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**Trade Union Formation and Collective Bargaining in Tanzania:
Legal Framework, Challenges and Prospects**

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Abstract

Trade unions are essential in upholding workers' rights, supporting equitable pay, and improving working standards through collective bargaining. This article discusses the legal position on trade union formation and collective bargaining in Tanzania, as outlined in the Employment and Labour Relations Act, Cap 366 R.E. 2019 (ELRA). It also reflects global and regional frameworks on trade union recognition and collective bargaining. It explores the processes involved in forming trade unions, their recognition as exclusive bargaining agents, withdrawal of recognition, and the power to enter into an agency shop agreement to deduct agency fees from non-members of a recognised trade union. The article further addresses key challenges facing trade unions, including employers' refusal to recognise trade unions, fragmentation of unions caused by multiple unions in a single bargaining unit, and opportunities to enhance labour representation and policy influence. It submits that legal and institutional efforts to address these challenges and balance the available opportunities will provide a fair platform for trade unions to exercise collective bargaining as part of their role in fostering working conditions and realising an equitable and just labour market in Tanzania.

Key Words: Agency Shop Agreement; Collective Bargaining; Recognition of Trade Union; Trade Unions; Withdrawal of Recognition of Collective Bargaining

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1. Introduction

This article examines the legal framework, challenges, and opportunities that promote the establishment of labour unions and their collective bargaining rights in Tanzania. The contractual approach between employer and employee, which is firmly rooted in the agreement, does not provide sufficient protection and rights for employees, given the nature of the relationship, as the contracting parties have unequal power.¹ The challenges in employment relations are addressed by relying upon the 'standard contracts' that serve as the foundation for the employment contract, which is arguably unsuccessful, given the way the contractual relationship is formed.² The use of collective bargaining has, to a large extent, proved effective as a way of creating balance in the employment relationship.

The article also describes the global and regional framework for trade unions' rights to collective bargaining and organisation. It finds that the International Labour Organisation's conventions and recommendations, as well as instruments under the United Nations (UN) and regional instruments under the Southern African Development Community (SADC), contain rules and regulations governing trade unions and their recognition for collective bargaining. It provides, albeit in summary, the position of the law on trade unionism in Tanzania, showing its evolution from the colonial period, and later discusses the activities and bargaining powers of trade unions as they have evolved in the labour law rules enacted after independence. Reports state that the government and/or the ruling party for long, have had sway over Tanzanian labour unions and collective bargaining. The article goes on to analyse collective bargaining and trade unions following the return of multiparty democracy in the early 1990s, highlighting the advancements achieved by limiting the registrar's office's ability to interfere in trade union affairs and by permitting trade unions to function independently of the ruling party. Thus, the right to collective bargaining by trade unions and to organise through them is currently protected by the Employment and Labour Relations Act (ELRA).³

The article then discusses the conditions set by the ELRA for establishing, registering, and accepting the trade union as the exclusive bargaining agent in the bargaining unit. This article looks at the consequences of recognition, the procedures for losing recognition, and the power to impose the collective bargaining agreement between a recognised union and its employers on non-members. The effects of an agency shop agreement, a contract between an employer and a recognised trade union that has the

¹ Honeyball S, 'Employment Law and the Primacy of Contract', *Industrial Law Journal* (Vol. 18, No. 2, 1989) 99.

² Collins H, 'Regulating the Employment Relation for Competitiveness', *Industrial Law Journal* (Vol. 30, No. 1, 2001) 21.

³ See the Employment and Labour Relations Act, Cap. 300 R.E. 2019 (ELRA).

effect of collecting agency fees for non-union members, are also covered in this article.

2. Methodology

This study employs a doctrinal research methodology with a socio-legal perspective, analysing global and regional instruments, national laws, judicial decisions, and scholarly literature to examine trade union formation, recognition, and collective bargaining in Tanzania. The doctrinal analysis establishes the formal legal framework, while the socio-legal perspective situates these norms within broader social, economic, and political contexts that shape union practices, including informal employment, power asymmetries between employers and unions, and challenges to regulatory enforcement. By combining legal analysis with attention to these social realities, the study identifies the opportunities, gaps, and constraints that influence the effective exercise of collective bargaining rights in Tanzania.

3. Trade Unions and Collective Bargaining: Global and Regional Framework

The rights of trade unions to bargain collectively are regulated by ILO conventions and recommendations, as well as by other global and regional instruments of the UN, the African Union (AU), and SADC. These instruments protect the right of employees to form, join, and participate in lawful activities of workers' unions, and the right of the unions to be active in trade union activities without undue restriction.⁴ ILO members and non-members must respect, promote, and realise the workers' right to associate freely, and ensure the effective recognition of the right to bargain collectively.⁵ The principles and rules governing trade unions' formation, recognition, and involvement in collective negotiations influenced the drafting of these global and regional instruments on unions' rights to bargain collectively.⁶ Most of the principles and rules have attained the status of customary international law.⁷

Without prior permission, all workers are free to form and join the unions of their choosing.⁸ Also, unions have the right to formulate their constitutions, set rules governing their internal affairs, and freely elect their representatives without interference from public authorities.⁹ Besides, the workers and their unions have obligations to comply with national laws, and the said laws must not be used to

⁴ Jin L, 'Towards the Improvement of Chinese Labour Law: A Comparative Analysis of Chinese and South African Collective Labour Law' (PhD Dissertation, University of Cape Town 2006) 12.

⁵ ILO, *Declaration on Fundamental Principles and Rights at Work*, ILO Doc CIT/1998/PR20A (19 June 1998), art 2.

⁶ Olivier MP, and Potgieter O 'The Right to Associate Freely and the Closed Shop (Continued)', *TSAR* (1994) 289.

⁷ *Ibid.*

⁸ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), art 2.

⁹ *Ibid.*, art 3.

impede international norms regarding workers' and unions' rights to organize and bargain collectively.¹⁰ As such, to facilitate the realisation of the right to organise, national legal frameworks must establish the prerequisites and implement the necessary actions.¹¹ The right to form and join trade unions is an integral part of the exercise of the right to bargain collectively. Without unions, the right to bargain collectively could not properly exist.¹²

The law affords adequate protection to unions against interference in their establishment, functioning, or administration, and in the performance or exercise of their right to organise or engage in collective bargaining.¹³ Thus, acts that are intended to disguise the establishment of unions under the control of employers or employers' associations or acts intended to financially support or use other means of support to unions to put such unions under the control of employers or employers' associations, are considered to be an interference with the freedom of trade unions.¹⁴ This foundational guarantee of non-interference is complemented by narrowly circumscribed limitations permitted under international labour law.

Article 9 (1) of ILO Convention No. 87 permits narrowly defined restrictions on freedom of association for members of the armed forces and police, a limitation that the ILO Committee on Freedom of Association (CFA) interprets strictly to prevent broad or automatic exclusions.¹⁵ This clause was intended solely to accommodate essential security needs, not to weaken the general protection of workers' associational rights.¹⁶ A comparable logic applies to prisoners: despite the lawful constraints associated with incarceration, prisoners engaged in remunerated labour retain core associational rights unless demonstrable security risks justify specific restrictions and academic commentary affirms that imprisonment limits but does not extinguish fundamental labour protections.¹⁷ Consequently, any derogation from the union's rights for conscripts or prisoners, must remain exceptional, evidence-based, and subject to procedural safeguards designed to prevent abuse.

