



Kate Conradie

SNR: 2063835

ANR: 427395

Tilburg University

Masters in Labour Law and Employment Relations

Master's Thesis

***Platform work in Africa: job quality, resistance and
regulation***

Date: 24 June 2022

Supervisors:

Prof. Dr. Mijke Houwerzijl

Mr. Dr. S.J. (Bas) Rombouts

Table of Contents

Chapter 1	4
1.1. Problem description	4
1.2. Research goals and questions	5
1.3. Approach and methodology.....	6
1.4. Societal and scientific relevance.....	6
Chapter 2: The legal framework	7
2.1. Introduction.....	7
2.2. The characteristics and definition of platform work	7
2.3 The platform economy in Africa and legal framework.....	8
2.3.1 Labour laws	9
2.3.1. Other laws and regulations	10
2.4. Conclusion	11
Chapter 3: The job quality of platform workers	12
3.1. Introduction.....	12
3.2. A framework for assessing job quality of platform workers.....	12
3.2.1 The ILO standards.....	12
3.2.2. The Fairwork Foundation principles	13
3.3. Job quality of platform workers in Africa	14
3.3.1 Fair pay and non-discrimination:.....	14
3.3.2. Fair conditions and health and safety	16
3.3.3. Fair contracts and clear terms of engagement.....	17
3.3.4. Fair management and access to data.....	18
3.3.5 Fair representation and bargaining power.....	19
3.4 Informal work in Africa.....	20
3.5. Conclusion	21
Chapter 4- African platform workers opposition to platforms	22
4.1 Introduction.....	22
4.2 Changes to the legal framework	22
4.3 Litigation against Uber in Africa.....	23
4.3.1.1. Kenya.....	23
4.3.1.2 South Africa.....	25
4.3.1.3 Nigeria.....	26
4.3.2 Protests and collective action.....	28
4.4 Conclusion	31
Chapter 5: Options to improve or initiate the regulation of platform work in Africa	32
5.1 Introduction.....	32

5.2. <i>Is the regulation of platform work in Africa a possibility?</i>	32
5.3.1. Remedies through the court	34
5.3.2. Collective bargaining, social dialogue and unions.....	35
5.3.3. Market-based strategies and moral campaigning.....	37
5.3 Conclusion	38
Chapter 6 : Conclusion.....	39
Bibliography.....	41

Chapter 1

1.1. Problem description

The future of work in Africa lies in the gig economy and not, as expected, in the formal sector.¹ Africa needs more jobs to supply work to new entrants into the labour market and many Africans are increasingly finding work on digital platforms, such as Upwork, Fiverr and Uber.² It is, thus, important to consider the quality of platform work in Africa and what can be done to improve it.³ Some estimates predict that by 2025, a third of all labour transactions globally will be through a digital platform.⁴ In the developed world, gig work is viewed as inherently precarious and informal. This view is not shared by the Global South. In Africa, where unemployment is high and informal work the norm, gig work is viewed as a pathway to generate an income, gain access to international markets and provide work of a formal nature.⁵ Africa faces high unemployment, poverty, inequality, poor job quality and little to no social security. The gig economy may be one solution to the problem of job creation.

Several international platforms, including Uber, Fiverr and Upwork operate in Africa, while 80% of the platforms in Africa are local platforms.⁶ In seven African countries, which include South Africa, Kenya, Rwanda, Uganda, Tanzania, Ghana and Nigeria, there were an estimated 4.8 million workers who found work on a digital platform in 2019.⁷ There are an estimated 60 million gig workers in the Global South.⁸

One of the positive aspects of the gig economy is the lack of borders in the digital sphere which means workers in Africa can find and access work online in other countries.⁹ Thus, workers in Africa can now access a larger pool of work, increase their earning potential, work for clients in the developed world and earn money in a stronger currency. Besides this, according to the World Bank, platform work may provide a means out of the informal sector.¹⁰ Countries such as Nigeria have attempted to utilise the potential of gig work by setting up initiatives to inspire its citizens to find work through the gig economy. The Nigerian government set up an initiative in 2013 called, “Naijacloud - Microwork for Job Creation”, the aim of which was to reduce unemployment and

¹ Amolo Ng'weno and David Porteous, 'Let's Be Real: The Informal Sector and the Gig Economy Are the Future, and the Present, of Work in Africa' (2018) <<https://www.cgdev.org/publication/lets-be-real-informal-sector-and-gig-economy-are-future-and-present-work-africa>> accessed 6 October 2021.

² Ibid.

³ Ibid.

⁴ Mark Graham and others, 'The Fairwork Foundation: Strategies for Improving Platform Work in a Global Context' [2020] *Geoforum*, 101.

⁵ Kate Meagher, 'Rewiring the Social Contract- Digital Taxis and Economic Inclusion in Nigeria' (United Nations Research Institute for Social Development (UNRISD), Geneva, 2018), 3.

⁶ Herman Smit and et al, 'Africa's Digital Platforms and Financial Services: An Eight-Country Overview' (insight2impact 2019), 6.

⁷ Mohammed Amir Anwar and Mark Graham, 'Digital Labour at Economic Margins: African Workers and the Global Information Economy' (2020) 47 *Review of African Political Economy*, 96.

⁸ Richard Heeks, 'Decent Work and the Digital Gig Economy: A Developing Country Perspective on Employment Impacts and Standards in Online Outsourcing, Crowdwork, Etc' [2017] *Development Informatics Working Paper* no 71, 2.

⁹ Ibid, 9.

¹⁰ Meagher (n 5), 3.

encourage citizens to find freelance work on digital platforms.¹¹ The Rockefeller Foundation has developed the Digital Jobs Africa Initiative, which plans to impact one million African youths by advocating for digital jobs as a means to economic freedom and a reduction in poverty.¹²

However, the gig economy in Africa, as in the developed world, has negative outcomes. These outcomes may be ignored or minimised by workers and governments due to the potential of gig work to reduce high levels of unemployment and the positive feedback received from African gig workers.¹³ Gig workers in Africa face difficulties such as a lack of formal employment rights, uncertainty, no social security and a lack of worker representation or collective bargaining. Although flexibility is often used to entice workers to work for platforms, there is clear evidence that certain types of platform work are not truly flexible or free and platform workers are at the mercy of algorithmic control.¹⁴

So, African states face a dilemma: to regulate the gig economy or not. If they do regulate, many platforms may take their business to other countries in the Global South, which are less willing to regulate.¹⁵ In addition, many African governments do not have the motivation or the resources to regulate the gig economy adequately, despite the lack of a clear legal framework.¹⁶ This is a problem: how can African citizens benefit from the gig economy in full and receive the fruits of their labour adequately and in a sustainable manner?¹⁷

1.2. Research goals and questions

This thesis explores whether the job quality of platform work requires improvement and how this may be achieved. The effects of the gig economy in Africa are an under-researched area. However, a number of academics have studied platform work in Kenya, Nigeria, South Africa, Ghana and Egypt.

This thesis answers the following research question:

What more can gig workers in Africa do to improve their job quality, if anything, without losing out on valuable work opportunities?

And the corresponding sub-questions:

1. What is the legal framework applicable to gig workers in Africa?
2. What is the job quality of gig workers in Africa?
3. Can changes to the legal framework of platform workers in Africa lead to improvements in job quality and what are the successes and failures of platform workers thus far in attempting to change their job quality and working conditions?
4. What more can gig workers or governments do to improve the job quality of platform work?

¹¹ Mark Graham and others, 'Digital Labor and Development: Impacts of Global Digital Labor Platforms and the Gig Economy on Worker Livelihoods' (2017) 23(2), 138.

¹² Mohammed Amir Anwar and Mark Graham, 'Between a Rock and a Hard Place: Freedom, Flexibility, Precarity and Vulnerability in the Gig Economy in Africa' (2020) 25(2) Competition and Change, 240.

¹³ Anwar and Graham (n 7), 103.

¹⁴ Anwar and Graham (n 12), 240.

¹⁵ Anwar and Graham (n 7), 97.

¹⁶ *ibid.*

¹⁷ Ng'weno and Porteous (n 1), 1.

1.3. Approach and methodology

This thesis is based on a literature review. I have used legislation, case law, journal articles and textbooks to research the questions posed. This thesis starts with a description of platform work, encompassing both gig work and crowdwork and provides examples of each. The second chapter of this thesis introduces the concept of gig work and describes the legal framework applicable to platform workers in Africa. The third chapter of the thesis looks at the job quality of the gig workers in Africa. In the fourth chapter, the success and failures of platform workers thus far in attempting to change or improve their job quality is discussed. In the fifth chapter, I focus on how gig workers can improve their job quality, if so required, and whether they have options in terms of litigation, collective bargaining, political campaigning or moral pressure.

1.4. Societal and scientific relevance

In 2016, the ILO found that 86% of work in Africa is in the informal sector, which is the highest in the world.¹⁸ While the informal sector provides a livelihood for many, it is precarious work and not of a high quality, according to the ILO.¹⁹ Africa has faced economic stagnation for some time, been dependent on foreign aid and its natural resources exploited while unemployment and inequality continue to grow.²⁰ Thus, it is important that the gig economy does not further inequality and exploit African workers and widen the gap between the developed North and Global South. The opportunities to be found in the gig economy may be negated should platform workers in Africa face exploitation and low job quality.

According to the Africa Growth Initiative, Africa will need around 12 million to 14 million jobs annually to supply work to new entrants into the labour market.²¹ The gig economy will bring jobs to Africa on a scale that would be difficult without the internet and thus its potential cannot be ignored. However, platform workers in Africa must be provided with the knowledge and skills to challenge those platforms that seek to exploit them. Research on the effects of the gig economy on worker's job quality is urgently needed to ensure that the potential of the gig economy provides sustainable economic development, the formalisation of highly informal labour markets and improved tax collection.²² This thesis thus contributes to the growing literature on the gig economy in Africa and summarises platform work within the context of the informal economy, provides an overview of platform workers' successes and failures in attempting to change their job quality and lessons for future platform workers who wish to challenge the digital platforms that seek to exploit them.

¹⁸ J Cilliers, 'The Future of Work in Africa' in Cilliers, J. (ed) *The future of Africa: Challenges and Opportunities* (Palgrave Macmillan 2021).

¹⁹ *ibid.*

²⁰ Anwar and Graham (n 12), 238.

²¹ *ibid.*, 200.

²² Tabea Lakemann and Lay Jann, 'Digital Platforms in Africa: The "Uberisation" of Informal Work' [2019] (GIGA Focus Afrika, 7) Hamburg: GIGA German Institute of Global and Area Studies - Leibniz-Institut für Globale und Regionale Studien, Institut für Afrika-Studien, 1.

Chapter 2: The legal framework

2.1. Introduction

In most African countries, platform work falls outside the labour law framework. This chapter explores the current legal framework applicable to African platform workers and answers the question: what is the legal framework applicable to gig workers in African? First, this chapter establishes a definition of platform work that encompasses both location-based gig work and online crowdwork and also provides a definition of digital platforms. Like most platform workers globally, the regulation of platform work is not well-developed and may even be entirely unregulated. Platform work has also been a disruptive force in Africa and a few legal challenges have ensued in the courts in Kenya, Nigeria and South Africa. However, Egypt and Nigeria are two countries that have attempted to regulate some aspects of platform work, which will also be discussed.

