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Challenging the formality bias: The organization of informal work, working relations, and collective agency in Kenya and Tanzania

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ABSTRACT

Motivation: Formal social protection systems, such as health insurance and representation, are often biased towards formal workers; thereby excluding most of the world's working population who make a living in the informal economy.

Purpose: The article extends existing critiques of the formality bias by investigating the reality of work for people in the informal economy in Kenya and Tanzania and analysing related social protection challenges. Specifically, we look at a) the governance of work; b) the organization of work relations; and c) collective agency. In terms of social protection, we focus on formal and informal forms of social insurance and representation.

Methods and approach: We draw on interview and survey data from people working in micro trading, transport, and construction in Nairobi and Kisumu, Kenya, and Dar es Salaam and Dodoma, Tanzania. 1462 workers were surveyed, and 24 focus group discussions were run with such workers. Interviews were held with 120 key informants: leaders and members of informal workers' associations in the three sectors, as well as representatives of authorities, trade unions, and business associations. Data were collected from June 2018 to

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Findings: Formal social insurance and representation do not fit the reality of most people working in the informal economy: they have been modelled on and designed to support workers in formal standard employment relations. At the same time, informal workers' own associations play important roles in meeting—albeit inadequately—the social insurance and representational needs of their members.

Policy implications: Meaningfully engaging with the reality of work and collective agency in the informal economy is necessary to inform more appropriate policies and measures to provide informal workers with appropriate social protection measures, particularly social insurance and representation. Their reality should not have to conform to an inadequate model; rather the model should fit their reality.

Keywords: informal economy, informal work, Kenya, representation, social insurance, Tanzania

1 Introduction

Widespread forms of formal social protection, such as health insurance and representation, are commonly explicitly or implicitly linked to formal-sector employment (Alfers et al., 2022; Riisgaard et al., 2021; du Toit & Neves, 2014; Oliver, 2019). Such social protection excludes most of the world's working population—those who work predominantly in the informal economy and often live uncertain and precarious lives.

In the social protection literature and policy discussions, this bias towards formal employment is noticeable in that discussions implicitly build on a social protection model which was elaborated in a context where formal work was the norm. This is accompanied by an almost sole focus on formal measures (Calder & Tanhchareun, 2014; OECD/ILO, 2019; UNDP, 2021). Awortwi and Walter-Drop (2018) and Morduch and Sharma (2002) offer rare exceptions as they explore informal forms of social protection. The formality bias stems from idealized, and unquestioned, forms of societal organization rooted in a particular historical, socio-economic, and geographical experience, namely a post-World War II North Atlantic context, in which most people were in a formal standard employment relation (SER). Taking the formal as the norm results in characterizing the remainder by what they are not. This renders the majority—2 billion workers representing 61.2% of the world's employed population (ILO, 2018)—the exception.

Critiques of the northern formality bias are emerging in the literature on industrial relations (see, for example, Bieler & Novak, 2021; Breman & van der Linden, 2014; Rizzo & Atzeni, 2020). These critiques focus on trade unions as the prioritized focus and logical institutional expression of labour agency. This article builds on and develops these critiques, but focuses on two social protection mechanisms, namely social insurance (with a particular emphasis on health insurance) and representation. Representation and social insurance are both of utmost importance for informal workers, who often have little prospect of obtaining either through established formal systems (Riisgaard et al., 2021).

There is growing international acceptance of the need to extend social protection coverage to informal workers (ILO, 2021). As will be elaborated later in this article, several initiatives have been launched in Kenya and Tanzania to address the limited coverage of informal workers. Despite these initiatives, almost all reforms of social insurance and representation systems are still based on the inherited northern model. This article argues for a need to de-centre and broaden both social protection analysis and policy discussions by addressing the working reality of most people, rather than continue the formalizing strategy of insisting that reality should conform to the model. To achieve this there must be a greater focus on the actual work, working relations, and needs of people working in the informal economy, rather than characterizing them by what they lack (e.g. formality, SER, formal social insurance, and representation based on the tripartite system¹).

Based on comparative research covering the micro-trade, construction, and transport sectors in Kenya and Tanzania, this article points to three broad analytical aspects that can illuminate the social insurance and representation needs, coverage and challenges with existing models that particular groups of informal workers experience: a) the governance of work; b) the organization of work relations; and c) collective agency. As these aspects interlink they should neither be considered in isolation nor as encompassing all other aspects of informal economy workers' lives.

The remainder of this article proceeds as follows. Section 2 outlines the methodology, definitions, and delimitations used in this research. Section 3 continues with a brief introduction to the institutional and formal social protection context in Kenya and Tanzania, and section 4 presents our theoretical approaches. Section 5 contains our analysis, in which we address the three analytical focus points, outline sectoral and country differences, and discuss the implications for the social insurance and representation needs, coverage and challenges of informal workers. Section 6 provides concluding remarks.

2 Methodology, definitions and delimitations

This article draws from a larger project focusing on social protection and the organization of informal workers in the transport, micro-trade and construction sectors in Kenya and Tanzania (Riisgaard et al., 2021). A broad understanding of social protection is used, inspired by Devereux and Sabates-Wheeler (2004), as encompassing among other things the issues on which we focus in this article; formal and informal forms of social insurance as well as representation.

A broad definition of the informal economy is also used, including self-employment in informal enterprises (i.e. unregistered business) and wage employment in informal jobs (i.e. without a written contract but possibly working for a formally registered enterprise—see Riisgaard et al., 2021 for details). The formal/informal dichotomy is restrictive because informality and formality interact and overlap in numerous ways. Nonetheless, the term “informal” remains essential in terms of delimitating social protection rights and of understanding key work-related challenges.

The project, on which this article is based, used a combination of qualitative and quantitative methods including a survey, focus group discussions (FGDs), and key informant interviews

¹ Where labour relations are dealt with in tripartite negotiations between employees, employers, and the state.

(KIs). KIs covered leaders and members of informal workers' associations in the three sectors, as well as authorities, trade unions, and business associations.² In total, 1,462 survey interviews, 120 KIs, and 24 FGDs were conducted between June 2018 and December 2019. The survey covered basic characteristics related to the worker and their occupation, including key challenges and opportunities. The informal workers' associations were asked whether they provided their own form of social protection and/or facilitated access to formal social protection, among other issues. Since the survey data revealed that less than 4% of workers contributed to formal pensions schemes, in this article we focus on the health insurance dimension of formal social insurance.