Taken together, these principles illustrate that the international framework on the freedom of association and collective bargaining is

¹⁰ Ibid, art 8.

¹¹ Ibid, art 11.

¹² Belcher V, 'The Promotion of Collective Bargaining: Different Models' (2007) 21, <https://open.uct.ac.za/server/api/core/bitstreams/448653f3-eea9-4b9e-8221-23f646bab571/content>.

¹³ Right to Organise and Collective Bargaining Convention 1949 (No. 98), art 2(1).

¹⁴ Ibid, art 2 (2).

¹⁵ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 9(1); ILO, *Digest of Decisions of the Committee on Freedom of Association* (6th edn, 2018) paras 254–258.

¹⁶ Langille B, 'Core Labour Rights: The True Story (Reply to Alston)', *European Journal of International Law* (Vol. 16 No. 3, 2005) 409.

¹⁷ ILO, *Digest of Decisions of the Committee on Freedom of Association* (n 15) paras 207–210; Dolovich S, 'State Punishment and Private Prisons', *Duke Law Journal* (Vol. 55, 2005) 437.

structured around three mutually reinforcing objectives: protecting workers from anti-union discrimination; preventing interference in the internal affairs of workers' and employers' organisations; and promoting the effective exercise of the right to bargain collectively.¹⁸ For instance, states are required to take measures to promote voluntary negotiation between workers and their associations, and between associations and their employers, which would eventually regulate working conditions and standards by way of collective agreements.¹⁹ The protection against employer interference ensures that unions remain autonomous; the tightly controlled exceptions for security-sensitive categories safeguard the universality of the right; and the broader guarantees of collective bargaining ensure that unions can operate meaningfully in defending workers' interests. The ILO principles on collective bargaining do not impose formal obligations to negotiate or enter into an agreement. However, such obligations may be imposed by laws adopted by ILO members.²⁰ Generally, public authorities must not interfere with workers' rights to bargain freely, unless there are compelling and justified reasons to do so.²¹ It is acceptable for supervisory bodies to impose proportionate sanctions where it is proved that the bargaining was conducted in bad faith.²²

The international legal frameworks put an obligation on state parties to the ILO to promote collective bargaining in the public and private sectors, and set permissive requirements to be met by the public sector by putting in place special modalities of customizing the global norms in the national laws or practice.²³ Equally, employees in the public service are protected from discriminatory actions and undue interference by public and government bodies.²⁴ This is fundamental to exercising the rights to organise, freedom of association, and engage in collective bargaining.²⁵

In addition to the ILO's legal framework, various international, regional, and sub-regional agreements, guarantee trade unions' freedom to organise and engage in collective bargaining. The Universal Declaration of Human Rights (UDHR) states that 'everyone

¹⁸ Carabetta G, 'International Labour Law Standards Concerning Collective Bargaining in Public Essential Services', *Deakin Law Review* (Vol. 19, No. 2, 2014) 278.

¹⁹ Convention No 98, art 4; ILO, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO (Fifth Revised Edition)* (International Labour Organisation, 2006) 926-927;

²⁰ Gernigon B, Alberto O, and Horacio G, 'Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies', *International Labour Review* (Vol. 139, No.1, 2000) 47.

²¹ International Labour Office, Freedom of Association Committee, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (International Labour Organisation, 2006) 881-994.

²² ILO Convention No 154; Gernigon, Odero, and Guido (n 20) 47.

²³ *Ibid.*

²⁴ Convention No. 151.

²⁵ Carabetta (n 18) 279.

has the right to form and to join trade unions for the protection of his interests.²⁶ UDHR is articulated in a lexicon directly derived from Convention No. 87, thereby representing a comprehensive exposition of the analogous philosophical principles.²⁷ The singular discernible distinction between the UDHR and the text of Convention No. 87 concerning the entitlement to establish and affiliate with a trade union is that UDHR notably excludes the terminology 'employer' from its discourse.²⁸

Moreover, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), enshrine the prerogative of trade unions to engage in associative activities and collective bargaining. The ICCPR affirms the fundamental right of all individuals to form and join trade unions to safeguard their interests.²⁹ It stipulates that no limitations may be imposed on the exercise of the right to freedom of association by trade unions, except for those delineated by law and deemed necessary in a democratic society for reasons of national security or public safety, maintenance of public order, safeguarding public health or morals, or the protection of the rights and freedoms of others.³⁰ Nevertheless, legally sanctioned restrictions on the rights of members of the armed forces and law enforcement personnel to exercise this right are permissible.³¹

The ICESCR delineates the freedom of association for trade union activities, stipulating that state parties are obligated to uphold the right of every individual to establish trade unions and affiliate with a union of their choosing, limited solely by the regulations of the pertinent organisation, to advance and safeguard their economic and social interests. Limitations on the exercise of this right may only be imposed in accordance with legal provisions that are essential within a democratic framework for safeguarding national security or public order, or for protecting the rights and freedoms of others.³² Furthermore, the ICESCR mandates that state parties ensure the entitlement of trade unions to establish national federations or confederations, as well as the right of such entities to form or affiliate with international trade union organisations.³³ Additionally, the ICESCR guarantees that trade unions possess the right to operate autonomously, subject to no constraints other than those established by law that are deemed necessary in a democratic society for the

²⁶ UDHR, art 23(4).

²⁷ Swepston L, 'Human Rights Law and Freedom of Association: Development through ILO Supervision', *International Labour Review* (Vol. 137, 1998) 169 - 171.

²⁸ *Ibid.*

²⁹ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) (ICCPR), art 22 (1).

³⁰ *Ibid.*, art 22(2).

³¹ *Ibid.*

³² 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (ICESCR), art 8(1)(a).

³³ *Ibid.*, art 8(1)(b).

safeguarding of national security or public order, or for the protection of the rights and freedoms of others, including the right to strike, provided that such action is conducted in accordance with the laws of the respective nation.³⁴ Nonetheless, the ICESCR permits the enactment of lawful restrictions on the exercise of these rights for members of the armed forces, law enforcement agencies, or the state administration.³⁵ Moreover, the legal framework stipulates that the provisions of the ICESCR shall not empower state parties to the Freedom of Association and Protection of the Right to Organize Convention of 1948 to implement legislative measures that would undermine, or apply the law in a manner that would undermine, the guarantees enshrined in that Convention.³⁶

At the regional tier, the African Charter on Human and Peoples' Rights, enacted in 1981 (ACHPR), affirms the right to associate through trade unions, asserting that every individual shall possess the right to free association, contingent upon adherence to the law.³⁷ The right to freedom of association, as articulated in the ACHPR, is exercised in conjunction with the obligation of solidarity, as enshrined in Article 29 of the ACHPR, which imposes a duty on individuals to preserve and enhance social and national solidarity, particularly when such solidarity is at risk.³⁸ Notwithstanding this, no individual may be coerced into joining an association. Furthermore, the ACHPR articulates that every individual is entitled to engage in work under equitable and satisfactory conditions, a condition that can be realized in nations that facilitate the establishment of trade unions and promote collective bargaining.³⁹

Another instrument that ensures that trade unions are afforded the right to associate and engage in collective bargaining is the Charter of Fundamental Social Rights in SADC (hereinafter referred to as the Charter).⁴⁰ The Charter mandates that member states establish a conducive environment that aligns with ILO Conventions pertaining to freedom of association and the right to organize, thereby enabling workers to establish trade unions of their choosing for the advancement and protection of their economic and social interests.⁴¹ Also, the Charter stipulates the freedom of workers to either join or abstain from joining trade unions without incurring any personal or occupational harm, as well as the entitlement of trade unions to negotiate and finalize collective agreements in accordance with the conditions prescribed by national legislation and customary

³⁴ Ibid, art 8(1)(c) & (d).