2.2. The characteristics and definition of platform work

The gig economy has been described as a marketplace for labour where workers use an app to “sell their labour.”²³ It is difficult to provide a precise definition of gig work, as there are many definitions, competing concepts and sub-categories. Jeremias Prassl has defined two broad categories of platform work: crowdwork and gig work.²⁴ Crowdwork is work performed entirely online and behind a computer from anywhere in the world²⁵ Gig work is work performed offline through a location-based app such as food delivery or an e-hailing cab app.²⁶ Crowdwork also includes “microtasks”, which are small repetitive tasks such as image labelling and complex tasks such as software development or graphic design.²⁷ Examples of crowdwork include Fiverr and Upwork and examples of gig work include Uber and Deliveroo. This thesis will refer to *platform work* as encompassing both crowdwork and gig work.

Platform work is also referred to as a form of crowdsourcing. Crowdsourcing is the “act of taking a job traditionally performed by employees and outsourcing it to an undefined, generally large group of people in the form of an open call.”²⁸ A platform is the digital means through which customers and providers of the service interact.²⁹ The platform, responsible for the open call, acts like a traditional employer by assigning and providing tasks to workers.³⁰ Companies can now engage in digital global outsourcing where menial or more complicated tasks are outsourced to platform workers anywhere in the world.³¹

Although platforms operate slightly differently, some characteristics apply to all. The first is a rating system by which consumers can provide public ratings on a worker and his or her services, resulting

²³ Alex J Wood and others, ‘Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy’ (2018) 33(1) Work, Employment and Society 57.

²⁴ Jeremias Prassl, *Humans as a Service* (Oxford Scholarship Online 2018), 13.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ *Ibid*, 11.

²⁹ Debra Howcroft and Birgitta Bergvall-Kåreborn, ‘Typology of Crowdwork Platforms’ (2018) 33(1) Work, Employment and Society 21, 23.

³⁰ Prassl (n 24) 11.

³¹ *Ibid.*

in a form of quality control.³² The platform also facilitates payment between the consumer and platform worker while taking a percentage of the worker's earnings.³³ Furthermore, workers are often defined as independent contractors or self-employed and are expressly not employed by the platform.³⁴ Human control and supervision of the worker is replaced with algorithmic control and complex software.³⁵ Platforms rebrand work as "gigs" and workers are enticed with the promise of entrepreneurship, freedom and flexibility.³⁶ Many platforms engage in regulatory arbitrage, that is the process of evading regulations by engaging workers as independent contractors and not as employees.³⁷ When workers are defined as independent contractors then employment laws and regulations which require minimum wages, sick leave, paid leave and other taxes are not applicable and platform workers cannot access the rights and regulation that labour laws provide.³⁸ This regulatory arbitrage results in a cheap labour force as platforms do not have to pay employment taxes or social security contributions and workers can be easily dismissed.

2.3 The platform economy in Africa and legal framework

In many countries, platform work has disrupted a number of industries and confused regulators and law makers. In Africa, the regulatory framework is lagging behind rapidly developing digital-labour platforms. The labour laws in Africa were developed and drafted well before platform work was conceived and thus, do not envisage such a type of work or provide protection to platform workers.

The size of the platform economy in Africa is significant and growing. In Kenya, a country with a population of about 50 million, platform work accounts for about 0.2% of GDP.³⁹ In 2019, there were 36 573 gig workers, of which there were 13 000 platform workers in the e-hailing sector, amounting to a value of US\$44.3-million.⁴⁰ Furthermore, it is estimated by the Fairwork Foundation that the value of the platform economy may increase to US\$345-million, with an estimated 93 000 gig workers by the year 2023.⁴¹

In South Africa, there are an estimated 30 000 gig workers and around 100 000 crowdworkers, amounting to an estimated 1% of the workforce, and this percentage is growing yearly at a rate of 10%.⁴² In Nigeria, there are 87 active platforms serving a population of 191 million, but it is difficult to find accurate statistics on the size of the platform workforce in Nigeria despite being one of the largest in Africa.⁴³ In Ghana, the platform economy provides an estimated 60 000 to 100 000 work

³² Ibid, 13.

³³ Ibid, 14.

³⁴ Howcroft, Debra and Bergvall-Kåreborn, Birgitta (n 29), 24.

³⁵ Ibid.

³⁶ Prassl, Jeremias (n 24), 13.

³⁷ Prassl, Jeremias (n 24), 20.

³⁸ Howcroft, Debra and Bergvall-Kåreborn, Birgitta (n 29), 24.

³⁹ Mark Graham and others, 'Fairwork Kenya Ratings 2021: Labour Standards in the Gig Economy' (2021). <<https://fair.work/wp-content/uploads/sites/131/2021/12/Fairwork-Kenya-2021-Report.pdf>> last accessed 8 January 2022, 11.

⁴⁰ Ibid. <<https://fair.work/wp-content/uploads/sites/131/2021/12/Fairwork-Kenya-2021-Report.pdf>> last accessed 8 January 2022, 11.

⁴¹ Ibid, 11.

⁴² Darcy Du Toit and others, 'Fairwork South Africa Ratings 2021: Labour Standards in the Gig Economy' (2021), 8.

⁴³ Herman Smit and et al, (n 6) 23.

opportunities to workers.⁴⁴ In Egypt, while it is difficult to find accurate statistics on the size of the platform workforce, the number of Uber drivers in 2019 was 90 000 and 200 000 in 2020, and the number of workers relying on the platform economy continues to grow.⁴⁵

2.3.1 Labour laws

One of the key features of digital labour platforms is to decrease regulation between the worker and platform and ensure national labour laws are not applicable to platform workers.⁴⁶ In practice, most platform workers are classified as independent contractors or in other ways do not meet the test for employment. African countries have various legal tests and definitions to determine whether an employment contract exists. For example, Kenya labour laws are regulated by the Employment Act, No. 11 of 2007 and the Labour Relations Act, No. 14 of 2007. An employment relationship is defined in the Employment Act as being established when a person is employed for wages or a salary and is defined by a contract of service between the employee and the employer.⁴⁷ Employees are protected under the Employment Act and are provided with basic conditions of employment, including working hours, annual leave, maternity leave, sick leave and dismissal protection.⁴⁸ Self-employed workers are not protected or provided with social security and the National Hospital Insurance.⁴⁹ The legal test for self-employment in Kenya requires that the individual must have a high level of autonomy over where the work is performed, how it is performed and when it is performed.⁵⁰

In Nigeria, it is often the case that platform workers are classified as independent contractors or self-employed and are not employed by the platforms they work for.⁵¹ Platform work is not specifically regulated by labour laws.⁵² Labour laws are regulated by the Labour Act, 2004 and a worker is defined under Section 91(1) as “any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour.”⁵³ The Nigerian courts have also developed various tests for employment, but these tests are only used when there is a dispute between the parties on the classification of the relationship.⁵⁴ These tests are considered when the relationship between the parties is not clear or the agreement does not contain an express classification.⁵⁵ The tests are the control test and the integration of the person into the enterprise.⁵⁶ Other factors the court will consider are the method of payment, whether the worker may work for other employers, regulation over working hours, arrangements for the payment of tax

⁴⁴ Thomas Anning-Dorson and others, ‘Fairwork Ghana Ratings 2021: Labour Standards in the Platform Economy’ (2021) <<https://digitalfrontiersinstitute.org/blog/2019/05/07/africas-digital-platforms-and-financial-services-an-eight-country-overview/>>, last accessed 15 September 2021, 23.

⁴⁵ Nagla Rizk, ‘Fairwork Egypt Ratings 2021: Towards Decent Work in a Highly Informal Economy’ (2021), 44.

⁴⁶ Graham (n 11), 140.

⁴⁷ *The Employment Act of 2007* (Kenya 2007), section 10.

⁴⁸ *ibid.*

⁴⁹ Mark Graham and others, ‘Fairwork Kenya Ratings 2021: Labour Standards in the Gig Economy’ (2021), 12.

⁵⁰ *ibid.*

⁵¹ N Ejims Enwukwe, ‘The Employment Status of Nigerian Workers in the Gig’ (2021) 107 *Journal of Law, Policy and Globalization*, 1.

⁵² *ibid.*, 8.

⁵³ *Labour Act (LFN), 2004 (reads together with Labour Act (Amendment) Bill, 2019)*.

⁵⁴ *Oladapo Olatunji & Others v Uber Technologies Sytems Nigeria* No. Suit No NICN/LA/546/2017 (The National Industrial Court of Nigeria, Lagos Judicial Division), para 18.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

and social security, the method of termination of the contract, who provides tools and equipment and which party bears the risk of loss and profit.⁵⁷

In South Africa, labour laws are regulated by the Labour Relations Act and the Basic Conditions of Employment Act. An employee is defined under the Labour Relations Act and the Basic Conditions of Employment as “any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration and any person who in any manner assists in carrying on or conducting business of an employer”.⁵⁸ The South African government has published guidelines to establish whether a worker is an employee or independent contractor, titled the Code of Good Practice: Who is An Employee. According to the Code of Good Practice, there are a number of tests developed by the courts that can be used in determining whether a worker is an employee or independent contractor. The main test followed by the courts is the “dominant impression test”, which includes a number of indicators to determine whether someone is an independent contractor or an employee. These include, among others, the object of the contract, whether the employee is obliged to perform the lawful commands and instructions of the employer, whether the worker performs the work personally or may appoint someone else to do the work and whether the contract terminates upon the death of the employee or when the work is completed.⁵⁹ The court will take note of the dominant impression of the contract and all relevant factors that point to an employment or independent contractor relationship and it is not relevant that the parties have chosen to label the contract an “independent contract”.⁶⁰

In Ghana, all platform workers are in practice classified as independent contractors and thus they are seen as falling outside the protection of the Labour Act 651.⁶¹ Under Section 9 of the Labour Act, employees are entitled to safe working conditions, health and safety, the right to join a trade union and to collective bargaining.⁶² Under Section 175 of the Labour Act, a definition of employment is provided as a “contract of service whether express or implied, and if express whether oral or in writing.”⁶³ A number of factors have been established by the courts as factors to determine whether someone is an employee and these include the degree of the control exercised over the employee and his or her work performance⁶⁴, whether the worker has a financial risk invested in the business and whether he or she owns the tools used to perform the work.⁶⁵ The intention of the parties is not conclusive but merely one factor the court will use to determine whether an employment relationship exists.⁶⁶ In sum, labour laws are in practice not applied to platform workers in Africa; however, there may be other laws providing some protection to platform workers.

2.3.1. Other laws and regulations

Although the Labour Act in Nigeria does not seem to protect platform workers, there may be other pieces of legislation protecting platform workers. Under Section 36(1) of the Nigerian Constitution,

⁵⁷ Ibid, para 19.

⁵⁸ *Labour Relations Act 66 of 1995, section 213.*

⁵⁹ Notice 1774 of 2006, ‘Code of Good Practice: Who is an Employee’ (1 December 2006), para 32.

⁶⁰ Ibid, para 27.

⁶¹ Anning-Dorson and others (n 43), 14.

⁶² Ibid.

⁶³ Labour Act, 2003 (Act 651).

⁶⁴ *Kussasi v Ghana Handling Co and Another* [1978] GLR 170-179.

⁶⁵ *Montreal v Montreal Locomotive Works* [1947] 1 DLR 161.