The project sampled informal workers in four urban areas—Nairobi and Kisumu in Kenya, and Dar es Salaam and Dodoma in Tanzania (see Torm, forthcoming, 2023 for further details). These included wage workers, own-account workers, and micro-enterprise owners with a maximum of two employees. In micro-trade the focus was on mobile traders or traders without a permanent structure. In the transport sector, paratransit (daladala/matatu) and motorcycle (boda-boda) drivers and conductors were sampled.³ In the construction sector, workers in large and medium construction sites were covered.

3 Formalization, informal workers and social protection

Labour markets in Tanzania and Kenya are dominated by informal jobs and enterprises. In Kenya, the informal economy was estimated to account for 81.1% of total (non-agricultural) employment in 2019 and in Tanzania, the share of (non-agricultural) informal employment was around 82.4% in 2020 (ILO, 2023). Government efforts to formalize have not succeeded in shrinking the informal economy which has instead shown an increase over time in both countries (KNBS 2020; ILO, 2023)

As aptly illustrated by Bernard (2017) government efforts to formalize—in Kenya leaning on recommendations from the International Labour Organization (ILO) and in Tanzania in addition taking inspiration from Hernando de Soto and World Bank policies—were always selective and influenced by local political struggles and hence have varied in intensity and specific measures over time.

Overall, however, the formalization efforts in Kenya and Tanzania have focused on the regulation of enterprises (including own-account workers) and less on the formalization of employment, as illustrated in section 5. This has been coupled with efforts to provide some elements of social protection (notably social insurance) to informal workers. As noted by Ghosh (2021), this combination of formalization strategies is common as it avoids more in-depth adjustments (such as creating more formal activities or increasing the viability of informal activities). Ghosh (2021) further notes that in the context of widespread informalisation and slack in labour markets (as is the case in both Kenya and Tanzania) formalization policies are hard to implement. We complement this with the observation (discussed in section 5.2.) that the impact of formalization efforts also depends on the nature of employment relations, as the lack of SER makes standard formalization strategies difficult.

² See Riisgaard et al., 2021.

³ Daladala (Tanzania) and matatu (Kenya) are private minibuses and Boda-boda are private motorcycles, all providing public transport.

Despite the fact that in both countries, formalization policies have not succeeded in shrinking the informal economy, formalization efforts continue but remain problematic and often contrary to the dynamics of the informal sectors. Consequently, they fail to be relevant for most people working in the informal economy (Gallien & Venessa, 2021; Lyons et al., 2014). Hence, although the view held by modernization theory (Rostow, 1960) that informal economies, as a residual or temporary phenomenon, would shrink (and ultimately disappear) as nations reached a certain advanced stage of economic development has been discredited, certain remnants of this theory prevail in the continued reliance on formalization policies.

The idea of universal access to social services was a prominent feature of the socialist Ujamaa ideology in Tanzania and in Kenya ideas of health care and education for all also formed part of the independence vision (Muinde & Prince, 2023; ROK, 1965). In the wake of the hardship brought about by the liberalizing economic reforms of the 1980s, these ideas re-emerged in the 2000s along with global policies of Universal Health Coverage (UHC) (Jacob & Pedersen, 2018; Muinde & Prince, 2023). As a result, numerous health reforms have been initiated and universal old-age pensions have also recently been implemented in Kenya and Zanzibar but not mainland Tanzania. In addition, a range of means tested cash transfer and health insurance initiatives exist in both countries (e.g. Tanzania Social Action Fund, TASAF in Tanzania and free UHC Supacover for vulnerable populations in Kenya). However, most informal workers typically do not qualify for these (Bodewig et al., 2020; Guven, Melis & Joubert, 2021). What has been promoted in both countries, to extend coverage to informal workers, is voluntary enrolment into existing social insurance measures. However, as discussed in section 5.2, certain characteristics of informal work help to explain why these have failed to attract significant numbers. Interestingly, several more innovative social insurance products designed specifically for informal workers have recently been initiated in both countries and their potential will be discussed in the light of our findings. With regard to representation there have been attempts (albeit small) by trade unions in both countries to include informal workers (see Riisgaard, 2022) and in Kenya there have been attempts to provide representational structures for some informal workers in some sectors. Nonetheless, as discussed in section 5.2, key representational systems are still based on the inherited northern model and largely fail to reach most workers.

4 Theoretical framework: the bias towards formality

The binary formal/informal dichotomy remains deeply problematic since the term “informal work” is defined by what it is not—that is, not formally regulated, not automatically linked to standard insurance systems, not a SER. As argued by Bieler and Novak (2021, p. 5), “it cannot suffice to define the majority of work relations on the globe via the absence of something which is characteristic of core countries’ labour relations”. They stress the danger of emphasizing workers (narrowly defined as those in SERs) as the privileged agents of transformation and their collective representation in trade unions as the logical institutional expression of labour agency.

Furthermore, as contended by Riisgaard (2022), the “classical” conceptualization of unions that centred on a SER was never appropriate for contexts in which most workers are informal. Nonetheless, the organizational form of trade unions was transposed to low- and middle-income countries, where it unsurprisingly failed to reach the informal economy, except in a few select contexts (see Kabeer et al., 2013). This has created a highly

problematic and exclusionary institutional model whereby only a minority of workers—those in formal positions—are invited to the negotiation table.

The lack of formal regulation in the informal economy is also in many ways a form of regulation. Roy (2005) astutely explores this in her examination of the role of the Indian state in framing urban informality. She argues that in the process of designating formality, the state actively produces informality as a deliberate modality of governing practices but often without clarity on what course of action state officials should take. As such, informality may encompass illegal (criminal), legal, or simply tolerated activities. In addition, state capacity and its will to act might be lacking for a variety of reasons (Roy, 2009).