³⁵ Ibid, art 8(2).

³⁶ Ibid, art 8(3).

³⁷ ACHPR; art 10(1); Breen C, 'Freedom of Association' in Blanpain R, *Comparative Labour Law and Industrial Relations in Industrialised Market* (Kluwer Law International, 2010) 315.

³⁸ O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (ACHPR), art 10(2).

³⁹ Ibid, art 15; Zvobga J, 'Collective Bargaining and Collective Agreements in Africa', *Turin School of Development Working Paper* 11 (2019) 3.

⁴⁰ Charter of Fundamental Social Rights in SADC (2003), art 4.

⁴¹ Ibid, art 4(a).

practices.⁴² In the exercise of the rights to freedom of association and collective bargaining, the Charter necessitates the implementation of industrial dispute resolution mechanisms and operational methods that are independent, accessible, efficient, and subject to tripartite consultations, in concordance with the assured right to pursue appeals or review procedures.⁴³ Similarly, under the auspices of the Charter, the right to freedom of association encompasses the right of trade unions to engage in collective action, including the right to strike and traditional collective bargaining, should a dispute remain unresolved.⁴⁴

The Charter addresses the complexities surrounding essential services when workers invoke their right to collective action by stipulating that the definition and parameters of essential services shall be collaboratively established and agreed upon by governmental bodies, employers' associations, and trade unions.⁴⁵ Furthermore, given the distinctive nature of essential services, governments, employers, and trade unions must institute suitable, readily accessible mechanisms for the expedited resolution of disputes.⁴⁶ The Charter unequivocally states that the rights to freedom of association and collective bargaining shall extend to all sectors of production, including export processing zones.⁴⁷

4. Trade Unions in Tanzania

The United Republic of Tanzania acknowledges the presence of labour unions, the right to form associations, and the right to bargain collectively, as evidenced by its ratification of significant ILO conventions on the free association of workers and employers. The ELRA guarantees workers' membership in the unions they establish and their engagement in the lawful operations of those unions. Nevertheless, the ELRA imposes restrictions on the rights to associate and participate in collective bargaining for specific groups of individuals, including magistrates, who are permitted to form or join unions exclusively designated for judicial officers, and prosecutors, who may only establish or affiliate with unions confined to attorneys involved in state prosecution or other officials of the court.⁴⁸ Furthermore, employees involved in management at the senior level are prohibited from becoming members of trade unions that represent employees in non-senior management roles within the same organisation.⁴⁹ The ELRA defines a 'senior management employee' as an employee who, by virtue of their position, makes policy on behalf of the employer and is authorised to conclude

⁴² Ibid, art 4(b) & (c).

⁴³ Ibid, art 4(d).

⁴⁴ Ibid, art 4(e).

⁴⁵ Ibid, art 4(g).

⁴⁶ Ibid, art 4(h).

⁴⁷ Ibid, art 4(i).

⁴⁸ ELRA, s 9(2)(a) & (c).

⁴⁹ Ibid, s 9(2)(c)

collective agreements on behalf of the employer.⁵⁰ This distinction acknowledges their strategic role and generally excludes them from trade union participation or collective bargaining to prevent conflicts of interest and protect the integrity of agreements and the unions' independence.

The ELRA further prohibits discrimination against employees who exercise or previously exercised any rights granted under the Act or any other relevant legislation concerning the formation, membership, or participation in lawful trade union activities.⁵¹ Similarly, employers are expressly forbidden to discriminate against leaders or employees of a trade union due to their role in representing the union or for engaging in legally recognised activities of the union.⁵² It is an offence for any person to discriminate against an employee, a union leader, or a union office holder involved in trade union activities, and penalties may include a fine of up to five million Tanzanian shillings.⁵³

To facilitate the effective realization of the unions' rights, such as the right to bargain collectively, trade unions possess the authority to establish their own constitutions, devise and manage their administrative functions and legitimate activities, join, form, and partake in the legal endeavours of federations, affiliate with, and engage in the operations of any global workers' organisation or the ILO, as well as to donate to or receive grants from such international associations.⁵⁴

The registration of a trade union in Tanzania is governed by Part IV, in particular, sections 45 to 58 of the ELRA, which stipulates a structured process to ensure unions' legal recognition and operational legitimacy. Unions must register within six months of formation, meeting criteria such as having at least 20 employees, a compliant constitution, and independence from employers. Constitutions must address governance, membership, and financial management, and align with national laws. In post-registration, unions become corporate entities with perpetual succession. The Registrar oversees adherence to these provisions, while the Labour Court has the authority to intervene in cases of noncompliance or disputes over registration decisions.

4.1 Legal framework for collective bargaining

The preceding section delineated the protocols pertaining to the creation and registration of trade unions. Subsequent to registration, trade unions assume a pivotal function in the practice of collective bargaining, which operates as a mechanism for negotiating the standards of employment between employees and employers. The collective bargaining process is characterised by mutual obligations

⁵⁰ Ibid, s 9(6)(b).

⁵¹ Ibid, s 9(3).

⁵² Ibid, s 9(4).

⁵³ Ibid, s 9(5).

⁵⁴ Ibid, s 11(e).

to engage in dialogues conducted in good faith, to attain agreements that are advantageous to both parties involved. This process positions collective bargaining as the primary forum for the realisation of workplace democracy. It is indispensable to any trade relations framework and serves as a device for achieving structured flexibility within the workplace.⁵⁵ Its significance in employment relationships is underscored by the shared powers and interests of trade unions to advocate for social and economic survival, which are prevalent in both public and private employment contexts.⁵⁶ Collective bargaining fulfils the function of harmonising the demands of equity and economic advancement by establishing new wage levels and other standards of employment through regulated flexibility.⁵⁷ As a voluntary process, it reconciles the divergent interests and ambitions of the administration and labour through collaborative governance of employment standards.⁵⁸ Through the collective bargaining process, employers and trade unions negotiate to accommodate their conflicting objectives.⁵⁹ Collective bargaining fosters and maintains workplace harmony by proactively addressing emerging conflicts through negotiation.⁶⁰ The efficacy of collective bargaining is contingent upon the existence of unionisation, wherein workers mobilise through trade unions to engage collectively.⁶¹

The ILO characterises collective bargaining as a comprehensive process of negotiations conducted between an employer, a group of employers, or one or more employers' associations on one side, and one or more workers' association on the other, with the purpose of determining employment terms and conditions; and/or managing the relationship between employers and employees; and/or overseeing the interactions between employers (or their associations) and one or more workers' associations.⁶² The ELRA does not delineate the term collective bargaining; rather, it explicates its outcome. That is, a collective agreement. Collective agreements are defined as

⁵⁵ Godfrey S, Theron J, and Visser M, 'The State of Collective Bargaining in South Africa: An Empirical and Conceptual Study of Collective Bargaining', *Development and Poverty Research Unit Working Paper Development Policy Research Unit Policy Brief* 08/18 (University of Cape Town 2008)1, <https://open.uct.ac.za/server/api/core/bitstreams/f644785a-93e3-45ec-9401-8fe089fa10c1/content>.