⁶⁶ *Young & Woods Ltd v West* [1980] IRLR 201.

all citizens are entitled to a fair hearing and the right to have their case heard in a civil matter before an appropriate forum.⁶⁷ This may protect platforms workers who are disconnected from a platform without receiving a full and fair hearing.⁶⁸ Platforms workers, such as Uber drivers, are often disconnected from the platform without being provided with a reason or an opportunity to defend themselves against their dismissal. Another piece of legislation that may protect platform workers is the Nigerian Trade Union Act. The definition of *worker* provided under the Trade Union is “any combination of workers or employees, whether “temporary or permanent”, the purpose of which is to regulate the terms and conditions of employment of workers”.⁶⁹ This slightly broader definition of *worker* may cover platform workers and provide platform workers with a legal basis to form and join trade unions.⁷⁰

While the above-mentioned African countries have not attempted to or passed any specific legislation regulating platform work, Egypt and Nigeria are exceptions. Egypt passed a law applicable to e-hailing platforms titled the Ride Hailing Apps Act, as platforms workers in Egypt are deemed to fall outside the protection of labour laws.⁷¹ This Act was promulgated due to protests from taxi drivers in 2019 and it regulates licensing fees paid by platforms and drivers and data protection.⁷² The Act requires both platforms and drivers to pay licensing fees and makes it mandatory for platforms to pay social-security insurance.⁷³ Unfortunately, the Act does not clarify the status of platform workers who work in the e-hailing sector and as a result most labour laws, such as minimum wages and working hours, are not applied in practice to platform workers in Egypt despite the Ride Hailing Apps Act providing some protection.⁷⁴ The Nigerian government also attempted to regulate taxes paid by e-hailing apps and published the *Guidelines for on-line hailing business operation of taxi in Lagos State* which classifies apps as “service entities” and not employers.⁷⁵ This tax resulted in protests by e-hailing drivers in Lagos, which is discussed in the next chapter.

2.4. Conclusion

In this chapter, the following sub-question was examined: what is the legal framework applicable to gig workers in Africa? Based on the sections above, it can be concluded that platform work is not adequately regulated in Africa by labour laws or other legal frameworks. Platform workers are labelled by platforms as independent contractors and thus, in current practice, fall outside the labour-law framework. An adequate legal framework or ‘inclusive interpretation’ of the current legal frameworks is, therefore, lacking. To determine whether the legal frameworks in African countries need to change dramatically, the job quality of platform work must be studied.

⁶⁷ Enwukwe (n 50), 8.

⁶⁸ Enwukwe (n 50), 8.

⁶⁹ *Trade Union (Amendment) Act, 2005, section 1.*

⁷⁰ Enwukwe (n 50), 9.

⁷¹ Rizk (n 45), 66.

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ Katarzyna Cieslik and others, ‘Offline Contexts of Online Jobs: Platform Drivers, Decent Work, and Informality in Lagos, Nigeria’ (2022) e12595 Development Policy Review, 12.

Chapter 3: The job quality of platform workers

3.1. Introduction

Platform work is not currently regulated in Africa, and neither is informal work. Informal work is defined by the ILO as “all economic activities by workers and economic units that are by law or practice, not covered or sufficiently covered by formal arrangements.”⁷⁶ Informal work, like gig work, is untaxed and workers lack social security.⁷⁷ Informal work is precarious and results in the vulnerability of workers.⁷⁸ Platform work is similar to informal work in that it is unregulated, but it may be slightly better in a number of respects and offer advantages that informal workers do not have. This chapter will explore the precariousness of platform work in Africa through an overview of the job quality of platform workers. The ILO has identified principles and labour standards that are applicable to platform workers regardless of their classification as independent contractor or employee. The Fairwork Foundation has also developed principles of “fair work” for platform workers. These standards and principles will be the framework within which, as a second sub-research question, the job quality of platform workers in Africa will be analysed. The chapter answers the questions: what is the job quality of platform workers in Africa?

3.2. A framework for assessing job quality of platform workers

There is no universal standard of job quality applicable to all workers across nationalities and industries. Job quality is job dependent and thus it is important to identify job quality indicators for platform workers specifically.⁷⁹ Job quality must also be distinguished from job satisfaction which is a subjective concept and a worker with a lower expectation of his or her job may be satisfied with his or her job although job quality may be low.⁸⁰ Traditional indicators of job quality include a stable income, future job prospects, working hours, a safe working environment, autonomy and flexibility.⁸¹ The ILO and the Fairwork Foundation principles for job quality within the context of platform work will be discussed below.

3.2.1 The ILO standards

Many academics argue that platform workers should be classified as employees. One of the reasons mentioned most often is that platform workers are not free to determine their own hours and working schedule. If this would be the case, it indicates that platform workers are controlled by the platform and, therefore, the relationship between the platform and the worker should be classified as an employment contract. This is one test for employment: whether there is an element of control between worker and employer. From Chapter 2 above, it has become clear this is a common test in African countries. If platform workers are classified as employees, then some problems associated with platform work may be solved as certain parts of platform work would be covered by labour laws, although there would remain many grey areas, such as when working time begins and ends.⁸² The

⁷⁶ Ibid, 6.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Brendan Burchell and others, ‘The Quality of Employment and Decent Work: Definitions, Methodologies, and Ongoing Debates’ (2014) 38 Cambridge Journal of Economics 469.

⁸⁰ Brendan J Burchell and Adam P Coutts, ‘The Experience of Self-Employment Among Young People: An Exploratory Analysis of 28 Low- to Middle-Income Countries’ [2018] American Behavioural Scientist 1, 3.

⁸¹ Ibid.

⁸² Tammy Katsabian and Guy Davidov, ‘Flexibility, Choice and Labour Law: The Challenge of On-Demand Platforms’ Forthcoming in the University of Toronto Law Journal, 4.

reclassification of platform workers as employees will take time, money and extended legal proceedings before platform workers in Africa are reclassified across all platforms and countries. In light of the pending problems of misclassification and lack of regulation, the ILO has identified certain principles and standards that are applicable to platform workers regardless of their status as “employee” or “independent contractor”.⁸³ According to the ILO the status of platform workers is not a hindrance to decent working principles being applicable to them.⁸⁴ This has been confirmed by the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEAR) which stated that “the full range of fundamental principles and rights at work are applicable to platform workers in the same way as to all other workers, irrespective of their employment status.”⁸⁵

The following fundamental principles are applicable to all workers regardless of status: freedom of association and collective bargaining, non-discrimination and equal remuneration, elimination of forced labour and the elimination of child labour.⁸⁶ These fundamental principles can be found in the conventions of the ILO including the Freedom of Association and Protection of the Right to Organise Convention, Equal Remuneration Convention, Discrimination Convention, Forced Labour Convention, Minimum Age Convention and the Worst Forms of Child Labour Convention.⁸⁷ These conventions all refer to “workers” and not “employees”, thus they are in principle applicable to all platform workers as well.⁸⁸ In addition, the ILO has identified other key labour standards that are applicable to all workers such as occupational safety and health, social security, employment and job creation and adequate labour inspection.⁸⁹ Moreover, there are further labour standards the ILO has identified that *may* be applicable to platform workers including payment systems, fair termination, access to data and privacy, clear terms of engagement, job mobility and grievance and dispute resolution.⁹⁰ According to the ILO, platform workers should also be entitled to fair and decent working conditions including working time, leave and proper remuneration even if classified as independent contractors as they are workers and entitled to be treated fairly.⁹¹ At the bare minimum excessive working hours for platform workers should not be permitted as this can put the worker’s (and/or third parties’) health and safety at risk, for example, a tired and overworked Uber driver may cause accidents and endanger others on the road.⁹²

3.2.2. The Fairwork Foundation principles

The Fairwork Foundation monitors, reports and provides recommendation on platform working conditions and related issues in a number of countries in the developed and the developing world. The Foundation has developed five principles to evaluate platform work in line with the principle of “fair work”.⁹³ These principles were developed in collaboration with the ILO and various other stakeholders.⁹⁴ The five principles of fair work for platform workers are fair pay, fair conditions, fair

⁸³ Sageet Paul Choudary, ‘The Architecture of Digital Labour Platforms: Policy Recommendations on Platform Design for Worker Well-Being’ [2018] ILO Future of Work Research Paper Series, 203.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid, 204.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid, 210.

⁹² Ibid.

⁹³ Du Toit and others (n 41) 6.

⁹⁴ Ibid.

contracts, fair management and fair representation.⁹⁵ The principle of *fair pay* requires that platform workers are paid a decent income, regardless of their employment status, while considering work-related costs such as vehicle maintenance, mobile data and transport costs.⁹⁶ *Fair pay* is assessed according to the minimum wage and the current living wage in each country.⁹⁷ The principle of *fair conditions* assesses procedures and policies that protect the worker from risks associated with the performance of work and health and safety standards.⁹⁸ *Fair contracts* is the principle of fair terms and conditions which are accessible to the worker, easy to read and comprehend and subject to local laws.⁹⁹ Furthermore, *fair contracts* require that should a platform worker be a genuinely self-employed worker then the platform should not exclude its liability in an unfair manner.¹⁰⁰ *Fair management* assesses whether there is a fair process and hearing in the event of deactivation including the ability to appeal any decision taken against or affecting the worker.¹⁰¹ This means there must be clear communication between the platform and the worker regarding policies on worker management, such as discipline and dismissal.¹⁰² The fifth principle is *fair representation* which assesses a worker's voice and participation and their ability to organise and bargain collectively.¹⁰³ The principle of *fair representation* requires that the platform should be willing to engage with workers and be open to negotiation.¹⁰⁴ These principles, developed by the Fairwork Foundation, largely overlap with the above labour standards identified by the ILO and thus will be the main standards used to analyse platform worker's job quality in Africa.

3.3. Job quality of platform workers in Africa

3.3.1 Fair pay and non-discrimination:

Fair pay, including equal remuneration and non-discrimination, is addressed in this section. Uma Rani and Marianne Furrer studied digital labour platforms in developing countries including Africa and Asia and found that crowdworkers spend a considerable amount of time looking for work or performing tests to obtain a job, time for which they are not paid.¹⁰⁵ These costs must be deducted from crowdworkers' earnings to calculate their actual earnings.¹⁰⁶ In addition in some cases if the user is not satisfied with the work, crowdworkers are not paid even after completing the task.¹⁰⁷ Many online digital platforms provide in their terms and conditions that users are not required to pay for work they find unsatisfactory.¹⁰⁸ According to Graham and Anwar, who conducted a study of African platform workers on Upwork, African crowdworkers face uncertainty and non-payment.¹⁰⁹ For example, a worker from Uganda was unable to finish a job on Upwork and the task was thus

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Uma Rani and Marianne Furrer, 'Digital Labour Platforms and New Forms of Flexible Work in Developing Countries: Algorithmic Management of Work and Workers' (2021) 25(2) Competition and Change, 222.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid, 225.

¹⁰⁸ Anwar and Graham (n 7), 97.

