgaard et al., 2021). Nonetheless, they might still be in competition with other umbrella structures aimed at representing the same people, as is the case in Tanzania where VIBINDO is targeting the same micro traders as TUICO. Hence, internal union delineations are not the only demarcation lines that are being confronted with the move towards inclusion. In 2019 TUICO and VIBINDO signed

⁵ NHIF = National Health Insurance Fund; NSSF = National Social Security Fund.

a Memorandum of Understanding seeking to establish cooperation and a division of labour; however, so far the intentions are still to be enacted in practice.

Another union recruitment strategy is individual recruitment into existing unions through events like May Day celebrations or testing for HIV or tuberculosis – events that attract people from the informal economy:

COTU and the International Labour Organization have also been giving us opportunity to have some events ... where the workers are screened, they are talked to about HIV and AIDS, and ... they are also given information on social protection issues... And through that ... they came together, being treated ... being examined and we had a catch; we recruited very many (Interview, Kenya Union of Hair and Beauty Workers [KUHABWO] representative, 2019).

The role of legislation

Public legislation is important in setting the context for the organising efforts of trade unions. This is particularly evident in the case of the Kenyan transport sector where legal changes have greatly facilitated the access of trade unions to workers in the industry, as explained here by a board member of COTU:

[In] the matatu sector ... we are lucky that one minister decided that all matatus should belong to SACCOs and given that they are in SACCOs it is easier for us to tap them (Interview, COTU board member, 2018).

The system of having savings and credit cooperative organisations (SACCOs) act as proxy employers and having vehicle licensing depend on the existence of an employment contract with a driver is not without problems (Kamau, 2021). SACCOs often refuse or are unable to take on employers' responsibilities because they do not own the vehicles. Nonetheless, it does provide an entry for organising and a potential counterpart in negotiations.

Whereas for transport workers legality is connected to the vehicle and the relation between the vehicle owner and driver, for micro traders a key issue is whether they operate in a legally designated trading area. So far, union recruitment of micro traders in Tanzania has been limited primarily to traders working in designated areas and hence limited to more secure traders.

Another sector where legislation plays a key role is the domestic sector, in which global campaigning resulted in the adoption of the Domestic Workers Convention by the ILO in 2011. In Tanzania, this was preceded by a 2004 change in legislation asserting domestic workers to be on the same footing as other workers (Steiler, 2020); this was followed by a court ruling in Kenya in 2012 that also placed domestic workers under the protection of the labour law, consequently extending to them the national minimum wage and social security benefits (Interview, KUDHEIHA representative, 2019). The legal foundations have thus made it possible for the relevant trade unions – the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) and the Conservation, Hotels, Domestic, Social Services and Consultancy Workers Union (CHODAWU) in Tanzania – to represent informal domestic workers in dealings with their employers with the threat of taking cases to the labour courts. In comparison, attempts made by TUICO to represent micro traders in disputes with the municipality over access to trading spaces or business facilities have to refer to civil court and a complex array of local bylaws. Hence, while legislative changes have sought to strengthen the status of domestic and transport workers as workers with rights – at least in theory – informal actors that are considered businesses, like micro traders or boda boda drivers, are not covered by labour laws.

Services offered

It was clear from the interviews that most unions are quite aware that the services they need to offer to informal workers cannot simply replicate those offered to their formal members. Ideas and practices differ slightly between sectors and, as noted above, are also influenced by the applicable legislation. Overall, for the daladala/matatu transport sector, where some kind of employment relation is common (even if informal), the focus tends to be on terms and conditions at work. This is generally achieved by negotiating with employers (via SACCOs) but also with authorities, in particular the police:

We'd put a programme with my colleagues with station commanders, police station commanders: they are the ones assigning duties to juniors, to arrest the workers. We were at Kamukunji police station... So with that one he accepted to be partners, to working as partners... Where there is a problem I call him or he calls me (Interview, MWU representative, 2018).

For sectors where people are often own-account workers like boda boda drivers, salon workers or micro traders (even if they might work on commission), the focus is either on business skills and financial services and/or negotiation with authorities. For example, in Tanzania, TUICO and COTWU(I) offered collateral to allow some of their informal economy branches to access bank loans, whereas KUHABWO started a SACCO under the union to attract informal salon workers:

So we started this SACCO; the entrance fee was [KES] 250 only to lure them and join the SACCO because our challenge was organising them and recruiting them. You meet somebody in the market today, you get her today, tomorrow you'll not get her there (Interview, KUHABWO representative, 2019).