⁵⁶ Moe TM, 'Collective Bargaining and the Performance of the Public Schools', *American Journal of Political Science* (Vol. 53, No. 1 2009) 156-174; Cloutier J, Pascale LD and Henriette B, 'Collective Bargaining and Perceived Fairness: Validating the Conceptual Structure', *Relations Industrielles/Industrial Relations* (Vol. 67, No. 3 2012) 398-425.

⁵⁷ Godfrey, Theron, and Visser (n 55) 1.

⁵⁸ Rycroft AJ and Barney J, *A guide to South African Labour Law* (Juta, 1992) 116.

⁵⁹ Grogan J, *Workplace Law* (Juta and Company Ltd. 2003) 304.

⁶⁰ Fasan C, 'Collective Bargaining and Corporate Strategy' (Unpublished Manuscript, Lagos State University 2011).

⁶¹ Sachs BI, 'The Unbundled Union: Politics Without Collective Bargaining', *Yale Law Journal* (Vol. 123 2013) 148; Madlala PC, and Cookie M G, 'Current Collective Engagement Stakeholder Strategies for South African Labour Relations', *SA Journal of Human Resource Management* (Vol. 16, No. 1 2018) 1- 8.

⁶² International Labour Organization Collective Bargaining Convention, 1981 (No. 154), art 2.

formalised contracts between employers and workers or their corresponding associations concerning the standards of employment applicable to the parties engaged in the employment relationship, executed according to the existing national statutes, rules, and regulations governing the contracting parties.⁶³ It is also characterised as a formalised contract established between a registered workers' association and an employer or a registered employers' organisation on any labour-related issue.⁶⁴

The trade union engaged in collective bargaining invariably has a collective interest in participating in social dialogue with the employer or the employer's organisation, striving to negotiate for the welfare of numerous employees within the workplace. The ILO defines social dialogue between trade unions and employers or employer associations as encompassing all forms of negotiation, dialogue, or the mere transmission of information between representatives of governments, employers, and workers, on issues of shared concern in economic and social policy.⁶⁵ This dialogue can transpire at the national, regional, or enterprise level and may also manifest as interprofessional, sectoral, or a hybrid of these forms. Furthermore, it can take the form of a tripartite arrangement involving governmental participation or bipartite relations between workers' associations and employers or employer organisations.⁶⁶

Collective bargaining aims to foster harmonious relations between employers and workers.⁶⁷ It facilitates consensus-building and democratic participation among the primary stakeholders in the workplace, recognising that social justice, peace, equitable workplace relations, and decent employment, are essential for sustaining development and socio-political stability within the workplace.⁶⁸ Workers' engagement in industrial action is intended to compel the employer to enter into a more favourable agreement for the workers.⁶⁹ Given that the right to bargain collectively originates from the concept of the liberty to associate freely and the entitlement to establish organisations, the bargaining process involving workers through their union and employers within the employment framework, is characterised by an imperative to resolve due to social, economic,

⁶³ Collective Agreements Recommendation No 91 of 1951, art 2(1).

⁶⁴ ELRA, s 4.

⁶⁵ See ILO, Areas of work – Social Dialogue, <https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm%20%20a>, accessed on 17 September 2024.

⁶⁶ Ibid.

⁶⁷ Khabo FM, 'Collective Bargaining and Labour Disputes Resolution: Is SADC Meeting the Challenge', *ILO Sub-Regional Office for Southern Africa, Harare: ILO 40* (2008): 4; Babalola SS, and Ajibola I, 'Perception of Collective Bargaining and Satisfaction with Collective Bargaining on Employees' Job Performance', *Corporate Ownership & Control* (Vol. 14, No. 2, 2017) 296-301.

⁶⁸ Zvobga (n 39) 6.

⁶⁹ Harrison DS, 'Collective Bargaining Within the Labour Relationship, in a South African Context' (Masters Dissertation North-West University, 2004) 126.

and legal pressures.⁷⁰ The primary aim of collective bargaining is to produce a collective agreement, understood as a documented arrangement between a trade union and an employer that sets out the terms of employment for a designated period. Negotiations conducted between recognised trade unions and employers without the intention of concluding a collective agreement cannot be classified as collective bargaining. Rather, effective collective bargaining must be inherently voluntary in nature and must not entail any coercive tactics that would compromise this voluntary quality of the negotiations.⁷¹

4.2 Recognition of trade unions for collective bargaining in Tanzania

The law provides that a registered trade union that represents the majority of employees in a defined bargaining unit is entitled to be recognised as the sole bargaining representative for those employees.⁷² An employer or an employers' association is prohibited from granting such recognition to any trade union that is not duly registered.⁷³ Furthermore, the authority to engage in collective bargaining for employees in a given bargaining unit, is exclusively vested in the registered trade union itself, not in any subordinate branch thereof.⁷⁴

A registered trade union seeking to act as the exclusive representative of employees is obligated to formally serve notice, using the prescribed forms, to the employer or employers' association of its intent to obtain recognition as the sole bargaining agent for the specified bargaining unit.⁷⁵ Pursuant to the ELRA, a bargaining unit is defined as any grouping of employees for which a registered trade union has been recognised, or is entitled to be recognised, as the exclusive bargaining agent, encompassing employees engaged by multiple employers.⁷⁶ Generally, a recognised trade union refers to a trade union acknowledged either by virtue of a collective agreement or by an order issued by the Labour Court under section 67, while the term 'registered trade union' may extend to two or more registered labour unions acting together in the unit.⁷⁷

⁷⁰Selala K, 'The Right to Strike and the Future of Collective Bargaining in South Africa: An Exploratory Analysis', *Proceedings of International Academic Conferences*, No. 0100283, (International Institute of Social and Economic Sciences 2014).

⁷¹ International Labour Office, Freedom of Association Committee (n 21), para 845.

⁷² ELRA, s 67 (1).

⁷³ ELRA, s 67 (2).

⁷⁴ *RAAWU Field Branch at TPRI v Tropical Pesticides Research Institute*, Labour Dispute No 1 of 2013, High Court of Tanzania Labour Division at Arusha (Unreported) at 3.

⁷⁵ ELRA, s67(3).

⁷⁶ *Ibid*, s 66(a).

⁷⁷ *Ibid*, s 66(b) & (c).

