

ISSN 0012-8678

EASTERN AFRICA LAW REVIEW

ISSUE NO. 2	VOLUME 51	DECEMBER	2024
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A JOURNAL OF LAW AND DEVELOPMENT

Published by University of Dar es Salaam School of Law
This issue was published in March 2026

EASTERN AFRICA LAW REVIEW

A Journal of Law and Development

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The Editor-in-Chief,
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Dar es Salaam,
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Price

Price per issue exclusive of postage is TShs. 20,000 (within Tanzania)
USD 20 (outside Tanzania)

Frequency of Publication

The publication is biannual: It is published in June and December.

Table of Contents

Navigating Global Fragility: The ICC as a Pillar of International Criminal Justice <i>Deo John Nangela</i>	1
Unlocking Justice: A Comparative Analysis of Mandatory Security for Stay Of Execution in the Apex Courts of Tanzania and Kenya <i>Noel Edward Tagagas Nkombe</i>	38
Remote Work In Post Covid-19 Tanzania: Relevance and Legal Regulation Challenges And Prospects <i>Daudi Francis Momburi</i>	67
The Lake Nyasa Border Dispute Between Tanzania and Malawi: A Need for Legal Solution <i>Anthony B. Mzurikwao and Kephas P. Ugula</i>	100
Reminiscence of a Law Academic in the Administration of the University of Dar es Salaam <i>Gamaliel Mgongo Fimbo</i>	139

REMOTE WORK IN POST COVID-19 TANZANIA: RELEVANCE AND LEGAL REGULATION CHALLENGES AND PROSPECTS

*Daudi Francis Momburi**

Abstract

The outbreak of COVID-19 has taught the world that employers do not have to physically assemble multitude of employees in their default place of work to have their work done. The imposed physical distancing and lockdown rules during the pandemic left employers with no choices other than adopting remote work option. As such, remote work proved to be an effective and reliable labour market solution during the pandemic.

The adoption of the remote work as successful labour market option during and after pandemic triggered rethinking of the relevance of and requirement for the work to be done at the employer's worksite. Accordingly, it accelerated adoption of remote work option without adequate legal backing, leaving employers and employees in regulatory grey area. Therefore, this paper seeks to uncover whether remote work is legally covered and adequately regulated in Tanzania.

Key word: *Regulation of Remote Work in Tanzania*

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1. INTRODUCTION

One of the notable labour market responses to COVID-19 pandemic was an increase in number of employees working in places other than their employers' default place of work.¹ Conventionally, an employee is required to be at a location where the work would typically be expected to be done, and such place is what is commonly referred to as employer's default place of work.² Therefore, remote work literally connotes the flexible condition of employment that allows employee to work at places other than their employers' default place of work. Further, remote work option is not meant to cover all existing jobs.³ So far as it is feasible, it can only be applied to jobs that employees' presence at the employer's workplace is not material.

Remote work often viewed as working at home or home-based work and sometimes telework and in many cases these terms are used interchangeably. However, remote work is when work is fully or partly done in an alternative worksite other than the employer's default place of work. It therefore, provides flexibility of choosing worksite. Work can be done either in the employees' residence or in any other places other than the employer's worksite.

On the other hand, working at home is merely a process of implementation of the remote work and home-based work. On

¹ International Labour Organization, "COVID-19 Guidance for Labour Statistical Data Collection, 2020", Geneva: ILO, 2020, at p 3, available at <<https://researchrespository.ilo.org/>>, (accessed 24 February 2025).

² Ibid.

³ Marcus, J. S., "COVID-19 and the Shift to Remote Work" *Bruegel's Weekly Newsletter*, (Brussels) 16 June 2022, available at <<https://www.bruegel.org/policy-brief/covid-19-and-shift-remote-work/>> (accessed on 5 March, 2025).

the contrary, home-based work is essentially a flexible form of employment as remote work, but employer's work must be carried out at the worker's place of residence. Moreover, telework is, in essence, a subset of remote work and refers specifically to that form of remote work in which the employee performs the employer's duties using personal electronic devices such as computer, tablet or telephone.⁴

Remote work is a new labour market option and therefore it is expected to offer employees better terms and conditions of employment than those offered by conventional employment set-up. Although terms and conditions of remote work are often considered to be relaxed and fulfilled, they tend to expose employees to little or no legal protection in the absence of strong regulatory framework. The unforeseen and unconventional change of requirement to work at employer's worksite seems to present new types of opportunities and challenges. For instance, remote work is considered to enhance access to labour market digitally, while at the same time it is said to deny employment opportunities to those who cannot access labour market digitally.⁵

It is important to appreciate that remote work has proven to be an effective labour market solution during the COVID-19 pandemic.⁶ It is alleged that it was a responsive tool that helped employers in navigating through the crisis while complying with

⁴ International Labour Organization, "Telework: Toward Safe, Healthy and Declared Work in Ukraine", Kyiv, 2020, at p 8, available at <<https://researchrespository.ilo.org/>>, (accessed 30 March 2025).

⁵ Ibid.

⁶ Id, at p.9.

the imposed physical distancing and lockdown rules.⁷ Compliance with the conventional terms and conditions of employment during the pandemic was claimed to be impractical and impossible. As such, it was reported that there was a downward spiral in compliance with the employment and labour conditions worldwide.⁸ In the United States of America (USA), for instance, the imposed COVID-19 physical distancing rules and lockdowns forced industries to shut down, hence disrupted lives of millions of American workers.⁹ As such, job security during this period was uncertain and so did the fundamental labour rights and the workplace safety.¹⁰

It is Interesting to note that, the idea of remote work was not very much appealing to the US employers prior to the COVID-19 pandemic. Work was thus defined by long hours, rigid schedule and uninterrupted performance of employees at a centralized workplace.¹¹ It was naturally conceived and perceived that work was meant to be done at a specific time and place.¹² This conventional work set-up, was baptized by the US's renowned Professor. Michelle A. Travis as a “full- time face-time norm”, hence were widely applied by the USA judges to protect

⁷ Ibid.