Holland's (2017) concept of forbearance expands on this point. Holland defines forbearance as the intentional and revocable choice not to enforce the law, arguing that local politicians employ forbearance as a political strategy and a form of welfare policy. However, as the data in this article confirms, the benefits of forbearance are insecure and unpredictable. The production of informality and the unstable nature of forbearance has consequences for representational needs (e.g. in terms of increasing vulnerability towards harassment) and contributes to economic insecurity, thereby increasing the need for social insurance. Informal workers' demands for social insurance coverage are dealt with mainly through informal systems. As detailed in Riisgaard et al (2021), informal workers' own associations have systems for pooling workers' contributions that, despite often being inadequate, are used to address workers' welfare needs and, in some cases, to marshal resources to support lobbying and negotiation with authorities.

By moving beyond the formality biased focus on unions and formal social insurance, this article recognizes the wide variety of worker organizations from a bottom-up perspective and responds to the concern that conceptual deadlocks cloud our analytical abilities (Bieler & Novak, 2021). Analysing workers' collective agency—and their ability to provide alternative forms of social insurance and representation—this article adopts categorizations developed in the Power Resource Approach (PRA). PRA starts from the premise that, if organized, labour can successfully defend its interests by collectively mobilizing different power resources (Schmalz et al., 2018). Of particular interest is associational power (derived from the formation of collective organizations of workers), structural power (derived from workers' position in the economic system) and institutional power (derived from “laws, regulations, procedures, practices and other formal and informal rules that formalize the relationship between trade unions, employers and the state and thus secures rights for workers”) (Kumar & Singh, 2018, p. 137; see also Silver, 2003; Wright, 2000). Using elements of PRA and drawing on the approaches to informality presented above, with a focus on social insurance and representation we establish a framework for uncovering the lived realities of informal workers and the challenges they face, as well as their ability to organize collectively in order to address these challenges. Where nothing else is noted, the analysis is based on data presented in Riisgaard et al., 2021 including Kamau, 2021; Kinyondo, 2021; Indimuli, 2021; Gervas, 2021 and Mitullah, 2021.

5 Analysis

5.1 The governance of work

How work is governed depends on parameters such as visibility, legality and strategic importance of the sector. Governance practices—whether forbearance, enforcements of laws or attempts at formalisation—in turn has implications such as economic insecurity which make regular social insurance contributions difficult. Where regulated, this is modelled on formal contexts or depends on political cycles and does not succeed in guaranteeing access to formal social insurance.

With regard to visibility for example, transport and micro-trade most often takes place in public spaces. While people working in these sectors provide low-cost goods and services, they are often perceived of negatively—as being too aggressive or blocking pavements and roads. Conversely, construction generally takes place in private spaces and even public construction sites were typically fenced off, making it a much less visible and interactive sector. Workers in sectors that operate in open and shared spaces—such as transport and micro-trade—typically have more regular and often conflictual interaction with public authorities, in particular law enforcers. As detailed below this is tackled differently in the two sectors, with different implications for the need for, the coverage of, and challenges with formal social insurance. While the governance of work also has implications for representation, this will be discussed in connection with working relations in section 5.2.1

5.1.1 Transport

The transport sector provides an essential service and the matatu/daladala sub-sectors are considered of strategic importance; formal regulation is thus desired to ensure a degree of control, predictability, and smooth functioning. In Kenya, there have been efforts to organize the matatu sector through Savings and Credit Co-operative Societies (SACCOs), which promotes a more controlled self-regulation. Since 2010 it has been a legal requirement for matatu workers to belong to a SACCO or a transport-management company, which furnish workers with the requisite road service licence and badges to operate. However, SACCOs have mostly favoured the interests of vehicle owners in terms of securing the smooth operation of their vehicles rather than guaranteeing that workers' rights were respected, or their opinions voiced. Despite the legal requirement for SACCOs and associated labour rights (statutory deductions, workplace health and safety, Work Injuries Benefits Act (No. 13 of 2011) insurance, statutory leave days, and formal work contracts), matatu workers have remained informal as such rights and benefits are seldom enforced. Since 2015, boda-boda drivers in Kenya have also been legally required to belong to a registered group or SACCO with a minimum of 100 motorcycle taxis. However, boda-boda drivers are not accorded the same mandatory rights as matatu workers.

In Tanzania, local authorities encourage the formation of associations in the transport sector (for both boda-boda and daladala workers) for easier coordination, and rule-bound cooperation does exist (e.g. allocation of routes and parking spaces) even if it is not formally institutionalized. At one point, in an attempt to regulate and formalize working relations, daladala owners were required to show legal contracts with licensed drivers before they could obtain a transportation licence. However, the frequency of submitting manipulated documents was so high that the requirements were eventually abandoned.

In sum, in both Kenya and Tanzania, the matatu/daladala sub-sectors are considered of strategic importance (see also Rizzo, 2017) and formal regulation is desired to ensure a degree of control and smooth functioning. Nonetheless, lax enforcement of regulations and a set-up that mostly favours the interests of vehicle owners result in the formalizing of vehicles but not their workers, leaving most of the workers informal and without social insurance coverage or effective representation.

5.1.2 Micro-trade

Authorities in both countries have long maintained an ambivalent relationship with informal micro-traders. Approaches vary between tolerance and evictions/relocations (see also Brown et al., 2015). Such state governing practices actively frame informality as a grey area, with no clarity on the action authorities should take (Roy, 2005, 2009). Informal activities are therefore either tacitly accepted and tolerated, forcefully sought formalized, or criminalized and penalized. In Tanzania, such variation is highly dependent on the political election cycle: in the run-up to elections, politicians put pressure on municipal authorities to tolerate informal micro-traders to retain their vote (see also Babere, 2013). For example, the late President Magufuli demanded issuance of identification cards for informal micro-traders, which offered prospects for the vendors to claim rights; however, this was not formalized into law and ceased to be promoted after his death. Similar strategies of forbearance are evident in Kenya. The former Governor of Nairobi, for example, decided in 2017 to ban collection of fees from micro-traders—a fulfilment of his campaign promise. However, micro-traders indicated that city officials soon reneged on this decision, illustrating the limitations of politically influenced statements not anchored in law. There have, however, been some changes in the institutional environment in Kenya that have allowed for a degree of consultation as will be discussed in section 5.2.2.