Upon receipt of the trade union's notification expressing its intention to be recognised as the exclusive bargaining agent within the bargaining unit, the employer is compelled to engage in consultations with the trade union within a period of thirty days from the date of such notification, to formalise a collective agreement that duly recognises the trade union.⁷⁸ The law provides that, in the event of a failure to reach mutual agreement or if the employer fails to engage with the trade union within the stipulated thirty-day period, the union shall have the right to refer the dispute to the Commission for Mediation and Arbitration (CMA) for mediation. Additionally, the thirty-day timeframe may be extended by mutual consent of the parties involved.⁷⁹ Should the mediation process fail to yield a resolution, any involved party retains the right to escalate the dispute to the Labour Court for adjudication and subsequent decision.⁸⁰

From the aforementioned provisions, it is evident that a dispute over recognition may arise when multiple trade unions exist within a single bargaining unit, each asserting a claim to have a majority representation among the employees. In such instances, the aggrieved trade union may submit a complaint to the Labour Court, seeking, among other forms of relief, recognition as the exclusive bargaining agent within that specific bargaining unit. The case of *Tanzania Union of Industrial and Commercial Workers (TUICO) v National Microfinance Bank*⁸¹ serves as a pertinent illustration of the procedural dynamics involved in the recognition of trade unions as exclusive bargaining agents for collective bargaining. The ruling articulated that a trade union possessing a majority status is entitled to recognition under section 67 of the ELRA, and upon such recognition, the trade union may enter into an agency shop agreement with the employer to facilitate the deduction of agency fees from non-members of the registered trade union.

The law requires that, when determining the suitability of a bargaining unit, the Labour Court must consider the preferences of the parties involved; the historical context of negotiations between those parties; the extent of union representation among the employer's employees; and the commonality of interests among such employees.⁸² Furthermore, the Labour Court is obliged to assess the organisational structure of the employer or employers; the various functions and operations they perform and their degree of integration; as well as the geographical distribution of the employer or employers, to ascertain the suitability of the bargaining unit.⁸³

⁷⁸ Ibid, s 67(4).

⁷⁹ Ibid, s 67(5).

⁸⁰ Ibid, s 67(6).

⁸¹ *Tanzania Union of Industrial and Commercial Workers (TUICO) v National Microfinance Bank*, Miscellaneous Labour Application No. 25 of 2015, High Court of Tanzania Labour Division at Dar es Salaam (Unreported).

⁸² ELRA, s 67(8)(a)(i)-(iv).

⁸³ Ibid, s 67(8)(a)(v) –vii).

Additionally, the promotion of orderly and efficient collective bargaining, with minimal disruption to the employer's organisational framework, constitutes a critical consideration in the Labour Court's evaluation of the appropriateness of the bargaining unit.⁸⁴ In instances where the Labour Court has established the appropriateness of the bargaining unit but a dispute subsequently arises regarding the interpretation or implementation of the court's ruling in this regard, the issue shall be forwarded to the CMA for mediation; and where settlement is not achieved; the matter shall be referred to the Labour Court for adjudication and ruling.⁸⁵ The law permits parties bargaining collectively to formulate their bargaining frameworks through a collective agreement, which need not adhere to the stipulations delineated in section 67 of the ELRA.⁸⁶ Registered trade unions and employers participating in collective bargaining are required to conduct negotiations in good faith to reach mutually acceptable agreements.⁸⁷

The law stipulates that a trade union may participate in collective bargaining once it is duly registered under section 45 of the ELRA and acknowledged by the employer as the sole bargaining representative within the bargaining unit. Certain labour law scholars argue that making collective bargaining dependent on employer recognition may weaken a trade union's negotiating power, since employers can delay, refuse, or strategically manipulate recognition even where a union enjoys clear majority support among workers. Collins, Ewing, and McColgan explain that recognition procedures often allow employers to exploit procedural thresholds and admissibility rules to obstruct or frustrate majority unions, including by recognising minority or non-independent unions, thereby undermining effective collective bargaining and the practical enjoyment of freedom of association.⁸⁸ This concern is mitigated by the legal requirement mandating the employer to recognise a trade union within 30 days following a recognition application, failure of which enables the trade union to refer the issue to the CMA for mediation, and where settlement is not reached, to refer the matter to the Labour Court for a ruling. The ELRA and case law make clear that an employer's authority to recognise a trade union as a bargaining representative is not absolute. Disputes over recognition must first go to the CMA for mediation, and if unresolved, the Labour Court may determine representativeness and issue appropriate orders, ensuring structured oversight of collective bargaining rights.⁸⁹

⁸⁴ Ibid, s 67(8)(b).

⁸⁵ Ibid, s 67(9)(a) & (b).

⁸⁶ Ibid, s 67(10).

⁸⁷ Ibid, s 68(1) & (2); Raj A and Salian DR, 'Collective Bargaining: A Tool for Settling Industrial Disputes', *Christ University Law Journal* (Vol. 10, No. 2, 2021) 43.

⁸⁸ Collins H, Ewing K and McColgan A, *Labour Law* (2nd edn), (Cambridge University Press 2012) Ch 14, 559–566.

⁸⁹ Employment and Labour Relations Act, Cap. 366, R.E. 2023, s 67; *Tanzania Union of Industries and Commercial Workers (TUICO) v Serengeti Breweries Ltd*

The foregoing discussions underscore that collective agreements are typically negotiated with a trade union that represents the majority of the workforce in the workplace. However, there are specific circumstances where registered trade unions within a particular bargaining unit may not attain the requisite majority membership to be recognised as the exclusive bargaining agent for that unit. In such instances, alternative frameworks or procedures may be needed to ensure that employees' interests are adequately represented and that collective bargaining processes remain fair and effective.

Trade unions can either conclude a collective agreement on behalf of their members or jointly develop one applicable to the bargaining unit.⁹⁰ As stipulated by the ELRA, a 'registered trade union,' or two or more registered trade unions acting jointly, are authorised to engage in collective bargaining with the employer.⁹¹ The principal objective of this framework is to enable minority trade unions to participate in collective bargaining, thereby enabling them to negotiate agreements that reflect their members' interests.⁹² In situations where no trade union commands an absolute majority within the bargaining unit, the employer is precluded from unilaterally imposing employment terms upon the workers. To address the potential impasse arising from the absence of majority representation, the law permits employers, registered employers' organisations, and registered trade unions, to establish their own collective bargaining structures.⁹³ This ensures the continuity of fair and effective negotiations, safeguarding the rights and interests of the workforce.

The legal framework further strengthens public-sector collective bargaining through the Public Service (Negotiating Machinery) Act⁹⁴. Section 4 establishes Service Joint Staff Councils as platforms for dialogue between public servants and the government, while section 5 defines the composition and functions of these councils to ensure structured negotiations. Presidential awards under sections 23 and 25 are binding for twelve months and cannot be altered without the Minister's written consent, providing enforceability and predictability. Together with the ELRA, these provisions foster good-faith negotiations, labour stability, and a structured framework that balances enforceability with periodic review, thus, strengthening the legitimacy and effectiveness of collective bargaining across the public sector.

At the international level, ILO Recommendation No. 204 (R 204), concerning the transition from the informal to the formal economy,

[2023] TZHCLD 1296 (High Court, Labour Division); *TUICO v Tanzania Tobacco Processors (Ltd)*, Revision No. 20 of 2008 (High Court, Labour Division).