In addition, TUICO has attempted to institutionalise a dialogue platform between their informal market trader branches and the municipality of Dar es Salaam as a way of offering representation to their informal members. While TUICO and KUHABWO both offer relevant services (training and representation or access to savings and loans), they illustrate the inability of the unions to address the employment relations that in both sectors often consist of commission work for changing “employers”. Hence, in the case of salon workers, the everyday challenges of harassment and job insecurity continue to fall outside the scope of union involvement. Although TUICO does not address retail relations, it has nonetheless demonstrated some innovative – albeit sketchy – attempts at representing informal workers in their relations with municipal authorities.

Rights and representation

As already mentioned, there is a fear among “traditional” unionists (formal workers) that they will be outnumbered by informal members with different agendas. Individual unions tackle this potential dilemma differently. Some insist on equal rights and representation:

Our constitution say that every member [has] equal right for vote and be voted (Interview, TUICO official, 2018).

For other unions, informal worker members are awarded different rights than the formal workers. This is the case, for example, with the Amalgamated Union of Kenya Metal Workers (AUKMW) in which all informal branches are envisioned to select one common representative to be the voice

of informal worker members on the board...

...because the informal sector is different from the formal. The issues that they want negotiated for them [are] quite different from what these guys want, so you can't put them in the same set up (Interview, AUKWM representative, 2019).

In both cases, however, the model employed falls strictly within the established tripartite setup and apart from the two transport workers' unions – TARWOTU in Tanzania and MWU in Kenya – which were set up by informal workers. The model employed is one whereby informal workers are incorporated as a minority into existing unions.

As explained here by a representative of TARWOTU, the legal system is based almost entirely on the tripartite model and hence if informal worker associations want to represent themselves then they need to form unions:

Because legally associations [which are registered at the Ministry of Home Affairs while unions are registered at the Ministry of Labour] don't have power to represent and defend rights of workers (Interview, TARWOTU representative, 2018).

TARWOTU is not affiliated to TUCTA, but, together with four other unions, has applied for the registration of a new federation:

We were forced to make claims of the new federation, because when the government prepares meetings they recognise or invite only TUCTA. So other unions, which are not from TUCTA, do not get a place to present their concerns (Interview, TARWOTU representative, 2019).

Discussion and Conclusion

In this article we have discussed the ongoing and contested reconceptualising of who is to be represented by the trade union movement and who is to be designated as “a worker”. Using the concepts of definition and delimitation from Boltanski (1984) and boundary drawing from Silver (2003) we have analysed this re-objectification process and how it relates to the political and socioeconomic context – in particular the nature of informal work and work relations. The analysis has highlighted the dilemmas involved but also pointed towards broader implications with regard to issues of rights, entitlements, representational structures and class understandings.

Overall, the analysis illustrated attempts to forge unity – by designating people working in the informal economy as workers, downplaying dispersion in employment relations or legal status, and insisting on incorporation into existing unions. At the same time, it also illustrated insistence by some unions on clear delimitations between formal and informal members internally in the unions and complete lack of engagement with the informal economy by most other unions.

This reflects different ways of tackling the underlying dilemma of, on the one hand, a need for unity and designation of people in the informal economy as workers in order to expand the trade union constituency and political power. On the other hand, it reflects the urge to maintain at least some traditional boundaries in order to protect established privileges and power structures, both internally in the unions and externally in the fragile compromise inscribed in the existing tripartite structures.

As a result, the process is highly politicised and contested and neither TUCTA nor COTU have been able to create a coherent policy approach at the federation level. How and if to involve

informal members is left up to the affiliated unions, and there is a slowly increasing number of new and independent unions created by and for informal workers. The latter are not permitted within the dominant federations and hence seek to form their own federations in direct competition with those dominated by formal workers.

Adding to the difficulties in forging unity are very real differences in the nature of employment relations which have implications in terms of representation and associated rights. Hence, while all unions tend to designate people working informally as a kind of worker or employee and unions as their legitimate representative in all work-related concerns, there is a difference in the rights associated between unions aimed at informal workers who are in an identifiable employment relation and the ones who are not.

The former (including unions representing daladala/matatu workers, domestic workers and to some degree salon workers) tend to associate a worker with having an identifiable employment relationship that is registered with the authorities – even if this reality seems quite utopian for some sectors. This conceptualisation comes close to that which is traditionally associated with formal workers and hence the status of a worker with legal rights is something informal workers can ideally attain once they formalise. Nonetheless, claims for workers' rights can sometimes be made prior to formalisation if there is a legal demand for a formal employment relationship (like in transport or domestic work). This does, however, leave most informal trade union members in a kind of transitional position, not unlike that envisioned by the global ILO-inspired discourse of gradual formalisation.