In sum, the continuous production of informality and illegality means that micro-traders have very few rights in public spaces. The insecure and unpredictable nature of forbearance contributes to economic insecurity, which in turn hampers micro-traders' ability to make regular payments towards the social insurance they require.

5.1.3 Construction

A range of different protective legislations in the construction sector are in place in both countries, but compliance is uncommon. This legislation is modelled on formal contexts and hence inadequate for the realities of informal workers.

In Tanzania, forbearance is practised in the construction sector as elected officials need to be seen to provide work for the poor. Furthermore, public entities are often also the clients, meaning that elected leaders have to both enforce (costly) legislation while also saving costs. Competitive tendering together with a demand for low-cost, on-time construction creates perverse incentives in terms of failing to enforce health and safety regulations and employment of workers on a casual and informal basis to avoid the costs associated with formal employment (Gervas et al., 2022). This leaves most workers in hazardous working conditions without formal social insurance (see also Jason, 2007; Wells & Jason, 2010).

Compared to the transport and micro-trade sectors, forbearance is less prevalent in the construction sector in Kenya. However, the sector is characterized by the widespread failure of employers to comply with employment regulations and the protection of workers, and the

inability of workers to go through the protracted process of claiming their rights. Workers are entitled to most labour rights embedded in labour laws such as the Kenya Occupation and Safety Act of 2007 and the Work Injury Benefit of 2007, but their employers rarely comply with such requirements. The nuanced multi-layered working relationships that transcended the formal/informal makes it difficult to neatly identify employers and employees. This situation is often exploited by employers who abdicate their responsibility of ensuring social protection for their workers (see also Mitullah & Wachira, 2003; Wells, 2007).

5.2 Working relations

Working relations vary greatly between different sectors, from identifiable and close to SER in the transport sector, muddled and opaque in construction, to mainly own-account micro-traders. Whether identifiable employer–employee relations exist has implications for social insurance, especially for whether an employer can be expected to co-finance insurance but also for who would be the relevant counterparts in terms of representation. Below we first outline the implications of working relations for social insurance needs and coverage. We then discuss formal health insurance initiatives in the light of our findings before moving to an analysis of working relations and their compatibility with existing formal representational structures.

5.2.1 Working relations and social insurance

According to our data, 24% of workers contribute to a social insurance scheme (4% for pension and 20% for health) and the share is almost double in Kenya (33%) compared with Tanzania (17%) as seen in Table 1. Across both countries, most workers referred to health insurance specifically.⁴ Since health insurance extends to the immediate family the coverage figure is slightly higher at 30% on average, yet with substantial variation by country (41% in Kenya, 19% in Tanzania) and sector. These figures are in line with official coverage rates—around 39% for Kenya (KNBS, 2019) and 22% for Tanzania (Jacob & Pedersen, 2018). At the sectoral level, the difference is particularly stark in the transport sector, in which 50% have health insurance coverage in Kenya compared to only 16% in Tanzania (Table 1).

In both countries the micro-trade sector consists mostly of own-account workers. This does not necessarily mean the absence of employment relations as some workers—particularly those selling durable wares—are in quite regular although largely hidden employment relations with a retail supplier. Yet others were micro-entrepreneurs with occasional or permanent paid help. In a framework based on SER, such micro-entrepreneurs would be regarded as employers who, if formalized, would be required to contribute to their employees' social insurance. For most micro-entrepreneurs, who do not have social insurance themselves, this is hardly realistic. Given the nature of working relations in the micro-trade sector, the low coverage of formal social insurance is therefore to be expected.

Table 1. Formal social insurance and health insurance coverage (%)

	Kenya	Tanzania	Average
Pension fund	6.8	1.6	4.0
Health insurance fund	26.1	14.9	20.1

⁴ Out of the 358 workers that answered positively to contributing to some type of social insurance scheme, 78% reported health insurance, 16% a pension fund, and 7% other insurance.

Health insurance coverage:	41	19	30
- Construction	35	17	26
- Trade	39	22	31
- Transport	50	16	33
Observations (N)	644	741	1,385

Notes: For the first two rows, the question asked is: Do you contribute to an insurance scheme e.g. national pension or national health? For HI coverage this is based on the question of who the primary contributor is, which can be the interviewee, the spouse, both or a child.

Source: author's elaboration

In the transport sector, boda-boda drivers are most often own-account. In Tanzania, drivers commonly hire motorcycles with the option of taking over the vehicle after paying off an agreed amount over a certain period, placing them in some form of working relationship with the motorcycle owner. In addition, financial institutions and motorcycle suppliers are increasingly designing schemes targeting boda-boda operators organized in associations. In Kenya, access to loans through associations or arranged financing from financial SACCOs and banks has expanded the ownership base of motorcycles and matatus.

Daladala/matatu conductors and drivers are closest in type to a regular employment relationship as there is an identifiable employer—namely the owner of the vehicle or the SACCO or transport company that managed the vehicle on behalf of the owner. As already noted, the latter set-up is mandated by law in Kenya and hence most conductors and drivers deal with a SACCO or transport company rather than directly with owners, although hiring, dismissal, and payment is usually dealt with by owners. In Tanzania there is no such mandate and drivers have more independence in the management of their vehicles. In most cases, conductors are hired by bus drivers and therefore not directly known by the vehicle owner. Drivers therefore function somewhat like an employer, although it is hard to envision drivers taking responsibility for the social insurance of the crew.

In Kenya, some SACCOs and companies engage workers on formal contracts that have social insurance provisions, but this is not the norm. The vehicle crews (conductor and driver) work on their own while having to meet a daily target (for the vehicle owner) and divide any surplus between them. Here viewpoints differ between workers and vehicle owners about who should cater for social insurance provisions, with each side apportioning the responsibility to the other. The crew negotiates with traffic officers, handles technical issues with the vehicle, and paid callers, loaders, and stage managers. They thus act as a kind of employer for other informal workers.

In Kenya, the higher degree of formal regulation translates into higher formal social insurance coverage compared to Tanzania (Table 1). In Kenya some bus companies and SACCOs make daily deductions from workers' wages and remit monthly to the national health insurance and pension funds on their behalf. However, even in those cases, membership remained largely voluntary and the cost burden fall entirely on workers despite the mandatory government requirement for transport workers to have formal coverage.