⁸ International Labour Organizational, “The Benefits of International Labour Standards” Geneva: ILO, at p; 1, available at http://www.ilo.org/international_labour_standards/benefits (accessed 15 July, 2024).

⁹ Raphael, A., “Arbitrating “Just Cause” for Employee Discipline and Discharge in the Era of Covid 19”, 34(4) *Georgetown Journal of Legal Ethics*, 2021, p. 1237, at p. 1237.

¹⁰ Ibid.

¹¹ Travis, M. A., “A Post Pandemic Ant discriminatory Approach to Workplace Flexibility”, 64 *Washington University Journal of Law and Policy*, 2021, p. 203, at pp. 205-208.

¹² Ibid.

employers.¹³ It was thus perceived that, an employee who failed to meet the “full-time face time norm” was disqualified from legal protection, Therefore, employers were refusing any form of flexibility in workplace choices, including remote work.

This judicial position is also found in the case of *Vande Zande v Wisconsin Department Administration*.¹⁴ Under this case, a circuit judge denied an employee request to telecommute to accommodate her partial paralysis and pressure ulcer. The courts have persistently treated full-time presence of employees at the employer’s worksite as itself an essential job condition. Equally, they continued to presume that a team work cannot be attained at home. The “full- time face-time norm” model received a greater acceptance and legal protection than divergent work arrangements. In most jurisdictions, the conventional employment relationship was largely defined to encompass a stable, open-ended and direct arrangement between a dependent, full-time employee and his or her unitary employer.¹⁵ It is important to appreciate that, the requirement that a work must be performed at the employer’s default place of work is a product of Fordist Model. It is a manufacturing system developed by Henry Ford in the 20th Century that organizes mass production of standardize goods on moving in assembling lines using dedicated machinery and semi-skilled labour¹⁶

¹³ Ibid.

¹⁴ 44 F 3d 538(7th Cr.1995).

¹⁵ Bario, A. and Schoukens, P., “The Changing Concept of Work: When Does Typical Work Becomes Atypical?” 8(4) *European Labour Law Journal*, 2017, p. 306, at pp. 307-309.

¹⁶ Encyclopedia Britannica, “Fordism: Economic History”, available at <<https://www.britannica.com/money/fordism>> (accessed 25 February 2025).

However, the emergence of flexible forms of employment including digital labour market platforms and remote work, significantly triggered a rethinking of the requirement that work must be done at the employer's worksite.¹⁷ These flexible forms of employment have made it possible for potential employees from all over the world to access employment opportunities digitally and carry out employer's duties outside the employer's worksite. Equally, they have made it possible for employers to hire workers for specific tasks and pay them when such tasks meet their desired qualities.¹⁸ However, these flexible forms of employment were largely not legally covered under the national laws, and their operations were not legally regulated.

Notwithstanding the above-mentioned legal gap, the outbreak of the COVID-19 pandemic amplified the use of this flexible form of employment including remote work. It is claimed further that the effective use of the remote work form during the pandemic has had an effect of revolutionizing the use of labour market option without seeking and obtaining adequate legal coverage and protection.¹⁹ It is during this period that more than 57% of the USA employers offered their employees flexible terms of employment options, including remote work.²⁰ Further, it is estimated that more than 23 Million people have transitioned to

¹⁷ International Labour Organization, "Crowdwork for Young People: Risks and Opportunities", Geneva: ILO, 2022, at p 5, Available at <https://webapps.ilo.org/static/english/intserv/working-papers/wp050/index.html> (accessed 25 February 2025).

¹⁸ Ibid.

¹⁹ Travis, M. A., "A Post Pandemic Ant discriminatory Approach to Workplace Flexibility", above note 10, at p. 217.

²⁰ Ibid.

remote work in America and Caribbean.²¹ Currently, it is only the continent of Europe that has managed to breakdown remote work options into: permanent work from home; alternate work from home, telework in co-working spaces; and mobile telework.²²

Unfortunately, it is not documented whether or not the Tanzania labour market was receptive and accommodative to flexible forms of employment and remote work prior to the COVID-19 pandemic. It is only during the pandemic when the government of Tanzania approached the pandemic unconventionally. Although there was no total lockdown or physical distancing rules imposed during the outbreak, yet there was partial interdiction of all public gathering (except religious) and closure of all schools, colleges and universities.²³ Again, it cannot be established to what extent the Tanzania labour market adopted remote work option during the pandemic.

However, during the partial interdiction, there is evidence of large number of institutions including public institutions, that directed employees to work remotely. Nevertheless, partial

²¹ ILO, “At Least 23 Million People Have Transitioned to Teleworking in Latin America and Caribbean” Barbados: ILO, 2021 available at <<https://easterncaribbean.un.org/en/136012-ilo-least-23-million-people-have-transitioned-teleworking-latin-america-and-caribbean/>> (accessed 25 February 2025).

²² Stavi, O., “Peculiarities of Legal Regulation of Remote Work in Ukraine”, 12 *Wrocławsko-Lwowskie Zeszyty Prawnicze Tom*, 2021, p. 9, at pp. 9-12.