¹⁰⁹ Anwar and Graham (n 12).

categorised as unfinished after which she did not receive any payment.¹¹⁰ This constitutes unpaid labour which is an indicator of forced labour, a labour standard identified by the ILO and applicable to all workers.¹¹¹

Richard Heeks has also studied digital platforms in developing countries including Africa and found that platform workers in the Global South are paid less than platform workers in the Global North, however, platform workers in developing countries earn more in relative terms.¹¹² Some platform workers in the Global South earn around 10 or 12 times more than the local minimum wage, whereas workers in the Global North earn about minimum wage.¹¹³ Payment from platform work is also more certain than payment from local informal labour markets.¹¹⁴ However, Heeks found that platform workers in Africa are not always paid on time or the pay is not fair as workers spend time searching and bidding for work, workers are not paid for learning new skills and workers must bear the costs of the technology required to perform the work.¹¹⁵ According to Heeks, many platform workers report that pay is sometimes too low.¹¹⁶ Berg also studied platform workers on MTurk and Crowdfunder and found that remuneration was low due to the high volume of unpaid work and the lack of available work.¹¹⁷ According to Berg, workers on Upwork work long hours and the competition among platform workers and the public bidding for work contributes to low pay rates.¹¹⁸ High competition among platform workers for work both local and global, contributes to insecurity and inconsistent income.¹¹⁹

According to the Fairwork Foundation reports, few platforms in Kenya, Ghana, South Africa and Egypt provide fair pay to their workers. Only one of the nine platforms studied in Kenya, provided evidence that they paid their workers the statutory minimum wage after taking into account work-related costs such as vehicle maintenance, fuel, mobile data, transport between jobs for domestic workers and traffic tickets for e-hailing drivers.¹²⁰ In Ghana, not a single platform pays its workers in line with the principle of fair pay; workers work long hours to cover expenses and pay was not in accordance with the standard of a decent living wage.¹²¹ South Africa performed slightly better with three out of nine platforms paying at or above minimum wage taking into account expenses but many also worked long hours to cover basic expenses.¹²² While in Egypt only two out of seven platforms paid their workers at or above the minimum living wage.¹²³

¹¹⁰ Anwar and Graham (n 12), 251.

¹¹¹ *ibid.*

¹¹² Heeks (n 8), 9.

¹¹³ Heeks (n 8), 9.

¹¹⁴ *ibid.*, 10.

¹¹⁵ *ibid.*, 13.

¹¹⁶ *ibid.*, 13.

¹¹⁷ Wood and others (n 23) 60.

¹¹⁸ *ibid.*

¹¹⁹ Pitso Tsibolane and others, 'Digital Gig Work in Africa: An Exploratory Survey' (The Gig Economy in the Global South, IMPROVING AFRICAN LIVELIHOODS WITH DIGITAL INFORMATION & TECHNOLOGY, Cape Town, South Africa, January 2018), 5.

¹²⁰ Graham and others (n 37), 14.

¹²¹ Anning-Dorson and others (n 48), 17.

¹²² Du Toit and others (n 41), 13.

¹²³ Rizk (n 45), 2.

Kate Meagher has studied platform workers in Nigeria and found that Nigerian gig workers working for Uber, Taxify and Oga Taxi earned only slightly above minimum wage and less than the living wage of 40 000 Nigerian Naira.¹²⁴ According to Meagher, drivers work long hours to earn minimum wage and on average work around 60 hours per week, while drivers that did not own the cars they drove worked about 76 hours per week.¹²⁵ Many drivers also complained that fares had declined due to an oversupply of drivers due to digital taxi companies fighting for the biggest share of the market.¹²⁶ However, not all platform workers receive pay that is unfair according to local standards but the majority of platform workers in Africa only receive a tiny portion of the profits that come from the labour they produce.¹²⁷

Platform workers in Africa face low pay but they also face discrimination. There is evidence that platform workers in the Global South cannot compete equally with platforms workers in the Global North.¹²⁸ A number of online crowdworkers in South Africa, Kenya and Nigeria have claimed they face discrimination as African workers. Clients in developed countries have a poor understanding of Africa and could not differentiate one country from another.¹²⁹ Some potential clients did not know that workers in Africa spoke western languages such as French, English and Portuguese and assumed they were not well educated and would be willing to accept any work for minimal pay.¹³⁰

3.3.2. Fair conditions and health and safety

Fair conditions refer to occupational health and safety. In its report on digital work, the ILO stated that excessively long working hours are a risk to a worker's health and safety.¹³¹ Due to low pay, some platform workers work excessively long hours to cover living expenses.¹³² When tasks are digitally outsourced to workers across the globe there are a number of health and safety standards that may be violated.¹³³ Online platform workers face isolation and loneliness as they work from home and do not interact with other colleagues offline.¹³⁴ Graham has reported that some platform workers work for 70 to 78 hours a week or even 18 hours in a single day to make a living wage.¹³⁵ In addition, as many digital platform clients are based in the UK, USA or Australia and in different time zones, some platform workers work at night to be in the same time zone as their clients.¹³⁶ Platform working time is not regulated and is determined by the client and his or her needs leading to unstructured work hours, long hours and even working up to seven full days a week.¹³⁷

According to the Fairwork Foundation, safety and security for offline and location-based gig workers is of high concern in the Global South. In Ghana, gig workers for e-hailing services often feel unsafe and experience armed robbery, road accidents, death and assault with little support from the platforms

¹²⁴ Meagher (n 5) 7 .

¹²⁵ *ibid.*

¹²⁶ *ibid.*

¹²⁷ Anwar and Graham (n 3), 103.

¹²⁸ Graham and others (n 11), 137.

¹²⁹ *ibid.*, 153.

¹³⁰ *ibid.*

¹³¹ International Labour Organisation (n 16), 201.

¹³² Anwar and Graham (n 3), 96.

¹³³ *ibid.*

¹³⁴ Wood and others (n 23), 66.

¹³⁵ *ibid.*, 67.

¹³⁶ *ibid.*

¹³⁷ *ibid.*

they work for.¹³⁸ This is also common among drivers in Lagos, Nigeria and Johannesburg, South Africa and drivers in these cities have protested the lack of safety and security provided by digital platforms.¹³⁹ Drivers in Ghana feel unsafe when they have to accept a trip in a dangerous neighbourhood and should they refuse the trip they may face consequences including deactivation.¹⁴⁰ Uber and Bolt drivers in Cape Town, South Africa have been robbed, stabbed, injured and murdered and some even accepted a trip by riders and were then robbed at the destination.¹⁴¹ These incidents also increased when Uber allowed cash payments in South Africa.¹⁴² Previously Uber had promised it would not allow drivers to have cash in their cars.¹⁴³ In addition, there is another threat to the health and safety of e-hailing drivers in Africa: violent clashes with local taxi drivers. These occur between Uber drivers and established taxi bosses in many African cities, for example, in Kenya in 2016 cars belonging to Uber drivers cars were set on fire and drivers were stabbed by local taxi drivers unhappy with the competition.¹⁴⁴

In Ghana, Bolt and Uber offer accident insurance that covers accidents and robberies but only while the driver is driving on a trip excluding time the driver spends waiting or looking for a trip, resulting in many workers not being protected during significant portions of their working time.¹⁴⁵ Many Ghanaian drivers interviewed by the Fairwork Foundation were not aware of these insurance options provided by Bolt and Uber and no gig worker was reported to have benefitted from this insurance.¹⁴⁶

The Fairwork Foundation reports that in South Africa most platforms provide some level of protection from risks to its gig workers and during the Covid-19 pandemic provided some form of personal protective equipment (PPE) at no cost.¹⁴⁷ In Egypt, gig workers face violence, crime and road accidents and according to the Fairwork Foundation five out of seven platforms studied provided protection such as PPE, accident reimbursement and insurance.¹⁴⁸ In Kenya, some platforms such as Uber provide insurance for accidents on the job but only while the worker is on a trip and not waiting or looking for a trip.¹⁴⁹ Glovo, a food delivery platform, also provides compensation for workers who have to isolate due to Covid-19.¹⁵⁰

3.3.3. Fair contracts and clear terms of engagement

The fair contracts principles is used to assess the terms and conditions between the platform and platform worker and whether they are accessible, easy to read and comprehend and subject to local laws. In addition, fair contracts assesses whether the platform unreasonably excludes its liability. According to Heeks, online platform workers in developing countries lack information regarding the

¹³⁸ Anning-Dorson and others (n 42), 22.

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

¹⁴¹ Pdraig Carmody and Alicia Fortuin, “‘Ride-Sharing,’ Virtual Capital and Impacts on Labor in Cape Town, South Africa’ (2019) 38:3 African Geographical Review, 202.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Gianluca Lazzolino, “‘Going Kanura’: Colliding Subjectivities and Labour Struggle in Nairobi’s Gig Economy’ [2021] EPA: Economy and Space, 8.

¹⁴⁵ Anning-Dorson and others (n 42), 23.

¹⁴⁶ *ibid.*

¹⁴⁷ Du Toit and others (n 41), 13.

¹⁴⁸ Rizk (n 45), 3.

¹⁴⁹ Graham and others (n 37), 14.

¹⁵⁰ *ibid.*

client, purpose of the task, feedback and ratings.¹⁵¹ Crowdworkers can be removed from the platform or suspended and the reason for this is not always provided to the worker.¹⁵²

Ghana, Kenya and Egypt do not fare well according to the Fairwork Foundation under the principle of fair contracts. In Ghana only two platforms provide clear terms and conditions to gig workers governed by Ghanaian laws and only one platform did not unreasonably exclude its liability.¹⁵³ In Kenya only one platform, Glovo, provided clear terms and conditions to its workers that were easily accessible and governed by the laws of Kenya and provided workers with notice of any changes in the terms and conditions.¹⁵⁴ In Egypt three platforms out of seven surveyed by the Fairwork Foundation have clear and accessible terms and conditions but others did not provide workers with a reasonable notice period of changes.¹⁵⁵ All platforms surveyed by the Fairwork Foundation in Egypt unfairly exclude liability on behalf of the platform.¹⁵⁶ South Africa scores better than other African countries in terms of fair contracts and most platforms have clear and easily accessible terms and conditions and apply South African laws for disputes.¹⁵⁷ However, only four platforms ensured the employment status of its workers was clearly defined in the contract and that liability was not unreasonably excluded on behalf of the platform.¹⁵⁸

3.3.4. Fair management and access to data

Workers are often enticed by platforms who promise freedom and flexibility, however, there is much research which dispels the promise of freedom and flexibility as a mere myth. Platform workers are often managed and controlled by an algorithm which entails a ratings system by customers.¹⁵⁹ This means customers and not a human manager must be pleased with the work and work performed according to customer standards.¹⁶⁰ In reality many workers do not have control or autonomy over their work schedule as they must work when work is available in order to make a living wage.¹⁶¹ The principle of fair management requires clear communication between the platform and the worker and workers should have the ability to have their case heard should they be deactivated. Upwork, a popular freelance platform, takes screenshots of a worker's computer every 10 minutes to ensure they are actually working, this results in constant monitoring and pressure to work long hours causing workers to experience back pain, weakening of eyesight and little sleep.¹⁶² Upwork provides some arbitration mechanism between client and worker, however, the client has significantly more power and may end the contract at his or her whim, increasing insecurity and precariousness.¹⁶³

According to Meagher, Nigerian gig drivers have no control over the contracts and the terms and conditions of engagement.¹⁶⁴ They cannot control the fares they charge and are barred from seeing

¹⁵¹ Heeks (n 8), 13.

¹⁵² *ibid.*

¹⁵³ Anning-Dorson and others (n 42), 17.

¹⁵⁴ Graham and others (n 37), 4.

¹⁵⁵ Rizk (n 45), 16.

¹⁵⁶ *ibid.*

¹⁵⁷ Du Toit and others (n 41), 13.

¹⁵⁸ *ibid.*

¹⁵⁹ Wood and others (n 23), 62.

¹⁶⁰ *ibid.*

¹⁶¹ Rani and Furrer (n 94), 224.

¹⁶² *ibid.*, 252.

¹⁶³ Wood and others (n 23), 250.