In both Kenya and Tanzania, transport workers have daily remittance targets (see also Spooner & Manga, 2019). This forces them to work long hours, aggressively compete for passengers, and drive recklessly to increase the number of trips made per day, all of which compromises safety and provoked clashes with the police and other people in traffic. In all transport sub-sectors, the system of daily remittance targets results in increased safety hazards (see also Rizzo, 2017), making social insurance even more essential.

Finally, informal construction workers—whether masons or helpers—engage in complicated employment structures whereby larger contractors hire layers of smaller contractors, work gangs, and individuals. The sector in both countries is multi-layered with most workers working under sub-contractors, contractors, and clients, all of whom are also mostly informal and not registered with authorities (see also Wells, 2007). This makes it difficult to monitor and enforce labour laws. Most workers are hired on a short-term basis, ranging from daily to monthly, with very few having steady employment with one employer for more than six months. Even if some construction workers have an identifiable employer (a contractor), due to their informal and temporary status, they do not have an employer that could share the cost burden of formal social insurance.

In addition to these differences in working relations between sectors, segregation is also evident along gender lines. In both countries, men dominate among wage workers while women tend to be own-account. In Tanzania women are also more likely to be micro-firm owners. Importantly, most forms of work in the informal economy, regardless of gender, are quite far removed from SER. This creates several challenges, such as who should be the counterpart in negotiations on rights and entitlements, and how should social insurance contributions be paid. Given the prominent lack of identifiable employer–employee relations, it is evident that formulating solutions based on SER is inadequate. Here inspiration might be found in the Indian Code of Social Security, 2020, which provides a 2% construction levy collected by local authorities and credited to the Building and other Construction Workers Welfare Fund (COSS, 2020). This aims at cushioning any construction worker who works continually for three months provided they are registered with the Construction Workers Welfare Board. By levying a fee on an industry, schemes could be designed to reach specific occupational groups in the informal economy. Such solutions have yet to materialize in Kenya and Tanzania, and what has been promoted instead is the extension of coverage to informal workers of existing social insurance measures through voluntary enrolment. Below we discuss formal social insurance initiatives in the light of our findings.

The National Social Security Funds (NSSF) and National Health Insurance Funds (NHIF) have in both countries tried to accommodate informal economy workers through voluntary enrolment. Unfortunately, so far these measures have failed to attract larger numbers (Table 1). The low coverage is linked to the cost burden (given the low and irregular earnings of informal workers), but this is neither the sole nor sometimes even the main explanation. For health insurance, factors such as inadequate knowledge of health insurance, complex registration procedures, penalty charges, and poor quality of services also contribute to workers' reluctance to enrol in the national schemes (Indimuli et al., 2022). As for pensions, low enrolment is also linked to conceptions that these are solely for formal workers, lack of prioritization of savings for needs that will only materialize in the distant future and mistrust of national schemes due to corruption. Importantly, formal insurance schemes modelled on the needs and abilities of formal workers require beneficiaries to have the capacity to

consistently provide contributions over relatively long time horizons with a perspective on future needs. This is often a poor fit with the reality of people working in the informal economy, as income fluctuates and urgent needs might arise. These factors all contribute to low coverage, and many people working informally resort to or even prefer the bottom-up social insurance models employed by most informal workers' associations as discussed in section 5.3.

Apart from encouraging voluntary enrolment into the existing NHIF and NSSF schemes several innovative social insurance products designed specifically for informal workers have been initiated in both countries in recent years. This includes the universal old-age pension in Kenya and Zanzibar mentioned earlier but also a few contributory schemes which seek to address some of the key challenges listed above.

In Tanzania the Community Health Fund established in 2001 for rural population and Tiba Kwa Kadi (TIKA) established in 2009 for urban population offered a partly subsidized but also reduced NHIF coverage. The schemes were in 2016 combined into the improved community health fund (iCHF) but informal workers interviewed in relation to our study had little regard for these schemes and Kigume and Maluku (2021) conclude in a recent study that the schemes face significant structural and operational challenges which result in low uptake.

Informal workers in our study expressed a particular interest in the group-based health insurance scheme KIKOA, introduced in 2015 which extended informal workers' access to the NHIF by allowing members (of registered informal workers' associations), to sign up their spouse and four dependents, at a reduced cost if a minimum of 10 members enrolled. The KIKOA scheme seemed well-suited to informal worker needs, representing an example of strong collective and institutional power, at least in the negotiation phase of the scheme where VIBINDO (the largest umbrella association for informal workers) was also involved. However, despite the scheme being tailored to informal workers and innovatively working through the informal workers' own associations we found evidence of KIKOA not providing certain services and eventually issues of adverse selection led to its demise at the end of 2019.

Also in Tanzania, the National Informal Sector Scheme (NISS) was elaborated in 2014 under NSSF to address the needs of informal workers by combining health insurance and old-age pensions with the option of taking small loans to cater for other life contingencies. NISS was designed to operate in phases allowing for an increase in scope of the benefits package, but from the outset it was unclear how the monthly contribution would cover all the benefits. The health insurance scheme turned out to be cost-ineffective for the implementer leading to the termination of medical service benefits for new NISS members after April 2019 (to reach a complete cease by 2023/2024). The credit component was also stopped whilst the old-age pension segment seems to be progressing (Kilonzo et al., 2023) although now reduced to mimicking the features of existing social insurance models and stripped of the key aspects which made it promising from the perspective of informal workers, namely catering for more than one need and included an option to take out small loans.