²³ WIEGO, “COVID-19 Crisis and Informal Economy in Dar es Salaam, Tanzania: Lasting Impact and an Agenda for Recovery” Dar es Salaam: WIEGO, 2022., at p. 6, available at <https://www.wiego.org/wp-content/uploads/2022/03/R2Dar_es_Salaam_Report.pdf/> (accessed 7 March 2025).

interdiction which was imposed in March 2020 did not last long. In a strange turn of events, in June 2020, all restrictions on gatherings were lifted and Tanzania was declared COVID-19 free nation.²⁴ Therefore, this paper seeks to uncover whether or not remote work is expressly covered by domestic laws and adequately regulated.

This paper adopts doctrinal research methodology. The first part involves critical examination of relevant international labour standards, which include, but not limited to. ILO Conventions, Protocols, Recommendations, Declarations and Guidelines concerning flexible forms of employment. The second part involves perusal of scholarly publications and other literature related to flexible forms of employment with special attention to remote work option. Finally, the article examines the Tanzania legal framework with the view of establishing whether or not remote work is expressly covered and adequately regulated under the national law.

2. RELEVANCE OF REMOTE WORK

As stated earlier, the requirement that employees must work at the employer's worksite gradually begins to lose its relevance with the emergence of flexible forms of employment such as digital labour platforms and remote work. However, it is until the outbreak of COVID -19 pandemic when the preference to these flexible forms of employment including remote work was amplified. The idea that employees must be confined to the employer's worksite is no longer considered a basic condition of employment. Lockdown and physical distancing rules imposed

²⁴ Ibid

during the pandemic have helped to redefine the earlier perceived meaning of employer's worksite to include even employees' place of residence or any other places where employer's work can be done. Accordingly, if employers can meet their objectives without confining employees at their worksite, then remote work remains to be a useful labour market option.

Remote work enables employees to perform their duties without having to commute for longer hours to and from the employer's worksite.²⁵ This help employees save time, but also money that may be used to improve the quality of their lives. Apart from that, remote work presents an opportunity to potential and competent employees, who for some reasons, cannot attend the employer's worksite. For instance, remote work is better for persons with physical impairment or those tied up with family responsibilities. Therefore, remote work offers an opportunity for employers to access these kinds of skilled and scarce human resources, which the conventional set-up would have not made it possible.²⁶

Furthermore, remote work reduces or eliminates the need for direct, on-site supervision, thereby lowering associated supervisory and monitoring cost for employers. As such, employers are no longer required to hire managers and supervisors for the purpose of routinely overseeing the work processes. In that regard, the employers simply rely on timely

²⁵ International Labour Organization, "Crowdwork for Young People: Risks and Opportunities" above note 16, at pp 13-16.

²⁶ Ibid

delivery of quality product or service as mode of appraising employees' productivity with little or no supervision".²⁷

Seemingly, remote work bring more added advantages and values to employees lives than conventional work set-up.²⁸ Undoubtedly, remote work is considered to have been responsible for improving employees work-life balance, increase their leisure time and allow employees ample time to spend with their families and loved one's. Further, it nurtures and promotes capacity of employees to be independent and autonomous in discharging employer's duties. Freedom and power to discharge employer's duties unchecked and uninterrupted, normally relieve employees from work-related stress and creates a relaxed working environment.²⁹

Unchecked and uninterrupted employee may be more productive than the supervised employee. Normally, the concept of autonomous employees aligns with the modern organisation psychology and management scholarship that emphasise autonomy, trust and self-management as drivers of performance.³⁰ Moreover, freedom and power to discharge employers' duties independently reduce workplace negative energy and free employee from any form of mental or physical

²⁷ Ibid.

²⁸ Varonstova, J., "Legal Aspects of Remote Work in 2022: Why Remote Work Shall be A Right Instead of Privilege". LL.M Dissertation, Tallin University of Technology School of Business and Governance, 2022, at pp. 10-13.

²⁹ Ibid.

³⁰ Zak, P.J. and Johannsen, R., "Autonomy Raises Productivity: An Experiment Measuring Neurophysiology" 2020, available at <<https://pcm.ncbi.nlm.nih.gov/article/PCM/>> (accessed 1 January 2026).

abuses as well as making employees free from workplace discriminations.³¹

In light of what has been expounded above, remote work continued to be relevant and preferable option even after the COVID-19 pandemic. Experience gathered from the United States of America (USA) reveals that more than 57% of USA employers offered their employees flextime or telecommuting options.³² Post-pandemic statistics reveal that the average USA workers spend three to eight days per month working from home.³³ It is further revealed that, about half of the USA workers are confirming that they have at one point worked remotely.³⁴ It is further revealed that, the rise of remote work has made business roles more flexible and, therefore, substantially more attractive to workers than ever before, attracting large numbers of applications per role.³⁵ Equally, Remote work has also given companies access to a wide talent pool across the US and beyond its borders.³⁶

³¹ Ibid.

³² Travis, M. A “A Post Pandemic Ant discriminatory Approach to Workplace Flexibility”, above note 10, at p 17.

³³ GALLUP, “ Remote Work Stable at Higher Rate Post-Pandemic” Washington: 2023. GALLUP, at p. 1, available at <<https://news.gallup.com/poll/510785/remote-work-stable-higher-rate-post-pandemic.aspx?>> (accessed 5 March, 2025)

³⁴ Ibid.

³⁵ Smart, T., “Remote Work has Radically Changed the Economy-and Its Here to Stay”, *US News and World Report* (Washington D.C), 25 June2024, available at <<https://www.usnews.com/news/economy/articles/2024-01-25/remote-work-has-radically-changed-the-economy-and-its-here-to-stay/>> (accessed 5 March 2025).