¹⁶⁴ Meagher (n 5), 8.

where a customer has requested to go before accepting a trip.¹⁶⁵ In 2017, Uber cut fares by 40% in Lagos causing many drivers unhappiness while one driver complained, “they don’t even consult with us. What is the essence of a partnership if decisions are one way?”¹⁶⁶

Arbitrary removal or deactivation from the platform contributes to worker’s insecurity and as platform workers are classified as independent contractors, they lack access to formal processes.¹⁶⁷ In Ghana, the majority of platforms surveyed by the Fairwork Foundation provided processes for workers to challenge decisions that affect them.¹⁶⁸ The picture is less promising in Kenya, where workers complained of dismissal and deactivation without due process or for arbitrary reasons.¹⁶⁹ Many workers in Kenya find it difficult to communicate with the platform and had challenges in communicating with a human representative and only two platforms provided evidence of an official appeal and disciplinary process.¹⁷⁰ In Egypt workers face challenges and few platforms provide due process for decisions effecting workers and workers may face consequences for voicing concerns.¹⁷¹

3.3.5 Fair representation and bargaining power

Platform workers lack bargaining power due to a number of factors including oversupply of workers and high competition resulting in a “race to the bottom” to lower wages.¹⁷² Graham’s study of African online platform workers found they were disempowered and lacked the ability to exert bargaining power which had a negative effect on worker’s lives.¹⁷³ For example, a worker in Kenya had difficulty in paying his rent when a client in Canada changed the terms and conditions of his engagement and he had to move to a cheaper part of Nairobi.¹⁷⁴ Due to an oversupply of labour on digital labour platforms such as Upwork, platform workers’ bargaining power is limited and only a few workers have the power to withdraw work or negotiate with clients.¹⁷⁵ For workers on Upwork power comes from good reviews and hundreds of hours of work and those with this power could, therefore, negotiate with clients on wage increases.¹⁷⁶ According to Graham, workers who had bargaining power and who could recognise their ability to disrupt a client’s business could exert this power and avoid the exploitative nature of gig work.¹⁷⁷ For example, an experienced worker in Kenya could successfully leverage his power: when the client refused to increase his wages, he cancelled his contract with the client after which the client hired him again on higher wages.¹⁷⁸ However, few platform workers have this power and a number of authors point to the lack of platform worker’s bargaining power.¹⁷⁹

¹⁶⁵ Meagher (n 5).

¹⁶⁶ *ibid.*

¹⁶⁷ Anning-Dorson and others (n 42), 17.

¹⁶⁸ *ibid.*

¹⁶⁹ Graham and others (n 37), 4.

¹⁷⁰ *ibid.*

¹⁷¹ Rizk (n 45), 17.

¹⁷² Graham and others (n 62), 146.

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*

¹⁷⁵ Anwar and Graham (n 7), 250.

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid.*

¹⁷⁹ Heeks (n 8), 15.

Platform workers face a number of difficulties organising collectively. There is often no official employer/natural person to address demands to and the lack of an official workplace means platform workers may struggle to meet and discuss issues.¹⁸⁰ Platform workers find work on an app, have limited interaction with other workers and face isolation and competition all contributing to barriers to connecting and creating a network.¹⁸¹ However, workers in Ghana are showing signs of organising and the Fairwork Foundation found that workers have connected via Facebook and WhatsApp and workers value the sharing of information and discussions around working conditions.¹⁸² Notwithstanding, only two platforms in Ghana surveyed by the Fairwork Foundation ensure that workers have a voice and freedom of association.¹⁸³ In Kenya, although most platforms state that they are willing to engage with workers, only one platform, SweepSouth, has adopted a formal policy reflecting a willingness to recognise and negotiate with collective organisations.¹⁸⁴ In South Africa, only two platforms studied by the Fairwork Foundation could provide evidence of a commitment to recognise collective bodies in the form of a public statement while seven platforms could point to mechanisms encouraging worker participation.¹⁸⁵ Only one platform in Egypt of all platforms studied by the Fairwork Foundation encouraged and enabled worker representation in the form of regular meetings and forums and also publicly supported the formation of a trade union to engage in negotiations.¹⁸⁶

3.4 Informal work in Africa

It is important to study the quality of platform work in Africa within the context of informal work and high unemployment. The ILO found in 2018 that 85.5% of employment in Africa is in the informal economy while youth unemployment is worsening and for some countries is at 60%.¹⁸⁷ In South Africa, informal employment makes up a large percentage of the workforce with an estimated 5 million people working in the informal sector.¹⁸⁸ Inequality is high in South Africa and has grown in the last 20 years while crime has risen.¹⁸⁹ Thus, it is important to ensure that platforms do not contribute to worsening inequality by not providing decent and fair work.¹⁹⁰ In Egypt, 50% of its GDP is in the informal sector and 60% of the population works in the informal sector.¹⁹¹

The informal economy is defined by non-standard employment relations which leads to an increase in precarious work and vulnerable workers.¹⁹² The informal economy is untaxed and labour standards or social protection is not enforced or guaranteed to workers in the informal economy.¹⁹³ The gig economy in developed countries leads to precarious and non-standard work but the same is not universally true for Africa, where gig work may lead to more formal employment that is slightly better and less precarious.¹⁹⁴ However, although gig work may be more formal than the majority of

¹⁸⁰ Anning-Dorson and others (n 43), 13.

¹⁸¹ *ibid.*

¹⁸² *ibid.*

¹⁸³ *ibid.*, 160.

¹⁸⁴ Graham and others (n 38), 15.

¹⁸⁵ Du Toit and others (n 41).

¹⁸⁶ Rizk (n 45), 17.

¹⁸⁷ Anwar and Graham (n 7), 238.

¹⁸⁸ Du Toit and others (n 41).

¹⁸⁹ *ibid.*

¹⁹⁰ *ibid.*

¹⁹¹ Rizk (n 45), 23.

¹⁹² Anwar and Graham (n 12) 242.

¹⁹³ Cieslik (n 75), 19.

¹⁹⁴ Anwar and Graham (n 12), 242.

informal work in Africa, this does not mean gig workers are not vulnerable.¹⁹⁵ According to Graham gig work is a form of vulnerable work for many Africans as there is a power imbalance between the worker and the platform due to customer scoring and the management strategies of workers.¹⁹⁶ Platform workers in Africa face labour insecurity as they are classified as employees and often enter into temporary contracts with clients.¹⁹⁷

Still, there is some evidence that gig work is slightly better than informal work in Africa. A study of Nigerian e-hailing gig workers found that in comparison to local taxi drivers in the informal labour market, e-hailing gig workers fared slightly better. E-hailing drivers earned up to five times the minimum wage while informal sector drivers earned slightly above minimum wage.¹⁹⁸ E-hailing gig drivers also reported positively on communication with the platforms and many were able to discuss grievances with the platform in timely manner.¹⁹⁹ In terms of work hours, local taxi drivers worked as equally long hours as e-hailing gig workers.²⁰⁰ In addition, local drivers and e-hailing drivers lacked overtime wages, paid leave and pensions.²⁰¹ However, a few e-hailing gig drivers in Nigeria had some social protections from a digital platform and medical benefits were the most common type of protections reported.²⁰² However, these benefits were based on merit such as customer ratings and targets, but this is still an advantage these drivers have over informal taxi drivers.²⁰³ Hence, according to the study, e-hailing gig work in Nigeria provides some benefits, such as increased earnings and social protection including medical and injury assistance, however, these benefits depend on the platform and whether labour standards are respected are platform-dependent and not universally applied.²⁰⁴

3.5. Conclusion

The job quality of the majority of platform workers in Africa is low. This chapter explored the following sub-questions: what is the job quality of platform workers in Africa? Platform workers are often not paid well or barely paid minimum wage, they face discrimination, work long hours or in unsafe conditions, they face unclear terms and conditions and algorithmic management and lack a voice and fair due process. Platform work is thus contributing to precarious and non-standard employment in Africa. This may not be the case for all platform workers across all countries in Africa but it appears to be so for a significant portion. It is thus important to provide platform workers with the tools and knowledge to challenge their working conditions. Platform workers have already shown signs of challenging their working conditions in a number of African countries although not always successfully. The attempts of platform workers thus far in challenging their job quality and working conditions will be discussed in the next chapter.

¹⁹⁵ Ibid, 250.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Cieslik (n 75), 11.

¹⁹⁹ Ibid, 10.

²⁰⁰ Ibid, 9.

²⁰¹ Ibid.

²⁰² Ibid, 10.

²⁰³ Ibid.

²⁰⁴ Ibid.

Chapter 4- African platform workers opposition to platforms

4.1 Introduction

It is not only academics that consider the job quality of gig workers to be low. African gig workers have expressed dissatisfaction with their job quality and terms and conditions of work. There are a number of examples across the African continent of gig workers uniting and challenging digital platforms through litigation, protests and strikes. However, action taken thus far has not been entirely successful and resulted in little to no substantial changes in the working conditions of platform workers. African platform workers face enormous challenges in changing the regulatory framework. They have limited resources and governments are often unwilling to intervene on their behalf, afraid of driving away much needed foreign investment and economic development. Some African states have actively encouraged platform work and done little to regulate or impose labour standards. Despite these challenges, platform workers have managed to engage in collective action. This chapter explores the sub-question: can changes to the legal framework of platform workers in Africa lead to improvements in job quality and what are the successes and failures of platform workers thus far in attempting to change their job quality and working conditions?

4.2 Changes to the legal framework

The benefits of platform work in Africa cannot be ignored. Platform work has the potential to create jobs and provide work to the unemployed. For example, in Egypt in 2017 over 30 000 drivers joined Uber of which 40% were unemployed at the time of joining.²⁰⁵ Digital platforms also offer inclusion in the labour market to participants who are traditionally excluded such as those lacking university education, women with care responsibilities, people with disabilities or health problems and immigrants.²⁰⁶ Barriers to entry are low or entirely removed in platform work.²⁰⁷ Flexibility is also another advantage and digital workers are able to find work from anywhere in the world, while online crowdworkers may save travel costs if they work from home.²⁰⁸

However, as discussed in the previous chapters, the current status of platform work in Africa shows disadvantages as well, as platform workers face low pay or sometimes no pay, discrimination, unsafe working conditions, unclear terms of engagement, arbitrary inconsistent management policies and workers lack a voice or the bargaining power to improve their working conditions. Platforms engage in certain practices that exploit workers in a number of respects. These include the removal of free agency, a reduction of collective bargaining rights and a fragmented workforce further reducing opportunities to organise collectively.²⁰⁹ Platform workers do not share in the profits of their labour as most profits are diverted to the platforms and investors.²¹⁰ A more accurate description of the gig economy is the “zigzag” economy, where workers perform multiple gigs through various platforms in order to make a decent living and to survive.²¹¹ According to a government office in the Western

²⁰⁵ Charles Wharton Kaye-Esson, “‘Uberization’ as Neoliberal Governmentality: A Global South Perspective’ (2019) Vol. 55(5) *Journal of Asia and African Studies*, 716.

²⁰⁶ Heeks, (n 8) 9.

²⁰⁷ Ibid.

²⁰⁸ Ibid, 10.

²⁰⁹ Sageet Paul Choudary, ‘The Architecture of Digital Labour Platforms: Policy Recommendations on Platform Design for Worker Well-Being’ [2018] ILO Future of Work Research Paper Series, 9.

²¹⁰ Ng’weno (n 1), 7.

²¹¹ Carmody (n 140), 205.