In Kenya, a similar idea has been introduced with the Haba Haba pension scheme established in 2019. This scheme is driven by the NSSF in collaboration with the NHIF, Kenya Commercial Bank, Safari Com and Proto Energy. The scheme uses mobile payment and initially targeted workers in the transport sector but is now open to all. Members save a minimum of KES 25 (equivalent to c. USD 20 cents) a day with the option of withdrawing

50% of their contributions after consistently contributing for five years. Other benefits like medical insurance and funeral expenses can be added at additional cost (Güven et al., 2021). While the initiative is certainly promising, it is still too early to assess the performance of the scheme and a five-year lock on contributed funds might also be an unsuitably long time horizon for many informal workers.⁵

5.2.2 Working relations and representation

The nature of employment relations has implications for representation, particularly for identifying counterparts in negotiations and compatibility with existing formally institutionalized representational structures. Looking at public understandings of and policies on social protection, the issues of representation and voice were notably absent in both Kenya and Tanzania. There have in recent years been moves towards more decentralized and inclusive representation of informal workers in Kenya, although this has been framed as relating to civil rights rather than designated as social protection. This was most prominently illustrated in the formation of the Micro and Small Enterprises Authority (MSEA), which represents informal micro-traders together with manufacturing, services, and agri-business. The Urban Areas and Cities Act of 2011 has also allowed for some participation of informal workers in the management of cities through urban boards. In general, however, for the transport and construction sectors representation is reserved almost entirely for formal workers through the tripartite systems. The legally mandated SACCOs and transport companies negotiated with authorities on issues affecting the sector. However, the issues addressed mainly relate to factors that might impede the smooth operation of the sector and does not provide the means for workers to voice their concerns or to demand rights.

Such formal institutionalized structures are absent in Tanzania. A seat was given to a representative of an informal association on the National Employment Advisory Committee in 1999, but there is little evidence of the committee being active on informal-sector matters. A low-level form of institutional power is available to associations of micro-traders who traded in local government-sanctioned locations. Such groups often have a form of representation in a market council through which they have some access to negotiate with local authorities. However, the majority of micro-traders in Tanzania traded in unsanctioned spaces and hence had no institutionalized representation. Contrary to Kenya where some steps have been taken towards a more inclusive and participatory institutional set-up, the trajectory in Tanzania has been based on ad hoc consultations and moving towards centralization and a shrinking of civil society space more generally.

The overall deficit in formal and institutionalized representational structures, especially in Tanzania, relates to the common understanding of informality as a transitional state towards formalization. This has impeded the recognition of workers in the informal economy as collective political actors who should have the right to represent themselves, particularly with regard to matters that directly concern them (e.g. use of public space or social protection policies and regulations). As illustrated in the examples above, many policies and regulations that govern the workplaces and conditions of IWs are either ineffective or

⁵ The Mbao pension scheme established in 2009 was also aimed at informal workers and enabled small contributions via mobile phones but the scheme seems to have become dormant.

undermine their ability to earn an income or qualify for co-financed social insurance. Effective representation is therefore a crucial factor for workers in the informal economy.

While institutional power via direct representation of informal workers in formal institutional structures is almost non-existent, there has been a shift towards including informal workers in the trade union movement. Although still nascent, this was nonetheless a significant development as informal workers could potentially tap into the institutional power of trade unions, while trade unions potentially stood to gain enormously in numerical strength. It is, however, also clear that this poses a difficult and politicized challenge for established unions (see Riisgaard, 2022). Neither the Kenyan nor Tanzanian national trade union federations have a policy on how the inclusion of informal workers should take place, despite both countries being externally funded to create such a federation-level policy. Actual engagement in Kenya and Tanzania is undertaken autonomously by a handful of unions often in collaboration with external actors, while most affiliated unions do not engage informal workers at all. Furthermore, the tripartite model of social dialogue—of which the unions are a constitutive part—was inherited from a specific historical period and geopolitical context wherein formality and SERs constituted the norm. Hence, trade unions have historically represented formal workers in a SER even in contexts where formality was not the norm.

As discussed by Riisgaard (2022), the inclusion of informal workers in the established trade union system encountered numerous challenges, many of which related to the nature of work and working relations in the informal economy. Not surprisingly, the forging of solidarity between formal and informal workers can be challenging, not least when clear employment relations are hard or even at times impossible to distinguish. Challenges differed between sectors and most union activity took place in the transport sector, which, as previously noted, more closely resembled regular employment structures than the micro-trade and construction sectors. Consequently, in both countries new and established unions were involved in representing informal transport workers, albeit in a fragmented and competitive manner. Formerly strong trade unions were splintered by breakaway unions and competition arose from new unions explicitly covering informal transport workers (the Tanzania Road Transport Workers Union/TARWOTU in Tanzania and the Kenya Matatu Workers Union/MWU in Kenya). However, independent unions are hampered because they are not affiliated to the dominant federations (Trade Union Congress of Tanzania/TUCTA and Central Organisation of Trade Unions/COTU of Kenya), which represent workers in national tripartite forums.

Although there is comparatively significant union activity in the transport sector, this does not translate to high enrolment numbers and unionizations rates among informal workers are miniscule.⁶ Nonetheless, such comparatively high levels of activity are likely due to the high degree of disruption power in the sector (see also Rizzo & Atzeni, 2020). The legal requirement of SACCO membership in Kenya likely also makes it easier for unions to approach workers.

⁶ In Kenya, an estimated 0.4 % of union members were from the informal economy (union density was around 15%) (DTDA, 2020). In Tanzania, union density out of total employment was estimated at 2.4%, with around 3% of members from the informal economy (DTDA, 2018).

Working relations are quite different in the construction sector, and there is no sign of union activity towards informal construction workers in either country. A significant share of informal construction workers operates as wage workers, suggesting a good fit with trade unions. However, the casual and informal nature of their employment together with continuously shifting sites of work and multi-layered employment relations make construction workers difficult to recruit. There are also fewer informal workers' associations in the construction sector, which trade unions often work through to recruit informal workers in other sectors, thereby further disadvantaging the sector (Table 2).

Table 2. Informal association membership shares (%)

	Construction	Trade	Transport	Overall
Kenya	33	47	57	48
Tanzania	19	34	50	34
Observations	429	513	443	1,385

Source: Authors' elaboration based on survey data.

The micro-trade sector poses an additional challenge as most workers are own-account or in hidden employment. This meant that core trade union services, such as representation towards employers or representation of cases in the labour court system, are practically impossible to implement. In Kenya there are no signs of union organizing among micro-traders; however, in Tanzania one trade union (TUICO) was active. TUICO engages informal micro-traders in recognized markets through existing associations but employs a rather innovative approach wherein they seek to set up a bargaining committee representing different markets towards municipal authorities (see Riisgaard, 2022). However, the lack of a recognized employment relation means that attempts made by TUICO to represent petty micro-traders towards the municipality (e.g. in disputes over access to trading spaces) are referred to civil court and its complex array of local bylaws—not the labour court system, which trade unions are normally referred to (Steiler, 2018). Union efforts seem to focus on the legal right to operate, to have a decent work environment, and to have representation, mainly towards the authorities. However, issues such as access to health insurance and pension schemes are the responsibility of the individual trader.