³⁶ Ibid.

Furthermore, it is evident that, in some cases, employees have refused or become reluctant to go back to employer's worksite or to work at least full-time.³⁷ It was further reported that about 64% of USA employees considered quitting their work if asked to return to the office full-time.³⁸ It is important to appreciate that USA is the largest economy in the world and is considered to be the global leader in labour market innovation and transformation.³⁹ The USA is considered the leading in adoption of new technologies and flexible work arrangements.⁴⁰ Similarly, this situation is also mirrored in India, where remote work emerged as significant labour market trend. Unlike in the United States, the functioning of remote work in India is faced with numerous legal challenges in areas such as employment contract, workplace regulation and protection of employee's rights.⁴¹ Therefore, in light of statistical data and reported trend cited above, it is evident that preference for remote work constitutes a global phenomenon, which Tanzania labour market cannot afford to ignore. Accordingly, it must progressively adopt and regulate.

³⁷ BBC, "Employees Rally Against Office Working Plan" London: BBC, 2021, at p. 1, available at <<https://www.bbc.com/news/technology-57385999>> (accessed 20 March 2025).

³⁸ Smith, M., "64% of Worker Would Consider Quitting if Asked to Return to the Office Full- Time" *CNBC*, (New York), 28 April 2022, available at <<https://www.cnn.com/2022/04/28/64percent-of-workers-would-consider-quitting-if-asked-to-return-to-office-full-time.html>>, (accessed 30 April 2025).

³⁹ Autor, D.H., Katz, L. F. and Kearney, M.S., "The Polarization of the US Labour Market: Implications for Employment and Earnings" 96(2) *American Economic Review*, p.189, at p.190

⁴⁰ *Ibid.*

⁴¹ Hirulkar, A. S., "Remote Work and Employment Contract: Legal Issues", 9(5) *International Journal of Research Publication and Reviews*, 2024, p. 1487, at p. 1487.

3. APPRAISAL OF THE TANZANIA LEGAL FRAMEWORK

The analysis of Tanzania legal framework is centred on two main sectors of employment: public service and private sector. Public service is a sector that mainly cover employees in the government and its institutions. It is primarily governed and regulated by the Public Service Act, Cap 298 (PSA) and its Regulations. On the other hand, the private sector is one which comprises of employees who are employed in the private establishments and it is governed primarily by the provisions of the Employment and Labour Relations Act, Cap 366 (ELRA) and Labour Institutions Act, Cap 300 (LI). Therefore, this part appraises these two regimes to uncover whether or not they expressly cover and adequately regulate remote work.

3.1 Public Service Regime

The Public Service in Tanzania is organised in various independent and autonomous services and schemes, which includes: the civil service; the teachers service; the local government service; the health service; the executive agencies; public institutions and the operational service.⁴² It is administered by the Chief Secretary (CS) who is the Chief Executive Officer (CEO) of the service.⁴³ The CS is thus the chief administrator and vested with powers to order terms and conditions of the public service.⁴⁴ In light of what is stated above, the Chief Secretary is the person responsible to determine whether or not public servants may carry their duties in their offices or remotely.

⁴² Ibid.

⁴³ Section 8 of the Public Service Act, Cap 298

⁴⁴ Ibid.

Further, the CS is also responsible authority that determine terms and conditions of Public Service. In so doing, the CS is thus vested with powers to issue circulars and directives regularly for the proper management and functioning of the public services.⁴⁵ For instance, following the public demonstration and civil unrest on 25 October, 2025, which was largely linked with the general elections, the CS directed all public servants in Tanzania to work remotely.⁴⁶ However, it is strange to note that, during COVID-19 pandemic the CS did not exercise such powers notwithstanding the evident risks that the virus posed to the public servants.

Apart from that, the existing legal framework governing the public service does not expressly cover remote work. This new labour market option is more conceived and perceived in how the work is executed (terms and conditions of employment) than stipulated in the text of the PSA and its Regulations. Therefore, it may be reasonable to consider that remote work is accommodated in the public service through the employer's directives (directives of the CS). Further, it is important to appreciate that, the public service is mainly regulated by virtue of the provisions of the Standing Orders, which is a subsidiary legislation made under Section 35A of the PSA.⁴⁷ This subsidiary legislation contain detailed minimum labour standards that governs the public service as well as those covering fundamental labour rights of public servants.

⁴⁵ Section 8(2)(i).

⁴⁶ Editor, "Tanzania Orders Public Servants to Work from Home over Security Concerns", *Xinhua*. (Zhongnamhai), 30 October 2025, available at <<https://english.news.cn/africa/20251030/bba5423949514380a2ff18d0faf988e/c.html?>>, (accessed 9 January 2026).

⁴⁷ Standing Orders for the Public Service, 2019.

A thorough perusal of the Standing Orders reveals that neither remote work nor other flexible forms of employment were meant to be regulated. As such, Standing Orders lack standard procedures for governing how public duties can be carried out remotely. Similarly, there are no guidelines for regulating how the work process can be supervised and monitored remotely. It is important to appreciate that, even if the remote work may be preferred in the public service, yet the employer and public servants remain in legal and regulatory grey area. Therefore, it is important to consider a legal reform that will legally cover and adequately regulate remote work.

3.2 Private Sector Regime

The ELRA is considered to be the primary legislation governing private sector employment in Tanzania. Its key objectives, among others, include making provisions for the definition of core labour rights, establishing minimum employment standards, conferring employees collective bargaining powers on employees, and setting out framework for resolution of labour disputes. On the other hand, the LIA was enacted to establish key labour institutions, define their powers, duties and functions as well as provide for employees to access those institutions in the enforcement and protection of their rights under the labour legal framework.