Cape, South Africa, the gig economy works, but only if the worker has high level skills as low skilled workers may be disempowered and exploited.²¹²

Valerie De Stefano and Antonio Aloisi argue that digital platforms violate fundamental labour rights, the most important one being the right to free association in trade unions and the right to collective bargaining.²¹³ According to Stefano and Aloisi, platform workers globally, not just in Africa, face significant obstacles in realising fundamental labour rights recognised by the international community and the ILO.²¹⁴ These fundamental labour rights applicable to all workers have already been discussed in the above chapter and include the right to collective bargaining, elimination of forced compulsory labour, abolition of child labour and elimination of discrimination in employment. The ILO has also highlighted that workers in non-standard employment who are excluded from employment and labour regulation are often not able to access fundamental principles and labour rights.²¹⁵ Stefano argues that workers in non-standard employment relationships are at the mercy of the “implicit threat” mechanism: this is the fear that should a non-standard worker exercise his/her contractual or labour rights this may result in the loss of work or employment.²¹⁶ This is the same for platform workers, who also face the “implicit threat” mechanism as the platform can simply decide to deactivate a platform worker on the basis of bad customer ratings.²¹⁷ Thus it is important that platform workers can access fundamental labour rights and platforms’ abusive business practices are limited.²¹⁸ This is an important reason to regulate the platform economy in Africa, because without regulation the gig economy is unsustainable and will not provide a solution to high employment, extreme poverty and informal work, but will exacerbate all.²¹⁹ A number of platform workers in a few African countries have already challenged their employment status and in some cases demanded the recognition of their rights. Protests, strikes and litigation have emerged in Kenya, Nigeria, South Africa, Ghana and Egypt.

4.3 Litigation against Uber in Africa

Despite the challenges of litigation, certain platform workers in Africa have managed to litigate through labour and other courts. However, there are only a few cases that have been brought before the courts in Africa and only Uber drivers and other e-hailing drivers have managed to initiate litigation. In Kenya, Nigeria and South Africa, Uber drivers have brought legal action against Uber and challenged the platform on the basis of contract and employment law. These cases will be discussed below.

4.3.1.1. Kenya

Uber entered the Kenyan taxi market in 2015. Uber enticed drivers in Kenya to join the platform and promised potential drivers minimum fares of 300 Kenya shillings (Kshs) and no less than 60 Kshs per

²¹² Ibid, 204-205.

²¹³ Valerio De Stefano and Antonio Aloisi, ‘Fundamental Labour Rights, Platform Work and Human Rights Protection of Non-Standard Workers’ in Janice R. Bellace and Beryl ter Haar (eds) *Research Handbook on Labour, Business and Human Rights Law* (Edward Elgar Publishing Limited 2019),1.

²¹⁴ Ibid, 6.

²¹⁵ Ibid, 7.

²¹⁶ Ibid, 11.

²¹⁷ Ibid, 12.

²¹⁸ Ibid.

²¹⁹ Meagher (n 4), 40.

kilometre, while Uber guaranteed it would only take a 25% commission for each trip.²²⁰ Many drivers enticed by the prospect of a lucrative business, procured and financed vehicles and on average spent about Kshs 1,3-million (about 10 000 Euros) on a vehicle.²²¹ Uber did not keep its promise and in 2016, Uber Kenya without consultation or agreement from any drivers decreased fares to Kshs 35 per kilometre and a minimum fare of Kshs 200 per trip.²²² This fare reduction resulted in many Uber drivers facing low earnings and an unsustainable business. Unhappy with the unilateral action taken by Uber, thirty four drivers sought legal action along with the Digital Taxi Association of Kenya. The Uber drivers believed that the “unilateral action is actuated by malice and in furtherance of a conspiracy to exploit the Plaintiffs and dominate the Taxi Business.”²²³ Kenyan Uber drivers wanted two things: an injunction preventing Uber Kenya from lowering the minimum fare and a guarantee that in future Uber Kenya would not vary any fares unless there was proper consultation and the plaintiffs had expressly agreed to any such fare changes.²²⁴

In response, Uber Kenya sought to evade all legal responsibility and argued it had no contractual obligations to the Uber drivers as it was not party to an agreement with the drivers and the correct legal entity was Uber B.V, the headquarters of Uber based in the Netherlands.²²⁵ The drivers did not accept this claim and argued that Uber Kenya was a subsidiary of Uber B.V as it had two shareholders, Uber B.V and Uber International B.V and was thus connected to Uber B.V.²²⁶ The High Court in Nairobi agreed with Uber Kenya and informed the plaintiffs that their case may fail should they not join Uber B.V as a party to the proceedings.²²⁷ Uber drivers had in fact joined Uber B.V prior to the matter being heard before the judge, but Uber Kenya had objected to the joinder on a legal technicality and requested the court to dismiss the request to join Uber B.V.²²⁸ The High Court, however, ruled in the driver’s favour and found that the amendment to the pleadings was not irregular.²²⁹

After several years the case was heard again in October 2021, but this time Uber International Holding B.V and Uber International B.V were joined as defendants.²³⁰ Uber Kenya continued to argue it was a distinct entity from Uber B.V and thus should be removed from the case as it did not have a not contract with the plaintiffs.²³¹ The drivers argued Uber Kenya was a proxy entity of Uber B.V and while Uber Kenya merely had an operating licence to dispatch e-hailing taxi services in Kenya, it represented Uber B.V.²³²

²²⁰ *Kanuri Limited & 34 Others v Uber Kenya Limited* No. Civil Suit No 356 of 2016 (In the High Court of Kenya at Nairobi).

²²¹ *ibid.*

²²² *ibid.*

²²³ *ibid.*

²²⁴ *ibid.*

²²⁵ *ibid.*

²²⁶ *ibid.*

²²⁷ *ibid.*

²²⁸ *ibid.*

²²⁹ *ibid.*

²³⁰ *Kanuri Limited & 33 others v Uber Kenya Limited & 2 others (Civil Case 356 of 2016) [2021] KEHC 138 (KLR) (Commercial and Tax) (7 October 2021) (Ruling).*

²³¹ *ibid.*

²³² *ibid.*

In a small victory for Uber drivers, the Nairobi High Court ruled that Uber Kenya was an agent of Uber B.V and thus liable to the plaintiffs and, therefore, both Uber Kenya and Uber BV could be sued for breach of contract. Unfortunately, the breach of contract, the original claim of the Uber drivers has yet to be decided on. While Uber drivers have been successful in joining Uber B.V to their legal dispute, Uber Kenya has managed to evade legal responsibility thus far by arguing legal technicalities and claiming it has no relationship with Uber B.V and is a distinct legal entity.

4.3.1.2 South Africa

South African Uber drivers also sought legal action against Uber but based their claims on labour law and not contract law. In 2017, South African Uber drivers and two trade unions brought a claim for unfair dismissal before the Commission for Conciliation Mediation and Arbitration (CCMA).²³³ The CCMA is a body that is restricted to hearing disputes between employees and employers only. Independent contractors are excluded from its jurisdiction. The drivers sought a declaration that they were employees and not independent contractors and entitled to bring a claim for unfair dismissal before the CCMA.²³⁴ A number of Uber drivers had been deactivated from the app without a good reason and believed this was an unfair dismissal under South African labour law.²³⁵ The drivers, as in the Kenyan case, sued the local entity Uber South Africa Technology Services (Pty) Ltd and not Uber B.V.²³⁶

Halfway through proceedings they attempted to join Uber B.V but the judge refused as according to South African civil procedure, employers not party to the matter before the CCMA could not be joined at the Labour Court.²³⁷ The Labour Court is responsible for hearing appeals and reviews from the CCMA. The judge also took into account the “jurisdictional challenges of a respondent based in the Netherlands.”²³⁸

The drivers argued they were employees of Uber SA, an entity acting through Uber B.V.²³⁹ In support of their case for employment and control they produced the following evidence: there was compulsory training at the Uber offices in Cape Town, the drivers were expected to follow numerous rules, Uber limited the number of drivers on the road in a particular zone thus controlling working time, Uber also closely monitored a driver’s performance and engaged in comprehensive performance management through customer ratings and reviews.²⁴⁰ According to the drivers their working conditions were entirely unregulated: they were not provided with a food break, or any break, or given the discretion to refuse to drive into an unsafe area.²⁴¹ In addition, drivers who cancelled riders or had low acceptance rates were deactivated.²⁴² Hence, the Uber drivers contended that they were in reality not independent contractors as they were unable to negotiate with customers and had no control over fares and pricing, which were unilaterally determined by Uber.²⁴³ While they had flexible hours and could

²³³ *Uber South Africa Technology Services (Pty) Ltd v National Union of Public Service and Allied Workers Union (SATAWU) and others C 449/17* (Labour Court, Cape Town).

²³⁴ *Ibid*, para 35.

²³⁵ *Ibid*, para 11.

²³⁶ *Ibid*, para 15.

²³⁷ *Ibid*, para 35.

²³⁸ *Ibid* para 11.

²³⁹ *Ibid*, para 35.

²⁴⁰ *Ibid*, para 36-38.

²⁴¹ *Ibid*, para 39.

²⁴² *Ibid*, para 39.

²⁴³ *Ibid*, para 40.

choose when to work, they were not entirely free to set their own working schedule as they had to work long hours in order to make a living wage.²⁴⁴ The drivers argued they were under the control of Uber partly through the app and partly through Uber's management in the Cape Town office.²⁴⁵ The drivers also claimed that Uber B.V was the parent company of Uber SA and they did not distinguish between Uber SA and Uber B.V.²⁴⁶

In response, Uber South Africa denied any contractual relationship with the Uber drivers, as in the Kenyan case.²⁴⁷ Uber SA claimed that the real contractual relationship was between the drivers and Uber B.V. In response to the claim of employment, Uber SA argued there was no employment relationship as the drivers were free to drive for any other transport service and the Uber app was merely a tool for the drivers to access customers.²⁴⁸ Uber SA claimed that it performed a purely administrative function on behalf of Uber B.V and that its limited interactions with the drivers did not create an employment relationship.²⁴⁹

These arguments persuaded the judge who ruled that Uber SA and Uber B.V were distinct legal entities and, therefore, no employment relationship existed between the Uber drivers and Uber SA.²⁵⁰ The judge ruled against the Uber drivers on the basis that they failed to sue the correct legal entity but did not provide a ruling on whether the drivers were employees or independent contractors.²⁵¹ The judgment left this question open and stated there may have been a different outcome had the Uber drivers sued Uber B.V and not only Uber SA.²⁵²

4.3.1.3 Nigeria

The Nigerian Uber case followed a familiar pattern to the South Africa case. In 2017, Nigerian Uber drivers also sued the Nigerian branch of Uber, but in addition they sued Uber B.V and Taxify, another e-hailing app. Like the South African drivers, the Nigerian Uber drivers claimed they were employees of Uber and not independent contractors due to Uber's control of the drivers. They also requested that Uber provide all employment benefits including health insurance, pensions and other benefits related to employment.²⁵³ The drivers claimed that despite the agreement with Uber being an "independent contractor" agreement, the reality of the relationship between Uber and the drivers was an employment relationship.²⁵⁴ In support of this claim they argued that Uber paid them wages in the form of a fare on a weekly or piecework basis and such fare was calculated solely by Uber.²⁵⁵ In addition, the drivers claimed they used tools provided by Uber. The "tool" they used was the Uber app used to perform work. Uber provided access to this app by issuing drivers with an ID enabling them to use the app to provide rides to customers. The drivers argued that if there was no app, there would be no Uber, therefore, the app was "capital equipment" and met one of the tests for employment.²⁵⁶

²⁴⁴ Ibid, para 41.

²⁴⁵ Ibid), para 42.

²⁴⁶ Ibid, para 44.

²⁴⁷ Ibid, para 45.