⁹⁰ International Labour Office, Freedom of Association Committee (n 21), para 978.

⁹¹ ELRA, s 66(c).

⁹² Esitang TG, 'The Impact of Threshold Agreements on the Organisational Rights of Minority Trade Unions' (LLD Thesis, University of Pretoria 2017) 42.

⁹³ ELRA, s 67(11).

⁹⁴ Public Service (Negotiating Machinery) Act, Cap 105 [R.E 2023].

emphasises inclusive labour rights, including freedom of association and access to collective bargaining for informal workers.⁹⁵ While the ELRA provides a statutory framework for trade union formation and collective bargaining, granting majority unions' exclusive recognition and protecting union members against discrimination, a substantial portion of informal workers remains outside these formal mechanisms.⁹⁶ Therefore, aligning domestic law with the principles of R 204 could expand union inclusivity, extend collective bargaining coverage to informal workers, and promote a structured transition to formal employment, thereby supporting decent work and social protection for all Tanzanian workers.

4.3 Disclosure of information during collective bargaining under the ELRA

The employer must permit the trade union recognised under section 67 of ELRA to participate effectively in collective bargaining in accordance with section 70(1) of the Act. When trade unions have access to relevant information during collective bargaining, they are better positioned to engage in meaningful and effective negotiations. Such access to information reinforces the principles of accountability, transparency, and openness within the collective bargaining framework. Consequently, to ensure the smooth and efficient conduct of collective bargaining, the employer is obligated to furnish a recognised trade union with all pertinent information that may be required to safeguard or advance the interests of its members. This entitles workers and their associations to obtain access to information held by the employer that is essential for the exercise or protection of their rights.

The right to access information for collective bargaining purposes is not absolute. According to section 70(2) of the ELRA, an employer is not obligated to disclose legally privileged information if such disclosure would contravene the law or a court order, reveal information of a confidential nature that could substantially harm either the employer or the employee, or involve the personal and private data of an employee without that employee's consent.⁹⁷ Furthermore, under section 70(3) of the ELRA, any trade union that obtains confidential or sensitive personal information is required to maintain its confidentiality and to adopt reasonable measures to ensure its continued protection. Disclosure of such information is strictly limited to the union's members and advisors who need it for legitimate purposes. Should a dispute arise regarding the disclosure of information, it is initially referred to the CMA for mediation, and in

⁹⁵ ILO, *Transition from the Informal to the Formal Economy: Recommendation No. 204* (International Labour Organisation 2015), <https://www.ilo.org/resource/r204-transition-informal-formal-economy-recommendation-2015-no-204>, accessed on 15 November 2025.

⁹⁶ ELRA, ss 9 & 45 – 73.

⁹⁷ *Ibid*, s 70(2)(a) – (d).

the event there is no settlement, the matter may be referred to the Labour Court for a definitive determination.⁹⁸

When deciding whether to order the disclosure of confidential information, the Labour Court will evaluate whether the union's inability to access the information would significantly impede its capacity to bargain effectively and represent its members adequately. The court will also take into account any past breaches of confidentiality by the trade union or its members before issuing any order compelling disclosure.⁹⁹ In instances where the Labour Court deems it necessary to order the employer to disclose confidential information, the order will incorporate safeguards designed to minimise any potential harm that may arise from such disclosure.¹⁰⁰ These safeguards may include provisions requiring the trade union to pay compensation for any breach of confidentiality, as well as temporarily suspending or permanently revoking the right to access certain information.

4.4 Withdrawal of recognition of trade unions in Tanzania

Employers accord recognition to trade unions that demonstrate adequate representativeness within the specified bargaining unit, as stipulated by section 67 of the ELRA. Consequently, the employer reserves the right to revoke such recognition should the trade union no longer represent the majority of employees in the bargaining unit, provided the union is granted a three-month period to regain majority representation but fails to do so by the conclusion of that period.¹⁰¹

Tanzania's ELRA, like the legislative frameworks in other SADC nations, establishes collective bargaining upon the principles of majoritarianism and pluralism. These principles confer specific advantages to trade unions that command majority support, while simultaneously disadvantaging smaller and minority unions.¹⁰² After a recognised union ceases to represent the majority in the bargaining unit, any other trade union in the unit may call for fresh elections to demonstrate that it is now the most representative. However, for a period of six months subsequent to the union's formal recognition as the exclusive collective bargaining representative, no application seeking to withdraw that recognition may be lodged. The trade union that 'represents the majority of the employees in an appropriate bargaining unit,' as defined in *Tanzania Union of Industrial and Commercial Workers (TUICO) v Tanzania Tobacco Processors Ltd*

⁹⁸ Ibid, s 70(4) & (5).

⁹⁹ Ibid, s 70(6)(b) & (c).

¹⁰⁰ Ibid, s 70(6)(d) – (f).

¹⁰¹ Ibid, s 69(1).

¹⁰² Kruger J and Tshoose CI, 'The Impact of The Labour Relations Act on Minority Trade Unions: A South African Perspective', *Potchefstroom Electronic Law Journal* (Vol. 16, No. 4, 2013) 288; Baskin J and Satgar V, 'South Africa's New Labour Relations Act: A Critical Assessment and Challenges for Labour', *Discussion Paper* (NALEDI, Johannesburg 1995) 12.

(*TTPL*),¹⁰³ is one that has many members among the regular employees on the premises.

Any significant violation of the collective agreement or recognition order gives another party the right to request that the recognition be revoked by discharging the recognition agreement or withdrawing the recognition order.¹⁰⁴ This is because employers, registered employers' associations, and registered trade unions, may establish their collective bargaining arrangements through the collective agreement, or a trade union may be granted an order of recognition. The Labour Court may resolve any dispute over the trade union's representativeness by directing the relevant party to hold a vote among the affected employees.¹⁰⁵ When resolving a conflict that arose from the trade union's designation as the sole bargaining representative inside the bargaining unit, the Labour Court has the authority to issue the following appropriate orders: granting the trade union representation, changing the bargaining unit, temporarily suspending recognition, or rescinding recognition.¹⁰⁶

4.5 Legal implications of trade union as exclusive bargaining agent

A complex legal system, several obstacles, and new opportunities influence the development of trade unions and collective bargaining recognition in Tanzania. The statutory processes governing the establishment of trade unions and their acceptance of collective bargaining within their operational framework, add complexity to the matter. Moreover, the interaction between Tanzania's formal and informal labour sectors significantly influences the collective labour law landscape. Upon being recognised as the exclusive bargaining agent, a trade union acquires the capacity to negotiate and conclude collective agreements with the employer, which then become binding not only on its members but also on non-members. This represents the primary legal implication of a trade union's exclusive bargaining authority.

The law also mandates that any collective bargaining agreements made by a trade union that has exclusive negotiating agent status must be in writing, signed by both sides, and legally enforceable upon the last signing.¹⁰⁷ Section 67 of the ELRA stipulates that the collective agreement binds not only the parties to the agreement but also all members and employees who are not union members, provided that the trade union is recognised as the exclusive bargaining agent for those employees.¹⁰⁸

¹⁰³ *Tanzania Union of Industrial and Commercial Workers (TUICO) v Tanzania Tobacco Processors Ltd (TTPL)*, Labour Dispute No. 49 of 2009, High Court of Tanzania Labour Division at Dar es Salaam (Unreported).