However, in a thorough perusal of the ELRA and LIA there are no provisions that expressly cover and adequately regulate remote work. Though, on the basis of the fundamental objectives of the ELRA, it may be conceivable and feasible that, the texts of these legislations are, by necessary implication, positioned to

accommodate remote work. It is important to consider that, the relationship between employers and employees is contractual, hence remote work arrangement can easily be incorporated within the terms and conditions of the contract.

In light of the above, the ELRA and LIA are simply required to: firstly, cover remote work in the text of the law; and secondly, to provide minimum standards for its regulation. The coverage which is contemplated is that which constitute remote work in the Tanzania's context. Remote work must be customized to fit Tanzania infrastructural realities and social-cultural context in order to be inclusive, effective and sustainable. Seemingly, Tanzania legal framework must foresee critical issues associated with the remote work. The law must foresee establishing standard procedure for implementing and monitoring work process. Further, remote work facilitates ease access of employment and allow employee to work remotely even far beyond national borders. Accordingly, the law must foresee establishing a regulator, who shall manage the functioning of remote work without compromising the national interests as well as facilitating protection of employment to local people and regulating local and cross border contractual relations.

Moreover, the law must consider on how organizational rights, collective bargaining and strikes and lockout can be exercised by employees working remotely. The concept of digital trade unions is not foreseen in the existing legal framework. So far as it is feasible, incorporating digital trade union may seems not to be big challenge, but accessing the digital trade unions and regulating the functioning of digital trade unions may be critical. Despite

the above identified legal gaps, the Minister is empowered to make Regulations by virtual of Section 98 of the ELARA. If those powers had been exercised in relation to the functioning of the remote, Tanzania would have been at forefront of African labour market in the adoption and regulation of remote work.

3.3 Status and relevance of international labour standards

The International Labour Organisation (ILO) has been at the forefront of protecting employees' rights through a range of policy and legislative interventions. These interventions include, but not limited to, adoption of various international conventions, protocols and recommendations as well as issuance of various guidelines and standards aimed at ensuring proper functioning of labour markets and protection of fundamental labour rights. These said interventions are largely seen and reflected in the legal frameworks of its member states. It is important to appreciate that, as earliest as the year 1996, the ILO envisages protection of employees under the remote work set-up by adopting the Home Work Convention, 1996.⁴⁸ This convention, among other things, serves as supplement to the general standards existed earlier and was meant to stipulate provisions that will cover working conditions that are to be applied to homeworkers. In the same veins, Convention, 1996 was later followed by the issuance of the Homework Recommendations, 1996 and later the Centenary Declaration for the Future of Work in 2019.

⁴⁸ Convention No. 177 of 1996.

Unfortunately, Tanzania has not signed and ratified the Homework Convention, 1996.⁴⁹ It is important to understand that Homework Convention has been signed and ratified by a small number of countries around 13.⁵⁰ It is worth noting that Tanzania has been a member of ILO since 1962 and has ratified only 37 of ILO conventions and protocols on various employment and labour matters.⁵¹ Notwithstanding the underlying legal technicalities and implications of non-ratification, the Home Work Convention, 1996 still requires ILO's member states to incorporate and implement the adopted provisions by reviewing their domestic policies and laws periodically, in consultation with the most representative organisations.⁵²

Further, the convention envisages consultation with organisation of employers and workers, and specifically, the organizations of homeworkers' employers and organisations of homeworkers if they exists.⁵³ The purpose of consultation is to shape the legal framework, so far as practicable, to achieve equality of treatment between homeworkers and other wage earners.⁵⁴ For the purpose

⁴⁹ ILO, "Countries that have not Ratified Home Work Convention" Geneva: ILO, 1996, available at <https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312322:NO/> (accessed 6 January 2026)

⁵⁰ Rivelo, L., "Advocating for Ratification of ILO C.177" available at <<https://www.homenetinternational.org/advocating-for-the-ratification-of-ilo-c177>> (accessed 6 January 2026).

⁵¹ ILO, "Country Portal Tanzania (United Republic)", Geneva: ILO, 2026, available at <<https://www.ilo.org/regions-and-countries/africa/tanzania-united-republic/>> (accessed 6 January 2026).

⁵² Article 3 of the Convention No 177 of 1996.

⁵³ Ibid.

⁵⁴ Article 4 of the Convention No 177 of 1996.

of promoting equality of treatment, Article 4 (2) set parameters for consideration, which include:

- i) Right to establish or join organisations of their own choosing and to participate in the activities of such organisations;
- ii) Protection against discrimination in employment and occupation;
- iii) Protection in the field of occupational safety and health;
- iv) Remuneration;
- v) Statutory social security protection;
- vi) Access to training;
- vii) Minimum age for admission to employment or work; and
- viii) Maternity protection.

Naturally, ILO contemplates that domestic legal frameworks should be responsive and positive in the furtherance of the rights of homeworkers through laws, regulations, collective agreements, arbitral awards or in any other appropriate manner, which is consistent with the national practice.⁵⁵ Together with these, the convention envision application of domestic laws and regulations governing safety and health at work, including prevention of uses of certain substances at the alternative working place.⁵⁶ Equally, it encourages inspections of these premises to be conducted in consistent with the domestic laws and provision of appropriate remedies for employees and imposition of penalty in case of violation where the need arises.⁵⁷

⁵⁵ Article 5 of the Convention No. 177 of 1996

⁵⁶ Article 7

⁵⁷ Ibid.