²⁴⁸ Ibid, para 46.

²⁴⁹ Ibid.

²⁵⁰ Ibid, para 97.

²⁵¹ Ibid, para 98.

²⁵² Ibid, para 98.

²⁵³ *Oladapo Olatunji & Others v Uber Technologies Systems Nigeria* (n 53).

²⁵⁴ Ibid.

²⁵⁵ Ibid, para 48.

²⁵⁶ Ibid, para 49.

Nigerian Uber drivers also argued they could not delegate duties to another person. According to the agreement between Uber and the drivers, the drivers were not permitted to share their ID with any third party and the app could not be loaned, sold or otherwise provided to any other party.²⁵⁷ Uber drivers also argued that the hours of work were determined and set by Uber who regulated the duration of each trip and location.²⁵⁸ Uber drivers referred the court to the UK case of *Uber B.V. v Mr Y Aslam Appeal No. UK/EAT/0056/17/DA* and the *California Unemployment Insurance Appeals case against Uber, case no. 5371509*. In both of these cases the tribunal ruled that the relationship between Uber and its drivers was one of employment due to the control Uber exercised over the drivers.²⁵⁹

Similar to the South African and Kenyan cases, Uber Nigeria claimed there was no contractual relationship with Uber Technologies Services Nigeria and the real contractual relationship was with Uber B.V.²⁶⁰ However, in this case Nigeria Uber drivers had joined Uber B.V to the matter and thus Uber B.V could not solely rely on this argument to escape legal liability. In response to the claim of employment, Uber B.V argued the app was not a tool but merely an intermediary between the drivers and clients and when drivers are sent a potential trip they were not “bound to accept the request.”²⁶¹ According to Uber B.V the service agreement was clearly defined as an “independent contractor agreement” and it had no control over the drivers who used their own vehicles and paid for all expenses related to the vehicle, they were not paid wages or salaries, they were allowed to use other apps or transports services to find work and were not bound exclusively to Uber and they were not an integral part of Uber’s business.²⁶² Therefore, not only was the agreement clearly defined as an independent contractor agreement but they did not meet any of the tests for employment.

The Industrial Court ruled in Uber’s favour and found that the Uber drivers were not employees of Uber based on a lack of evidence. The Court held that Uber drivers did not provide enough evidence in support of their claims. According to the Court, the driver’s entire case lacked any substantial evidence, for example, they did not provide in evidence the agreement between Uber and the drivers and they relied on this agreement in support of their claims.²⁶³ According to the Court, Uber drivers put before the Court a case that was “in the main, speculative, conjecture, academic and hypothetical.”²⁶⁴ Although the drivers sued the correct legal entity and provided clear arguments they were employees, they failed to provide sufficient evidence to support their arguments and thus missed a vital opportunity to enforce their rights.

4.3.1.4. Success of litigation

As is clear from the very little litigation on platform workers in Africa discussed above, the success rate is low. In 2020, Egyptian Uber drivers also attempted to bring a lawsuit against Uber for arbitrary suspension from the app.²⁶⁵ They were not successful in bringing the lawsuit and evidence of the

²⁵⁷ Ibid, para 51.

²⁵⁸ Ibid, para 53.

²⁵⁹ Ibid, para 55.

²⁶⁰ Ibid, para 9.

²⁶¹ Ibid, para 9.

²⁶² Ibid para 10-11.

²⁶³ Ibid, para 67.

²⁶⁴ Ibid.

²⁶⁵ Rizk (n 45), 14.

reasoning behind this is difficult to find.²⁶⁶ Platform workers face a number of challenges in bringing legal action before the platform. The structure of the corporate group and limited liability were two obstacles Uber drivers in Kenya, South Africa and Nigeria faced. A parent company is often not liable for the acts of the subsidiary and the doctrine of limited liability ensures that shareholders are not liable for the debts of a business that goes beyond their investment.²⁶⁷ The corporate veil and a complex corporate structure of large multinational companies is an obstacle that litigants face in transnational litigation as the corporate structure is organised in such a way that each entity is distinct and thus not liable for the actions of the other.²⁶⁸ However, the corporate veil is sometimes lifted in cases where the corporate structure has been used for the abuse of legal privileges, fraud or to prevent the “evasion of legal requirements or of obligations.”²⁶⁹

It is possible to pierce the corporate veil in some jurisdiction by proving a link between the parent company and the subsidiary.²⁷⁰ This was the case in the Kenyan case, where the judge was willing to pierce the corporate veil and allowed Uber drivers to sue both Uber B.V and Uber Kenya and accepted there was a link between the two. Unfortunately, this obstacle prevented South African Uber drivers from pursuing their case and Uber was successful in evading its legal obligations. Nigerian Uber drivers sued both legal entities of Uber, however, Uber still managed to evade legal responsibility while also claiming that Uber Nigeria and Uber B.V were not connected. This is a legal tactic Uber clearly employs to evade legal responsibility and should future platform workers sue Uber or other platforms this is something they should be aware of. There are “jurisdictional challenges” involved in litigation transnationally, as the judge in the South African Uber case identified, a challenge that Uber is clearly aware of and has exploited to its advantage. In addition, litigation is expensive and Uber drivers have limited resources to pursue litigation that lasts several years. Kenya Uber drivers commenced litigation in 2016 and are still waiting for an outcome on their contractual dispute, meanwhile Uber drivers continue to drive for Uber. However, platform workers have engaged in other means to challenge their working conditions, including protests and collective action.

4.3.2 Protests and collective action

While some platform workers have sought legal action, others engaged in protests and collective action to improve their working condition. In 2018, Kenyan e-hailing drivers organised a mass protest.²⁷¹ The drivers protested the fare policies of two ride-hailing apps: Uber and Taxify.²⁷² About 100 vehicles blocked an intersection in Nairobi and drivers uninstalled the Uber and Taxify apps.²⁷³ The protest lasted nine days and some drivers were arrested.²⁷⁴ The protests was organised by various

²⁶⁶ Ibid.

²⁶⁷ Gwynne L Skinner, ‘Beyond Kiobel: Providing Access to Judicial Remedies for Violations of International Human Rights Norms by Transnational Business in a New (Post-Kiobel) World’ (no date) 46 Columbia Human Rights Law Review 15.

²⁶⁸ Ibid.

²⁶⁹ Ibid, 16.

²⁷⁰ Ibid.

²⁷¹ Gianluca Lazzolino, “‘Going Kanura’: Colliding Subjectivities and Labour Struggle in Nairobi’s Gig Economy’ [2021] EPA: Economy and Space, 2.

²⁷² Ibid, 1.

²⁷³ Ibid, 2.

²⁷⁴ Ibid.

organisations, one being the Digital Taxi Association of Kenya (DTAK), representing around 2000 digital taxi drivers, which claimed that Uber and Taxify “notice us only when we disappear.”²⁷⁵

The drivers who protested were also unhappy, like the drivers who sought legal action, with the changes in fares and commission charged by Uber.²⁷⁶ The protesting Uber drivers claimed Uber enticed them to join the Uber app, promising high returns. Many drivers also took out loans to purchase vehicles or leased vehicles for around 2000 Kshs per day.²⁷⁷ In July 2016, Taxify entered the Kenyan market and sought to compete with Uber by offering a 15% commission and setting fares at 40 Kshs per kilometre.²⁷⁸ Uber then lowered its fares to 35 Kshs per kilometre and after some time to 33 Kshs per kilometre.²⁷⁹ The decrease in fares and an increase in the price of petrol resulted in many drivers unable to earn a living wage, some even slept in their cars working long hours merely to earn a decent living.²⁸⁰ In January 2018, Uber made a mandatory limit on the working hours of drivers by limiting driving time to 10 hours per day and only permitting drivers to log onto the app again after 6 hours had passed.²⁸¹ Many drivers were unsatisfied with this change in policy and some declined rides when the destination was too far away or in an unsafe area.²⁸² As a result Uber threatened them with deactivation for refusing too many trips.²⁸³ In March 2018, Uber further reduced fares to 27 Kshs per kilometre, and coupled with another increase in petrol, drivers saw a further decrease in their earnings.²⁸⁴

Despite the obstacles Uber drivers faced in organising and engaging in collective action, they managed to organise around petrol stations, car washes and parking at shopping malls and discussed their working conditions and low income.²⁸⁵ Grassroots organisations began to form and leaders emerged encouraging drivers to engage in insubordination by either sending Uber messages reminding the platform that they were independent contractors and entitled to decline a trip or drivers were encouraged to accept a trip and then not move to pick up the customer.²⁸⁶ Collective action took place on the streets but also online, where some Uber drivers connected with other Uber drivers in the UK and compared experiences with Uber drivers in the developed world.²⁸⁷ In 2018, members of the International Transport Workers Federation (PUTON) in Kenya attempted to unionise Uber drivers together with the Digital Taxi Forum and attempted to regulate the e-hailing sector, but were not successful as drivers preferred the grassroots organisations that had spontaneously formed in the community.²⁸⁸ These grassroots organisations led the protest in July 2018.²⁸⁹ The protest came to end when PUTON engaged the drivers, representatives from Uber and the Minister of Transport to sign a

²⁷⁵ Ibid.

²⁷⁶ Ibid, 7.

²⁷⁷ Ibid.

²⁷⁸ Ibid, 8.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid, 9.

²⁸⁶ Ibid, 1.

²⁸⁷ Ibid, 9.

²⁸⁸ Ibid, 10.

²⁸⁹ Ibid.

memorandum of understanding.²⁹⁰ The memorandum was not binding on the parties and only made a generic commitment to improve working conditions but did not guarantee drivers a minimum fare, which was the main condition requested by the striking drivers.²⁹¹ The drivers viewed the strike as a failure due to lack of support from the government and a fragmented leadership of the various drivers organisations.²⁹²

E-hailing drivers in South Africa have also managed to organise themselves collectively and share experiences on WhatsApp groups and through organisations like “The Movement” and the “Drivers’ Guild”.²⁹³ In 2018, drivers protested against fees charged by Uber and Bolt in Cape Town.²⁹⁴ Uber and Bolt drivers protested the increasing cost of working for both companies; the cost of petrol had increased by 13% but Uber and Bolt still charged the same commission.²⁹⁵ The fare charged by drivers did not increase and thus the increase in petrol costs was borne by the drivers.²⁹⁶ Uber and Bolt drivers protested for one day, organised by the Movement.²⁹⁷ The protest was brief and all drivers returned to work the following day as Bolt agreed to raise its fares.²⁹⁸ Uber also agreed to offer incentives through a rewards programme that included fuel rebates, cell phone deals, maintenance and also healthcare.²⁹⁹

Ghanaian Uber drivers organised a protest in Accra. In April 2018, Uber drivers organised a sit-down strike. They were unhappy with Uber’s commission of 25% as drivers were finding the commission resulted in an unprofitable business and the continuous discounts offered to customers affected their income.³⁰⁰ This protest was unsuccessful and Uber refused to charge a lower commission than 25%.³⁰¹ The government did not intervene to protect Uber drivers.³⁰² The drivers went back to work for Uber as it has the biggest market share in Accra and drivers were reluctant to drive for other e-hailing apps with fewer customers.³⁰³

Nigerian e-hailing drivers, unhappy with the attempts at regulation by the Nigerian Government organised a week-long protest as they believed the *Guidelines for online hailing business operation of taxi in Lagos State* were exploitative.³⁰⁴ The protest was organised by e-hailing drivers’ unions including the Professional E-Hailing Drivers and Private-Drivers Association and the National Union of Professional App-Based Transport workers.³⁰⁵ This protest was successful and resulted in the amendment of the *Guidelines* and the proposed tax on platforms was lowered resulting in drivers

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Carmody (n 140) 205.