¹⁰⁴ ELRA, s 69(3).

¹⁰⁵ *Ibid*, s 69(4).

¹⁰⁶ *Ibid*, s 69(5).

¹⁰⁷ *Ibid*, s 71.

¹⁰⁸ *Ibid*, s 71(3)(a) –(c).

Employers or workers who were not parties to the collective agreement at the time it was established, including individuals who have since resigned from the trade union or employer association, remain bound by its terms.¹⁰⁹ In the meantime, employers and workers who join the parties to the collective agreement after it has been signed are bound by the collective agreement signed between a trade union and an employer.¹¹⁰ Any party to an agreement may end it with reasonable notice, unless a collective agreement specifies otherwise, and the law requires the party that ends the agreement to give a cause for doing so.¹¹¹ Parties are required to submit a copy of the collective bargaining agreement to the Labour Commissioner after signing it.¹¹² The copy of the collective bargaining agreement filed and registered with the Labour Commissioner is considered authentic and can be signed as a court order.¹¹³

Moreover, as it was demonstrated in the case of *Tanzania Union of Industrial and Commercial Workers (TUICO) v National Microfinance Bank*, a trade union may enter into an agency shop agreement with the employer after achieving the position of exclusive bargaining agent.¹¹⁴ The agency shop agreement is concluded in line with the legal principle that freedom of association entails certain legal limitations, namely the individual's right to choose, the right not to join, and the right to organise into trade unions and bargain collectively with the employer.¹¹⁵

Closed shops, agency shops, and any kind of coercion to join an association are all regarded by the law as violations of the freedom to freely associate.¹¹⁶ Although it is widely acknowledged that the negative right to associate is a component of and a consequence of the right to associate freely,¹¹⁷ laws have been passed that make some types of coercion a requirement for employment in union workplaces.¹¹⁸ Closed shops, union shops, membership maintenance shops, and agency shops, are all included in basic union security.¹¹⁹ An agreement that requires an employee to join a trade union is unenforceable in Tanzania.¹²⁰ Nonetheless, an

¹⁰⁹ Ibid, s 71(4).

¹¹⁰ Ibid, s 71(5).

¹¹¹ Ibid, s 71(6).

¹¹² Ibid, s 71(7).

¹¹³ Ibid, s 71(7).

¹¹⁴ *Tanzania Union of Industrial and Commercial Workers (TUICO) v National Microfinance Bank* (n 81).

¹¹⁵ Anderman SD, *Labour Law: Management Decisions and Workers Rights* (Butterworths 1991) 232-233.

¹¹⁶ Ibid, 232-233.

¹¹⁷ Olivier and Potgieter (n 6) 289.

¹¹⁸ Harcourt M and Helen L, 'Freedom of Association, Freedom of Contract, and the Right-To-Work Debate', *Employee Responsibilities and Rights Journal* (Vol. 18, 2006) 250.

¹¹⁹ Ibid.

¹²⁰ ELRA, s 72(1).

employer and a recognised trade union may reach a collective bargaining agreement that provides for an agency shop.¹²¹

Accordingly, the ELRA defines an 'agency shop' as a union security structure whereby workers in a bargaining unit who are not affiliated with the recognised trade union, are obligated to pay the trade union an agency fee.¹²² Because they gain from the agreements reached through collective bargaining between recognised trade unions and employers or employer groups, non-trade union members are justified in paying fees for this process. According to the ruling in *Tanzania Union of Industrial and Commercial Workers (TUICO) v National Microfinance Bank*, agency fees must be deducted in accordance with the ELRA's rules.¹²³

Only employees within the designated bargaining unit are subject to the legally binding agency shop agreement. Employees who are not members of the trade union are not obligated to join the union, and any agency fees deducted from their wages must be equal to or less than the union dues deducted from the wages of union members by the employer.¹²⁴ Pursuant to the law, funds collected from both union members and non-members must be deposited into a separate account managed by the trade union. These funds are strictly to be utilised for advancing or protecting the socioeconomic interests of the employees within that workplace and should not be allocated towards political party affiliations or supporting the campaign contributions of any candidate for public office.¹²⁵

Since the purpose of the agency shop agreement is to promote and protect the socioeconomic interests of employees, it is not necessary to obtain the employees' prior consent to collect agency fees from non-members of recognised trade unions.¹²⁶ Even though they did not pay the trade union's subscription costs, the employees who agreed and are acknowledged as negotiating agents in the bargaining unit, receive advantages from the union's collective efforts.¹²⁷ Notably, a worker's association that is a party to an agency shop agreement must designate a registered auditor to conduct an annual audit of the account receiving agency fee and provide the findings to the Registrar and the Labour Commissioner within 30 days of the audit date and authorise any interested party to examine the report at the union office within office hours.¹²⁸

¹²¹ Ibid, s 72(2).

¹²² Ibid, ELRA s 72(9).

¹²³ *Tanzania Union of Industrial and Commercial Workers (TUICO) v National Microfinance Bank* (n 81).

¹²⁴ Ibid, s 72(3)(a) - (c).

¹²⁵ Ibid, s 72(3)(d), (e)(i) & (ii).

¹²⁶ Ibid, s 72(3)(c) & (d).

¹²⁷ Ibid, s 72(4).

¹²⁸ Ibid, s 72(5)(a) - (c).

4.6 Challenges for trade unions to realise free collective bargaining in Tanzania

The establishment and effective functioning of trade unions in Tanzania face multiple legal and structural challenges that constrain their autonomy and bargaining power. ELRA provides the foundational legal framework for trade union recognition and collective bargaining. Section 67 of the Act gives employers the discretion to recognise trade unions as collective bargaining agents. This provision may, however, delay or restrict unions' capacity to engage in substantive negotiations.¹²⁹ While section 68(1) formally recognises trade unions as exclusive bargaining agents for their members, this legal acknowledgment does not automatically translate into substantive negotiating power, particularly within the public sector.¹³⁰

The Public Service (Negotiating Machinery) Act exemplifies such structural constraints. Section 23 explicitly empowers the President to issue binding awards on public-service labour disputes, which may override any agreements reached through negotiation.¹³¹ By positioning the state as the ultimate negotiator, this provision effectively subjects union-negotiated outcomes to executive control, thereby undermining the principle of equality that underpins collective bargaining. Empirical studies from the Tanzania Teachers' Union (TTU), demonstrate how this statutory design restricts unions' capacity to negotiate effectively, reflecting a broader pattern of government dominance over public-sector labour relations.¹³² Socio-economic realities further compound these limitations: surveys reveal widespread dissatisfaction among public-sector employees regarding union responsiveness and the outcomes of collective bargaining, highlighting the gap between formal rights and practical representation.¹³³

Beyond statutory constraints, section 45 of ELRA permits the formation of an unlimited number of trade unions, provided the statutory requirements are met.¹³⁴ While this legal flexibility allows for union pluralism, it has also led to fragmentation within the same sector, with multiple unions competing for recognition and membership. This proliferation can weaken collective strength, dilute negotiating power, and foster intra-sectoral competition that undermines workers' collective interests.