In the same veins, the Home Work Recommendation No 184 was adopted to supplement provisions of Convention No 177. As such, it has been made clear that persons with employee status do not become homeworkers simply by occasionally performing their work as employees at home rather than at their usual workplaces.⁵⁸ This implies that working from home must be part of employees' terms and conditions of employment. Further, the Recommendations envisaged the establishment of a designated national authority which will be responsible in overseeing the functioning of remote work. This national authority, shall be responsible for formulation and implementation of the national policy.⁵⁹

The said contemplated national authority is set to register employers of homeworkers and intermediaries, if any; collect detailed information of homeworkers; hearing opinions of both employers and homeworkers on implementation of the national policy. Additionally, the Recommendations imposes obligation to the homemaker's employer to notify the authority when they give home work for the first time.⁶⁰ Furthermore, the employer is further required to keep the register of homeworkers, which must be classified according to their sex and keep the record of assigned work, the time allocated, remuneration, cost incurred by the homemaker, records of reimbursement, statutory deduction made and the gross and net pay together with the date which it was paid.⁶¹

⁵⁸ Paragraph 1(b) of the Home Work Recommendation, 1996 No. 184

⁵⁹ Paragraph 3 of the Home Work Recommendation, 1996 No. 184

⁶⁰ Paragraph 7 of the Home Work Recommendation, 1996 No. 184.

⁶¹ *Ibid.*

Seemingly, provisions of the recommendations are designed, when applied, to get track of information on knowing who are the employers of homeworkers and who are the homeworkers themselves. Equally, the provisions aim at getting hold of information about work that the homeworkers were assigned. Further, knowing how the work is distributed on gender basis and how much the employees are paid. Moreover, to establish whether or not the cost incurred in the course of the process of employment were reimbursed. If deductions were to be made, whether or not such deductions justified. Essentially, the Recommendations are geared to establish what was the gross amount paid and net received and when was that payment made.

The fundamental aspect of any employment is the final entitlement and whether or not such entitlement was timely paid. In addition to these fundamental aspects, Recommendations amplify employees' rights to organise and bargain collectively.⁶² Further, it puts emphasis on occupation health and safety in paragraphs 19- 22 and employees hours of work, rest periods and leave in paragraphs 23-24.⁶³ It is important to appreciate that Recommendations also recognise the employees' rights in social security and maternity protection in Part VIII and IX and the relevancy of protection against unfair termination and labour dispute resolution in Part X and XI.

Additionally, Recommendations have imposed obligation to employer to promote and support programmes, which essentially enable homeworkers to join and participate in organisations of

⁶² Paragraphs 11 and 12 Home Work Recommendation, 1996 No. 184.

⁶³ Home Work Recommendation, 1996 No. 184.

their own choices including cooperatives. Further, it requires employers to improve homeworkers' skills, including non-traditional skills, together with the leadership and negotiating skills. The contemplated capacity building and exposure to on-job programmes, are aimed at improving productivity as well as empowering employees to be competitive.

International labour standards foresee important aspects such as access to credit, housing and child care support as part of employer's obligations. These aspects are not considered under the conventional employment set-up. Therefore, international labour standards governing flexible forms of employment have not only provided adequate protection, but also foresee improving employees' quality of life. In the same veins, the Centenary Declaration for the Future of Work, 2019 has, among others, pushed for transformative change in the world of work by being driven by technological innovations, demographic shifts and being inspired by environmental and climate change, and globalisation.⁶⁴

Transformative changes are aimed to curing if not to mitigating the persistent inequalities, poverty, and injustices, conflict, disasters and other humanitarian emergencies in many parts of the world⁶⁵. These aforementioned vices have largely constituted a threat to advanced standards and efforts in securing shared prosperity and decent work for all, which in turn have profound impacts on the nature and future of work. Therefore, the

⁶⁴ Vicente, S., "The ILO and Future of Work: The Politics of Global Labour Policy", 22(2), *Global Social Policy*, 2021, at p. 1-18, pp. 7-9.

⁶⁵ Ibid.

declaration, re-ignites the determination to act with urgency to seize the opportunities and address the challenges to shape a fair, inclusive and secure future of work with full, productive and freely chosen employment and decent work for all.⁶⁶ Further, it re-instills value and dignity of people in it so as to achieve social justice, democracy and the promotion of universal and lasting peace. Ultimately, it may put an end to poverty and leaves no one behind.⁶⁷

In the final analysis, it important to consider that Tanzania has not ratified and domesticated Convention No 177. Equally, fundamental principles enshrined in the Home Work Recommendation No 184 and Centenary Declaration for the Future of Work, 2019 are not reflected in Tanzania's legal framework. Under these circumstances, the international labour standards governing flexible forms of employment and remote work are simply persuasive without legal force. It is therefore, critical to consider legal reforms to align the Tanzania's legal framework with the international standards.

4. IDENTIFIED CHALLENGES

While digesting the Tanzania's legal framework, a number of challenges have been uncovered ranging from legal, infrastructural, cultural and social. In order to put this paper in common legal perspectives, challenges have been strategically categorised into two sections: legal and practical. Undoubtedly, some of the challenges may seems to be legal, and at the same

⁶⁶ Ibid.

⁶⁷ Paragraph C of the Home Work Recommendation, 1996 No. 184.

time, practical. Nevertheless, it is the nature of intervention required to overcome them that will eventually determine their classification. Further, it is important to appreciate that some of the identified challenges may not necessarily require a legal reform but rather a changing of perceptions and attitudes of both employees and employers so as to make remote work functional.