In sum, who might constitute relevant counterparts with regards to representation, is an open empirical question as the research revealed instances of representation towards employers (in transport and construction), the police (transport and micro-trade), as well as municipal and national level authorities (all three sectors). Given the numerous challenges faced by most workers in the informal economy, it is nevertheless clear that representation is of critical importance. It is also clear that skills are needed to navigate environments wherein the continued production of informality and illegality coexist with more or less systematized forbearance and where most people are not in a SERs. Notwithstanding the difficulties, representation via established unions indicates potential for increasing institutional power by tapping into established institutional set-ups.

5.3 Collective agency through workers' own associations: Informal social insurance and representation

Given the low level of representation of IWs via unions, the myriad ways informal workers organize themselves collectively—in different kinds of networks and associations to advance their own interests and provide informal social insurance—is of immense importance even if their support is inadequate. Nonetheless, due to the formality bias, such informal collective social protection measures remain little explored in social protection literature and policy discussions.

While associations do not use conventional formal social protection concepts such as social insurance, much of the welfare cushioning they provide fall within this social protection category. The social insurance they offer ranged from one-off responses to specific problems to more elaborate insurance schemes. Almost all associations support members during sickness and death, and a few intermittently support maternity and unemployment. While associations generally do not provide for the possibility of pensions, many organise savings and loans which can be used for other life contingencies such as weddings or school fees. In addition, some are also vehicles for representation and voice, even if most associations do not engage in representation.

The nature of the collective agency and the social protection offered is influenced by differences in organizational levels, purpose, and power resources, which often connect to the sector-specific characteristics of work, work relations, and governance structures discussed above. One major sectoral difference relates to the level and nature of organization, in which the micro-trade and transport sectors manifest a higher level of organization compared to the construction sector (Table 2). The micro-trade and transport sectors have well-established grassroots and umbrella associations, and there are nascent signs of unionization for better representation and voice. In addition, Kenyan associations also tend to be more resourceful than Tanzanian associations. Below we discuss informal workers' associations with regards to representation and social insurance.

Most associations in the construction sector were established to facilitate job-seeking while also providing cushioning for members. Only a few workers' associations are engaged in bargaining with employers, even though issues like wage delays and short contracts are listed as important challenges for construction workers in both countries. More specifically, a few construction associations in Kenya are found to represent members regarding demands for workspace, fighting harassment by local authorities, and demanding payment from sub-contractors, contractors, and clients. There are no such cases from Tanzania.

Formal social insurance coverage is comparatively low in both Tanzania and Kenya (Table 1), which seems particularly unfortunate given that construction workers are exposed to some of the most hazardous working environments. As a response, some informal workers create informal self-cushioning mechanisms through their associations, although these schemes only provide partial coverage. In both countries, construction associations ensure that injured colleagues are taken to hospital, and some Tanzanian associations continue supporting members while on sick leave. Employers do not take full care of injured workers in either country, although some made one-off payments. Furthermore, in both countries, construction workers supplement group contributions with additional one-off contributions. This is done by mobilizing resources among members and apportioning it to any member with a critical welfare issue, such as hospital admission or death.

In the transport sector, workers are mainly organized around work-related challenges, particularly in dealing with authorities or employers, but some were established mainly for social welfare and protection. Correspondingly, the survey data indicate that key challenges for transport workers include dealing with the police/authorities, client conflicts, and poor infrastructure. Transport associations in both countries are fragmented with breakaway unions and, in Kenya, legally mandated SACCOs. In general, however, for both countries, the nature of the work and the way that it is governed has facilitated a high level of associational power. Over the years, daladala groups in Tanzania and boda-boda groups in both Kenya and Tanzania have arisen progressively, bound together by the social obligation to assist each other in need or under threat. Hence quite a few of the associations (as well as the SACCOs in Kenya) engage in negotiations, although primarily with the police or other authorities and primarily regarding factors that might impede the smooth operation of the fleet; issues related to working conditions or rights to social protection are rare. As already noted, an increasingly common strategy to gain negotiation leverage is to associate with or form a trade union.

Workers in the transport sector are more likely to access formal insurance measures, especially in Kenya. However, as in construction, workers are exposed to occupational health and safety issues and are prone to accidents, and many workers rely on associations and SACCOs for informal insurance. The Tanzanian associations tend to be stronger in providing informal social insurance. For example, some provide support following a death in a member's immediate family; some also provide survivor's cushioning, although the social insurance is not usually as comprehensive and long term (see also Rizzo & Atzeni, 2020). In cases where associations are weak, members spontaneously help colleagues who required assistance through informal fundraising. In Kenya, there is a greater mix of formal and informal insurance. In the latter case, workers' groups sometimes form sub-groups for savings and credit.

The largest variety of associations is found in the micro-trade sector in both countries. Associations vary including groups working in designated areas that organized access to workspaces and market-level representation, welfare groups, and larger and more robust umbrella structures that organize many kinds of micro-traders. Key work-related challenges noted by micro-traders related to problems with authorities, low and fluctuating income, and exposure to the environment. Despite the obvious need for representational capacities regarding access to trading spaces, evictions, confiscations, fines, and harassment, only a few of the associations encountered are engaged in the representation of members.

If an association belongs to a larger umbrella structure (e.g. the Association of Small Businesses/VIBINDO in Tanzania and the Kenya National Alliance of Street Vendors and Informal Traders/KENASVIT), they benefit from greater associational power and representative capacity. In general, such associations are able to offer different kinds of support to their affiliated groups, such as access to training, loans, and health insurance. Crucially, they also have the infrastructure to take on issues of representation.