For unions engaging own-account or non-transparent employment relations like micro traders, *jua kali* workers or boda boda drivers, the emphasis is more on enlarging the worker concept to include self-employment. Here the focus is on the legal right to operate, to have a decent work environment and to have representation (mainly in dealings with the authorities), whereas employment relations are not addressed and issues like access to health insurance and a pension are considered the responsibility of the individual self-employed worker.

Similar divisions can be distinguished across different public policies and programmes. First is the separation between workers with a formal employment contract, who are considered rightful claimants of workers' rights and representation via unions, compared to informal workers who are not. The latter group is again divided into people in identifiable employment relations, who in general have no backing in the labour law until they formalise. Even when keeping in mind the legislative changes in sectors such as transport and domestic work, public designations remain strongly rooted in the necessity for formalisation as a prerequisite for labour rights.

Informal actors without an identifiable employment relationship are considered micro businesses. Consequently, they are not seen as workers with a potential claim on workers' rights or union representation. Rather, the emphasis is on formalising via business registration – despite the fact that this is not within the reach of the majority of these informal actors (see e.g. Lyons, Brown and Msoka, 2014). These conceptualisations are in line with historical efforts to delimit the legitimate constituency of trade unions to the formal workforce and instead seek to incorporate small business as part of market-driven development.

We thus note that, rather than seeing large differences between the Tanzanian and Kenyan context, we see some distinguishable patterns related to differences in the nature of the employment relations and legislation. Hence, the findings of this comparison point to issues of broader relevance, although extension beyond the Kenyan and Tanzanian context necessitates further research.

The discussion above links to discussions about whether the traditional tripartite model is

deemed a suitable representational form or whether efforts should instead be put towards approaches which allow for participation of informal workers in their own right. While trade union efforts fall largely within the former model, trade unions established by and for informal workers (like MWU in Kenya or TUICO's approach with facilitating bargaining committees for informal traders) moves closer to the 3+1 ideal. Here separate structures of representation are established, but still through unions and within the tripartite model as this is the key avenue through which informal workers can currently gain access to formal institutional power.

Hence, the current struggle over how people in the informal economy should be represented is a political struggle and potentially a class struggle. While a more thorough discussion of class lies beyond the scope of this article, it is nonetheless clear that efforts to define informal workers as part of the social class represented by trade unions have implications for how class is conceptualised. One can see that the dilemma described above – between unity and an enlarged social base versus difference and protection of established privileges – is partly mirrored in different conceptualisations of who the working class is. In a structuralist understanding, class belonging is determined objectively by one's position in the social organisation of the means of production (Selwyn, 2017). In such an understanding, class is often either reduced to formally employed workers or to workers in identifiable employment relations (either formal or informal). If, however, we are to include the myriad non-standard employment forms prevalent in the informal economy (and increasingly also in the formal economy) we need a broader understanding of class, and the question then becomes what might constitute such a class? Here Selwyn's (2017: 15) understanding of a global labouring class which takes myriad forms but shares the common condition of being subordinated to and exploited by capital might be useful also in emphasising that trade unions are not the only sites of workers' collective action. (For an analysis of informal workers' own associations in Kenya and Tanzania, see Riisgaard et al., 2021).

It was noticeable, though, that during conversations with unions cohesion or solidarity within a re-conceptualised trade union constituency was generally not referred to apart from in negative terms, because informal members overtaking the agenda and decision-making power within the unions was perceived as a real danger. What was instead emphasised was (a) the ability of the trade union movement to offer services to and represent informal workers in the tripartite system and bilaterally towards employers or authorities, and (b) the potential contribution to the financial base of the union movement as well as enhanced political power stemming from increased membership.

Hence, talk along the lines of Selwyn's global labouring class or social movement unionism as proposed by Munck (1999) or Waterman (1993) – where unions are envisioned as major actors of societal change coalescing with other civil society actors – was not really on the agenda. Such change – if forthcoming – would take time given that the role unions have performed since independence has been centred mostly around securing and maintaining rights for the select few in formal employment.

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BIOGRAPHICAL NOTE

LONE RIISGAARD, PhD, is an associate professor at the Department of Society and Business at Roskilde University, Denmark. She has through her academic career carried out extensive research related to workers' conditions and in particular workers' collective agency. She has been involved in research related to the governance of agricultural value chains, regulation through private sustainability standards, and the regulation and agency of labour in global value chains. In addition, she has a broader interest in collective agency, in particular in combination with more radical alternative visions of societal relations. [Email: loner@ruc.dk]