4.1 Legal challenges

The functioning of the remote work in Tanzania is not expressly backed by any specific law or provisions of the existing laws.⁶⁸ Indeed, the existing laws provide general provisions governing employment, which are essentially responsive and accommodative to remote work option. As earlier expounded, remote work has been instrumental in ensuring businesses stability and in maintaining employment during the outbreak of the COVID-19 pandemic. Notwithstanding the lack of literature and statistical information about the functioning of remote work during and after the pandemic, yet it is an undeniable fact remote work was chosen and used in Tanzania. In that regard, below is the discussion of common conceivable and perceivable legal challenges.

Firstly, there are no clear provisions of the law that define remote work generally or in the Tanzanian context. Defining what constitutes remote work in Tanzanian context will reduce ambiguities and differentiate remote work from other flexible forms of employment. Secondly, in as much as decision to work

⁶⁸ Singh, A. K., "Right of Workers in Era of Remote Work in India: Legal Challenges and Solution" 2(6) *International Journal for Multidisciplinary Research*, 2024, p. 1, at pp. 2-4.

remotely may be a part of the implementation of the terms and conditions of the contract of employment or coming from the employers' directives, there must be legal provisions that governs and provides minimum standards for its operation. Lack of minimum standards for operation poses a threat to the fundamental labour rights of employees under this new labour market option. It was revealed earlier; ILO has adopted specific convention and recommendations as well as made a declaration that define remote work and set minimum standards for its operation.

Thirdly, remote work is not legally regulated. As discussed earlier, international labour standards provide for basic principles that governs the functioning of these flexible forms of employment. Unfortunately, Tanzania has neither signed nor ratified these international labour standards. Despite the fact these international standards are useful and exhaustive, they are merely persuasive without force of law. Lack of local legal regulatory framework poses a number of labour market risks including, but not limited to, local employment opportunities falling in the hands of foreigners beyond Tanzanian borders. Local regulatory framework is essential to oversee and monitor the apportionment of employment opportunities that qualify for remote work, as well as to monitor and oversee employment opportunities that are to be offered locally and those beyond borders.

Fourthly, in essence, as discussed earlier, the international labour standards governing remote work contemplates the establishment of national authority. This authority is position to oversee the functioning of remote work for the purpose of serving not only

the employers' and employees' interests, but also that of the nation. Notwithstanding the relevance of the national authority, Tanzania's legal framework has neither designated this function to the existing authorities nor established a specific authority for those purposes. The establishment of a national authority is essential to closely regulate the functioning of remote work. It is part of the regulator's function to register and renew registration of remote work players after fulfilling conditions precedent and subsequent. Equally, the regulator is positioned to require periodic reporting of the implementation while conducting inspections, investigations and resolving labour market disputes in some cases. Therefore, the establishment of a national authority will not only ensure that national interests are served, but also becoming a reliable source of statistical data and information about the functioning of the remote work in Tanzania.

Fifthly, remote work is not considered as employee's right in most jurisdictions.⁶⁹ In essence, employers are not bound to consider remote work in the terms and conditions of the employment contract. Equally, no legal remedy is afforded to employee who has been denied or refused an opportunity to work remotely.⁷⁰ In some jurisdictions, remote work option is only available where and when an employee has special needs or reasons such as health conditions, disabilities and in cases of outbreaks of pandemics. Therefore, in most jurisdictions, remote work is made to be an option and not a right.⁷¹ Understanding the dynamics of

⁶⁹ Varonstova, J., "Legal Aspects of Remote Work in 2022: Why Remote Work Shall be A Right Instead of Privilege", above note 27, at p. 7.

⁷⁰ Ibid.

⁷¹ Ibid.

the global labour market trends, it is important to consider remote work option as a right in the text of law. As such, employers should be bound to consider remote work in their terms and conditions of contract. Further, text of laws should also be designed even to allow employees to reverse their earlier made decision to work remotely and attend the employer's default place of work, where need arises.

In the final analysis, as earlier stated, remote work option is not meant to cover all existing sorts of jobs.⁷² So far as it is feasible, it can be applied to jobs that employees' presence at the employer's workplace is not material. Remote work is thus not a one size that fits all.⁷³ In that context, what was implemented and experienced during the outbreak of COVID-19 pandemic would not be necessarily the case in the post pandemic. Therefore, it is important to carry out a study which will inform new preferences and set-up that may fit new realities. Furthermore, it is important to appreciate that, in some jurisdictions, there is an emerging preference to hybrid arrangements than sole remote work. Under the hybrid set-up, employees may spend part of the weekdays in the employer's worksite, and part at home.

Sixthly, conventional employment standards provide employees with their organisational rights including forming and joining trade unions. Tanzania's legal framework has no clear provisions in support of digital trade unions. As such, even the

⁷² Marcus, J. S., "COVID-19 and the Shift to Remote Work" *Bruegel's Weekly Newsletter*, (Brussels) 16 June 2022, available at <<https://www.bruegel.org/policy-brief/covid-19-and-shift-remote-work/>> (accessed on 5 March, 2025).

⁷³ *Ibid.*

existing trade unions are not organized to accommodate employees working remotely. Therefore, in absence of specific rules for governing the functioning of digital trade union and access to digital trade unions, employees of remote work will be left with little or no legal protection. It is important to appreciate that, these labour market flexibilities and options are likely to become a new norm.⁷⁴ Therefore, it is crucial to align the Tanzania legal framework with existing international standards as well as borrowing a leaf from Europe.