Most associations in the micro-trade sector provide social insurance, and many specify the rules for this in their constitutions. In such schemes in both countries, a member is the point of reference but other family members, in particular spouses and children, are often covered. Some associations extend support to parents and relatives who are part of a members'

household. However, support is provided at a reduced level for non-members, and it mainly covers sickness, in particular admission to hospital, and death. Other areas that are supported but generally on an ad-hoc basis or through the provision of loans are school fees, unemployment, funerals, and weddings. As the micro-trade sector is dominated by women, maternity cover is in some cases provided. Some associations exempt nursing mothers from attending association meetings or paying association contributions; some assist women with managing their businesses while on maternity leave.

Across sectors, there is a significant correlation between informal association membership and access to formal social insurance (driven mostly by health insurance coverage), and this relation was especially strong for transport sector workers, in both countries (see Torm, forthcoming 2023). Moreover, some associations play a crucial role in either registration of members to a formal health insurance scheme or by directly handling members' premium payments via their savings. Although this is by no means common practice, it highlights the potential role that some associations might play in encouraging enrolment and preventing default among their members.

When informal social insurance is provided by associations it is based on reciprocity and characterized by being personalized, trust-based, and timely. However, such cushioning is generally provided as a one-off pay-out and only covers a limited amount. In addition, the limited size and financial resources of most associations makes them vulnerable to disruptions such as members defaulting or mismanagement of funds by association leaders. Nonetheless, while coverage is limited, associations do provide social insurance services that most people in the informal economy would otherwise find difficult or impossible to access elsewhere.

6 Conclusion

This article shows how formal social insurance and representation systems fail to adequately cover most of the working populations in contexts dominated by informal economic activities, such as those in Kenya and Tanzania. This is at least partly explained by the replication of social protection models that were originally developed in a north Atlantic and post-World War II context. These models replicate a binary distinction between formal and informal, with formal considered the norm. This bias towards the formal and towards SERs is accompanied by an almost sole focus on formal social protection measures in the social protection literature and policy discussions. In Kenya and Tanzania, this has generated a strong focus on formalization strategies, and social protection and representational systems have consequently largely been modelled on and designed to support workers in formal SERs.

A tripartite system is in play in both countries, meaning that lawfully guaranteed tripartite representation is almost solely reserved for the trade unions that overwhelmingly represent workers in formal SERs. A few developments towards more inclusive representational structures are evident in Kenya, such as the MSEA and the urban boards, but overall a gaping deficit remains with regard to representation for the vast majority working in the informal economy.

As this article shows, simply incorporating informal workers into existing trade unions is highly challenging. While inclusion provides the potential for increasing institutional power, union experiences with representation are largely restricted to negotiations with employers and legal representation of workers via the labour court system. This poses challenges for many informal workers who are often not in legally recognized (or even identifiable) employment relations. If trade unions are to be effective vehicles of representation for most of the working population, a radical rethinking of their structure and key services is needed to align with working realities.

Given the minimal representation of informal workers via formal institutional structures, the key vehicles for representation and voice are the informal workers' own associations or federations. Even if most associations do not have the capacities to engage in representation, the few that do are adapted to the challenges faced by their members and to the specificities of the work and working relations within their sector. Hence some associations for boda-boda workers engage in regular negotiations with the police and local authorities, and some associations for micro-traders negotiate access to recognized workspaces for their members. Nonetheless, the sheer number of informal workers calls for additional structures that ensure genuine and effective representation of different types of informal workers.

The recent implementation of a universal old-age pension in Kenya and in Zanzibar attests to the growing consensus on the need for inclusive or even universal social insurance, as do a range of initiatives to promote voluntary enrolment of IWs into existing insurance systems.⁷ Despite this, however, most people working in the informal economy do not have coverage. Systems exist in both countries that guarantee employer-linked and co-financed health insurance coverage for formal workers, along with other employment-related protections. However, most people working informally are not in an SER with an identifiable employer on whom they could rely for employment-related co-financing even if formalization was to materialize. In addition, even though the option of self-financed health insurance or pension is available, most informal workers have difficulties in paying monthly premiums because of irregular, low incomes and because of all the other contingent demands on the little income they do have. The irregularity of income as well as many latent disruptions, losses, and expenditures are contingent on the way that state governing practices – including forbearance – actively produce and reinforce informality.

In sum, while formal insurance schemes are now open for informal workers, they remain modelled on the needs and abilities of formal workers in an SER and are not designed to fit the reality of most people working in the informal economy. There is thus a critical need to redesign schemes in a manner that effectively de-couples them not only from the restrictive formal/informal dichotomy but also from their basis in an SER. As Riisgaard et al (2021) suggest, rethinking might include more flexible payment methods and some ability to access unused contributions in the form of loans to make the public schemes more attractive in addressing short-term needs. Inspiration might also be found in the Indian Code of Social Security (2020) whereby a fee is levied on the construction industry and used to cushion workers. Initiatives seeking to incorporate some of these aspects have been attempted in

⁷ Both countries have plans to introduce self-contributory universal minimum health insurance schemes which will be subsidized only for very poor households (see Riisgaard et al., 2021).

later years in Kenya and Tanzania but while we are yet to learn more about the Haba Haba scheme in Kenya, the schemes initiated in Tanzania (KIKOA and NISS) have either ceased to function or shed their innovative elements—it seems due to selection bias and lack of sufficient uptake.

Although heterogeneity characterizes informal workers, one aspect that cuts across countries and sectors is the important role played by different workers' associations in filling the substantial formal social insurance gaps. They do so by either facilitating access to formal schemes or by directly cushioning members during difficult times such as sickness or death or by providing savings and loans for other life contingencies such as weddings or school fees. The immense importance of informal workers' own associations in meeting (even if inadequately) the social insurance and representational needs of their members should not only be recognized but should also help inform efforts to reframe national social protection policies and systems.

This article has shown that meaningful understanding of and engagement with the governance of work, the organization of work relations, and the varying forms of collective agency is necessary in order to achieve meaningful reforms of social protection. There are a number of ways in which systems of support for informal workers can be tailored to achieve this, all of which require a conceptual rethinking of social insurance and representational models that are attentive to the actual working realities of people in the informal economy. Their reality should not have to conform to an inadequate model; rather the model should fit their reality.

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DATA AVAILABILITY STATEMENT

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ETHICS STATEMENT

This paper reports analysis of primary data. Persons from whom data were collected gave their free, prior and informed consent. Their data has been kept confidential and used anonymously.

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