¹²⁹ Ibid, s 67.

¹³⁰ Ibid, s 68(1).

¹³¹ Public Service (Negotiating Machinery) Act, Cap 105 (Tanzania), s 23.

¹³² Salum H, 'Trade Union Autonomy and Public Sector Labour Relations: A Case Study of the Tanzania Teachers' Union' (Master's Thesis, University of Dar es Salaam 2018).

¹³³ Nchimbi R, 'Union Effectiveness and Public Sector Employee Perceptions in Tanzania: Evidence from Singida and Arusha', *African Journal of Labour Studies* (Vol. 12, 2016) 45–63.

¹³⁴ ELRA, s 45.

The rise of non-standard employment further challenges unionisation efforts. ELRA primarily protects workers engaged in standard employment contracts, typically full-time employees working under the direct supervision of a single employer.¹³⁵ However, outsourcing, labour broking, and informalisation, have increased the number of workers outside the conventional employment framework, complicating union representation and collective bargaining. These arrangements reduce unions' capacity to organise workers effectively and secure meaningful participation in labour negotiations.

At the international and regional levels, trade unions and the right to collective bargaining are enshrined as core principles of democratic industrial relations. ILO Conventions No. 87 and No. 98 guarantee freedom of association and the right to collective bargaining, while the SADC Charter of Fundamental Social Rights reinforces these rights as essential for social dialogue and the achievement of decent work.¹³⁶ These instruments provide normative guidance for member states, including Tanzania, to create an enabling environment for autonomous and effective trade unions. Within Tanzania, trade unions remain vital in articulating and advancing workers' collective interests. ELRA establishes the framework for the formation, registration, and operation of trade unions, including the right of workers to join unions of their choice, subject to registration requirements overseen by the Registrar of Trade Unions.¹³⁷ Nevertheless, employer interference, procedural delays, and restrictive interpretations of registration criteria have limited unions' capacity to organise and advocate effectively. Recognition of unions achieving majority representation grants them the mandate to negotiate collective agreements covering wages, benefits, and working conditions.¹³⁸ Yet, in practice, employers often withhold essential information under claims of commercial confidentiality, undermining genuine dialogue. Additionally, the revocation of recognition for unions that lose majority membership status imposes dual challenges: unions must maintain internal cohesion and sustained membership while navigating complex employer relations to retain bargaining authority.¹³⁹

Conclusively, executive powers under section 23, union fragmentation, the rise of non-standard employment, and socio-economic realities, systematically constrain trade union autonomy in Tanzania. Addressing these challenges requires legal and structural reforms that strengthen union capacity, balance power asymmetries, and foster genuine equality in public-sector labour relations, thereby

¹³⁵ Ibid.

¹³⁶ International Labour Organisation, *Freedom of Association and Protection of the Right to Organise Convention* No. 87 (1948); International Labour Organisation, *Right to Organise and Collective Bargaining Convention* No. 98 (1949); Southern African Development Community, *SADC Charter of Fundamental Social Rights* (2003).

¹³⁷ ELRA.

¹³⁸ Ibid.

¹³⁹ Ibid.

revitalising trade unionism as a cornerstone of democratic industrial governance.

4.7 Opportunities and prospects of trade unions and free collective bargaining in Tanzania

The existing labour law framework in Tanzania provides a viable basis for enhancing and expanding trade union autonomy and collective bargaining, contingent upon effective implementation and free of excessive employer interference. Modest legislative reforms aimed at elucidating and optimising current procedures, such as the criteria for union recognition, the extent of information disclosure, and safeguards against anti-union practices perpetrated by employers, would significantly enhance the operational independence of trade unions and reinforce their bargaining capacity.

Equally salient is the need to broaden the protective ambit of collective bargaining and trade union rights to encompass informal-sector workers, who constitute a significant segment of Tanzania's labour force. Acknowledging the collective rights of informal workers should constitute a central focus of national labour policy. By widening informal workers into trade unions and collective bargaining frameworks, these unions can substantially enhance their legitimacy, extend their influence, and ensure that the advantages of collective action reach traditionally marginalised factions of the workforce. Through this inclusive expansion, trade unions will be optimally positioned to holistically represent workers' interests, amplify their bargaining power, and articulate a unified voice in advocating for improved remuneration, superior working conditions, and enhanced occupational safety and health standards. The legal certification of trade unions, along with the acknowledgment of their collective bargaining rights, will not only elevate the living standards of workers but also cultivate more harmonious employer-employee relations. Trade unions can serve as vital intermediaries in labour dispute management, thereby mitigating the escalation of workplace conflicts and fostering industrial peace.

Furthermore, through proactive engagement in collective bargaining and the formulation of legislative reforms that promote equitable labour practices, trade unions play a central role in establishing a more just and stable labour market. This endeavour reinforces social justice, strengthens democratic engagement within the workplace, and promotes inclusive economic development. Consequently, the effective realisation of trade union autonomy and collective bargaining in Tanzania, require more than supportive legislation; they demand efficient enforcement, the elimination of structural obstacles to union operations, and a political commitment to extend these protections to all workers, including those in the informal economy. This holistic strategy seeks to empower trade unions as key actors in social dialogue and industrial democracy, ultimately enhancing workers' rights and national development.

5 Conclusion

This article analyses the recognition of trade unions in the context of collective bargaining, concluding that national, regional, and international legal frameworks strongly uphold the right to establish trade unions and engage in collective bargaining. This right is enshrined in ILO conventions and international instruments such as the ICCPR and ICESCR, and further strengthened regionally through the ACHPR and the SADC Charter of Fundamental Social Rights. Domestically, the ELRA specifies the procedures for trade union establishment, registration, and recognition, and outlines the collective bargaining process. Therefore, employers are generally required to recognise trade unions for their collective bargaining potential. Nevertheless, where recognition is denied without just cause or unreasonably delayed, unions may refer the matter to the CMA and, if no settlement is reached, to the Labour Court for decision.

The article finds that; trade union's recognition depends on its demonstration of majority membership within the bargaining unit. If that is achieved and eventually a trade union is recognised, it acquires the right to negotiate employment standards with employers, advancing social justice, workplace harmony, and sustainable economic development, all aimed at enhancing standards of employment in the workplace. Section 67 of the ELRA requires majority membership for trade union recognition, and such recognition may be withdrawn if the union fails to maintain a majority membership. Agreements reached by recognised trade unions apply to all workers in the bargaining unit, irrespective of union membership. Recognised unions also retain the right to negotiate agency shop agreements, therefore, ensuring that non-members benefiting from union negotiations contribute to agency fees.

Despite this strong legal framework, substantial barriers continue to impede the full exercise of collective bargaining rights in practice. These include employer resistance, procedural delays, fragmented union representation, and the exclusion of informal sector workers. Additional challenges include restrictive interpretations of registration criteria, limited access to information necessary for bargaining, and structural disadvantages for smaller or newer unions. Nevertheless, with strategic legal reforms, explicit inclusion of informal workers in legal protections, and determined political will for effective enforcement, Tanzania can reinforce trade union autonomy and strengthen their role in meaningful collective bargaining.

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