4.2 Practical challenges

As stated earlier, the functioning of remote work in Tanzania is either on the basis of employer's directives or dictated by the terms and conditions of contract of employment. In most cases, terms and conditions of the contract of employment are not shared publicly. Equally, what employers may direct may not be in the public domain. For that matter, it is unfeasible to obtain reliable and correct information about local practical experience in the implementation of the remote work option. Nevertheless, the implementation of remote work is not free from practical challenges. Therefore, this part mainly discusses shared experience gathered from other jurisdictions.

in most shared experiences, employees do not have a place in their homes or any other place of their choice that can be designated as worksite. Employees normally use any available space in their home to carry out employers' duty. One of the intriguing facts is that such selected work space may either be under furnished or not furnished at all. It is strange to note that,

⁷⁴ Ibid.

the alternative worksite is largely unsuitable for carrying out employer's functions. Borrowing a leaf from the European Union, the European Framework Agreement for instance, make it the responsibility of employer to ensure availability and functioning of work-related equipment and covering of related expenses, where and when work is implemented outside employer's premise.⁷⁵

Another critical practical challenge is time management. What has been experienced in the implementation of remote work is poor time management. It is revealed that poor time management has led to increased cases of employees working even in odd hours in order to meet their employers' deadlines.⁷⁶ This state of affairs, is attributed to either the flexibility of not adhering to uninterrupted paid time standard or lack of or inadequate supervision.⁷⁷ Unlike in the employer's worksite, under remote work, the employees are the ones determining the timing of the execution of the employer's tasks. It is therefore, crucial consideration that, without encroaching employees' privacy, employers may use permitted methods to monitor workflow remotely.

Further, it was observed that, in places where remote work is widely opted, employees work in isolation, hence are exposed to mental and psychological problems. It is important to reflect that working in solitude is not for everyone. It is also important to consider that employees should be required to get medical

⁷⁵ Varonstova, J., "Legal Aspects of Remote Work in 2022: Why Remote Work Shall be A Right Instead of Privilege", above note 27, at p.8.

⁷⁶ Ibid.

⁷⁷ Ibid.

clearance first and working in isolation should be for those who are medically qualified. Moreover, it is important to appreciate that working at the employer's worksite enhance teamwork, facilitates ease on-job consultations and enables sharing of experiences. Certainly, these are one of the things that employees under remote work will not benefit.

5. PROSPECTS AND RECOMMENDATIONS

It is an indisputable fact that remote work is a new labour market reality. It has proven to be an effective labour market option during the COVID-19 pandemic. It has continued and remained to be relevant and preferable option even after the pandemic. As exemplified earlier, remote work benefits tend to outweigh the associated challenges. For that matter, Tanzania should accommodate and incorporate remote work in its legal framework. The ILO has long realized the importance and relevance flexible forms of employment including remote work, hence made relevant policy and legislative interventions to enable its member states to reap the benefits of this new labour market option.

Therefore, in order to make effective functioning of remote work in Tanzania a reality, the government must first sign and ratify the Homework Convention, 1996 to form part of domestic legal framework. Additionally, it has to translate principles enshrined in the Homework Recommendations, 1996 and the Centenary Declaration for the Future of Work in 2019 in national policies and laws. Ratification and domestication of Convention No. 177 will be a motivation for reformation of the existing legal framework while the country strives to honour its international

obligations. The ILO Convention No. 177 provides useful and exhaustive rules for the protection of fundamental labour rights and regulation of these flexible forms of employment including remote work.

Reformation may either take the form of amending principal legislations or by making Regulations as so provided by Section 98 of the ELRA as well as Sections 35 and 35A of the PSA. Such contemplated amendments or issued Regulations must define and constitute remote work in Tanzanian context. It is important to customize the meaning and purpose of the remote work to fit the prevailing situations. Equally, they must contain provisions that facilitate smooth regulation of all new flexible forms of employment including remote work. Further, as it was contemplated in the international standards, a national authority must be established or in the alternative, the text of the reformed legal framework should vest powers upon the Labour Commissioner or any other senior officer in the Ministry responsible for labour matters to regulate the functioning of remote work.

Realising dynamics of the global labour market, remote work should be a right and not a privilege. Once it is an established right, an employee will be in a position to opt in and out of the remote work option. Further, the legal framework should consider facilitating the establishment of digital trade unions platform to enable employees of remote work to exercise their right to freedom of association. These platforms are essential to enable remote workers exercising their rights to collective bargaining, representation and protection, industrial action and

social and economic advancement digitally. Finally, the contemplated reforms in the Tanzania legal framework should as well foresee a hybrid arrangement, where an employee may opt part of his or her week days to be spent at the office and another part at home. Hybrid flexible form of employment is an emerging trend and is considered to be the most preferred in the developed world.

6. CONCLUSION

Weighing out the pros and cons of the remote work, it is an indisputable fact that remote work is crucial and inevitable in this digital age. The outbreak of COVID-19 pandemic has taught the world a valuable lesson that, what matters is not the physical presence of employees at the employer's worksite, but rather the desired quality output. Remote work is thus positioned to increase work efficiency and reducing employers' overheads. The future of work will enable employer to assign specific tasks to effective employees who will be remunerated upon delivery of results on satisfaction of the employer. This translates that, employers will not have to assemble a multitude of employees to get their job done. Equally, employers will be no longer required to possess or rent a default place of work to have their work done.

Furthermore, as discussed earlier, remote work helps employees attain work-life balance, which is crucial to their mental and physical health. Further, remote work remains to be responsible in transforming labour market to appreciate new work realities and it is equally responsible for boosting modern labour market

dynamics. Undoubtedly, remote work is here to stay, and so what is important, is to advocate for policy and legislative interventions to accommodate and regulate this new labour market reality. Tanzania should therefore, sign and ratify Convention No.177 and reform domestic legal framework to align with international standards as well as fully accommodate and regulate remote work option