²⁹⁴ Ibid, 204.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid, 202.

³⁰⁰ Kaye-Esson (n 204), 727.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Cieslik (n 75), 10.

³⁰⁵ Ibid.

income being preserved.³⁰⁶ Other successes to come out of the protest included lower licence-renewal fees and a 90-day grace period for drivers to obtain all the documents required by the platform to be activated.³⁰⁷ The Nigerian protests proves that collective action can achieve results.

4.3.2.1 Success of protests and collective action

E-hailing gig workers have been the most active in challenging their working conditions in Africa and have been active in organising protests. However, the outcome of these strikes has not been successful in substantially changing the working conditions of these gig workers. Kenya gig workers have been the most successful and were able to sign a memorandum of understanding with Uber and the government, however, this memorandum was not binding and did not achieve the aims of the Uber drivers or guarantee minimum fares for the drivers. Perhaps the implicit threat looms too large for gig workers and the threat of the loss of work should they engage in sustained protest action is too powerful. However, the Nigerian protest was able to achieve material successes and evidence that collective action works.

4.4 Conclusion

This chapter has explored the experiences of platform workers in African and their attempts to change and improve their job quality and working conditions. This chapter explores the sub-questions: can changes to the legal framework of platform workers in Africa lead to improvements in job quality and what are the successes and failures of platform workers thus far in attempting to change their job quality and working conditions? In summary, changes to the legal framework will improve the job quality of platform workers who are unhappy with their working conditions and have expressed this through litigation and protests. However, platform workers have not been successful in regulating or substantially improving their working conditions in many cities. Lagos is an exception, and even their success was limited to licence fees and not substantial changes to their job quality. Platform work remains mostly unregulated in Africa, despite the challenges from workers. In the next chapter, options available to platform workers and governments will be explored.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

Chapter 5: Options to improve or initiate the regulation of platform work in Africa

5.1 Introduction

Platform work poses several problems to worker's rights, labour standards and rules. It has been established in the preceding chapters that the job quality of platform workers in Africa is lacking and some forms of platform work in Africa leads to precarious employment. Although some platform work may be slightly better than the informal sector, and evidence on this is not substantial, the regulation of platform work is urgently required to ensure the gig economy provides sustainable jobs. This chapter will examine the final question posed in this thesis: what more can platform workers, in Africa, do to improve their job quality and what are their options, if any? Some platform workers have already attempted to change their job quality and improve working conditions but with limited success. However, platform workers should continue to engage each other and digital labour platforms into providing jobs of a better and higher quality than is currently on offer. First the possibility of regulating platform work in Africa will be briefly discussed and then the following possibilities will be discussed, remedies through the courts, collective action and moral campaigning or market-based strategies.

5.2. Is the regulation of platform work in Africa a possibility?

Regulating the platform economy in Africa may be difficult but it is possible. Across Africa, unemployment is high, and governments face enormous difficulties in creating more jobs and many states are fearful that should they regulate digital platform work, platforms may take their business elsewhere.³⁰⁸ Although these fears may be real, they may be exaggerated. It is not only international platforms that have provided work opportunities to African workers, local platforms have also provided valuable work opportunities to African workers. As mentioned in chapter 1, around 80% of the platforms that operate in Africa are local platforms.³⁰⁹ In Nigeria, 76% of its digital platforms are based in and come from Nigeria.³¹⁰ Although Uber may have a significant presence on the African continent, it is not the only e-hailing taxi app available and should Uber leave the African continent, there are other locally grown business that may take its place. This may be better for the overall economy of African states, as the income generated will come from and stay in Africa. Uber has proven to care little for the labour rights of its drivers and sought to evade legal responsibility.

Regulating the platform economy will not be an easy task for African states. The options available include passing laws that regulate platform work or enforcing labour standards by developing a more inclusive definition of an 'employee'. A solution to the problem of regulation requires an awareness of the needs of the platform workers while taking into account the issues of flexibility and security.³¹¹ Labour laws are not inconsistent with flexibility and can provide security to platform workers.³¹² Prassl argues that employment law is the key to regulating the platform economy as it provides for a floor of minimum rights and protections that ensure the platform worker is not exploited by the platform.³¹³ However, he also notes that the platform economy is unique and current labour laws may need to be amended to provide for the flexible nature of platform work.³¹⁴ Employment laws and

³⁰⁸ Anwar and Graham (n 12) 253-254.

³⁰⁹ Herman Smit and et al. (n 6) 6.

³¹⁰ Ibid, 24.

³¹¹ Prassl (n 24), 93.

³¹² Ibid.

³¹³ Ibid.

³¹⁴ Ibid.

flexibility are not at odds with one another and pursuing this line of reasoning may result in the prevention of the realisation of platform worker's rights.³¹⁵

Platform work is inherently flexibility, as workers can choose when to log onto the platform and for how long. This flexibility does not fit into the current definitions of employment in most jurisdictions and thus, platform workers are classified as independent contractors. However, platform workers are not entirely free to choose when they work and are often at the mercy of the platform or customer ratings.³¹⁶ For example, an Uber driver may choose to log onto the app when it suits him or her, however, he or she is not guaranteed to find work and may have to work long hours or at odd times to make a living wage.

Davidov and Katsabian also argue that flexibility does not make an independent contractor and flexibility in work and a status of employment are not incompatible.³¹⁷ In addition, there are other tests for employment and flexibility is not the sole test for employment. The test of control is a significant indication of employment.³¹⁸ As discussed above and highlighted by platform workers through litigation in Kenya, Nigeria and South Africa, platform workers are under the control of digital platforms in a number of areas. They must perform their work in line with the standards of the platform including the fares they charge and, in some cases, how long they may be logged onto the platform, like the Kenyan Uber drivers discussed in the previous chapter. African states, like the rest of the world, will have to find a creative solution to the regulation of the platform work.

Uber and many other platforms have argued that its drivers or workers are not under its control or subject to its subordination.³¹⁹ However, across the world in many jurisdictions Uber drivers have initiated litigation and succeeded in California, Spain, France and in the UK.³²⁰ These courts have concluded that a finding of employment is not inconsistent with a worker who is free to choose when to work and how much to work, and a platform worker should be considered employed during the time he/she is working.³²¹ Several courts have concluded this and the European Commission has also developed a proposed Directive on platform work. The Directive states that the freedom to choose when to work is not inconsistent with the finding of a status of employment.³²² Therefore, Africa can also regulate the platform economy and include platform workers in a definition of employment, despite the issue of flexibility.

Digital platform work is subject to and under the control of people, and the internet is made and built by people and exists in institutions, it is not an unruly domain that cannot be regulated.³²³ Regulation could start with a minimum wage based on a living wage, the definition of employment broadened to be more inclusive and digital platform workers included in the norms and standards of current labour markets and regulation.³²⁴ There may be lack of political enthusiasm to attain these objective but it is

³¹⁵ Ibid.

³¹⁶ Tammy Katsabian and Guy Davidov, 'Flexibility, Choice and Labour Law: The Challenge of On-Demand Platforms' Forthcoming in the University of Toronto Law Journal, 1.

³¹⁷ Ibid, 7.

³¹⁸ Ibid, 8.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Ibid.

³²² Ibid.

³²³ Mark Graham and others, (n 11) 154.

³²⁴ Ibid, 156.

possible.³²⁵ Platform workers can assist by bringing attention to their interests and enforcing their rights through litigation and collective bargaining.

5.3.1. Remedies through the court

As seen in chapter 4, the attempts of platform workers thus far in seeking remedies through the courts have been fraught with difficulties and mostly unsuccessful. Labour laws are not easy to enforce and employers, not only digital platforms, attempt to evade labour laws as they are costly, decrease the flexibility of management and reduce profits.³²⁶ In addition, employees are often not aware of their rights or are incapable of enforcing their rights due to the imbalance of power, fear of retaliation and lack of resources.³²⁷ However, Davidov and Edo Eshet argue that the courts have a vital role to play in the enforcement of labour laws.³²⁸ They argue that the courts play a role in compliance by actively encouraging employers to comply with labour laws.³²⁹ This encouragement can be explicit through ordering remedies and holding employers accountable, alternatively this encouragement may be implied by raising awareness of labour standards.³³⁰ Whether labour standards are respected or not, depends on the issue of compliance, as employers - if given the opportunity - will evade labour regulations, while non-compliance destroys worker's rights and overall respect for the rule of law.³³¹

Thus, despite the difficulties platform workers have faced thus far in litigation, it is still a worthwhile and necessary course of action. Future platform workers who wish to challenge digital platforms should learn from their predecessors. Uber is a platform that engages in legal strategies to evade regulation and future platform workers should take note of these strategies. In addition, across the globe there are a number of judgments that have confirmed that platform workers are employees and should be provided with labour rights and standards enforced. There may be a different outcome in African courts should platform workers attempt litigation again. Even if unsuccessful, litigation may bring attention to their struggles and encourage governments to pass legislation regulating platform work.

One judgment that may prove useful for African platform workers is the Canadian case of *Uber Technologies Inc., Uber Canada, Inc., Uber B.V. and Rasier Operations B.V. v David Heller* where the court dealt with the issue of inequality of bargaining power between Uber and one of its drivers David Heller.³³² Heller was bound to a standard form contract with Uber containing an arbitration clause that required Heller to pay USD14,500 for administration fees for arbitration in the Netherlands in the event of a dispute.³³³ These fees were almost the same as Heller's annual salary and would be disproportionate to any arbitration award Heller may have received and in addition he would have to

³²⁵ *ibid*, 156.

³²⁶ Guy Davidov, 'Compliance with and Enforcement of Labour Laws: An Overview and Some Timely Challenges' (2021) 3 *Soziales Recht*, 111.

³²⁷ *ibid*.

³²⁸ Guy Davidov and Eshet Edo, 'Improving Compliance with Labor Laws: The Role of Courts', *Comparative Labor Law and Policy Journal* (as a Special Section Lead Article, Followed by Several Commentaries)' [no date] Forthcoming in the *COMPARATIVE LABOR LAW & POLICY JOURNAL* (2022), 23.

³²⁹ *Ibid*.

³³⁰ *Ibid*.

³³¹ *Ibid*.

³³² *Uber Technologies Inc., Uber Canada, Inc., Uber B.V. and Rasier Operations B.V. v David Heller* 2020 SCC 16

³³³ *Ibid*, para 94.

travel and pay for expenses air fares to the Netherlands.³³⁴ According to the court, this clause was an example of inequality of bargaining power and essentially Heller would be unable to enforce his contractual rights due to the expenses involved in travelling to the Netherlands and the administrative costs.³³⁵ This Canadian case bears similarities to the Uber cases in Africa, where Uber drivers sought legal action and were unable to pursue their rights due to Uber's argument of a distinct legal entity. For example, in the South African Uber case, the drivers were unable to enforce their rights due to the head office of Uber being in the Netherlands and this is a clear example of inequality of bargaining power too.

5.3.2. Collective bargaining, social dialogue and unions

Collective action has proved vital in the history of labour struggles and an important tool for enforcing labour standards.³³⁶ However, the nature of platforms are designed in such a way that workers are the market and are forced to compete with other platform workers to gain work; resulting in a barrier to organising.³³⁷ This is a problem for effective organisation, however, platform workers in Kenya, South Africa, Nigeria and Ghana have recognised the potential in collective organisation and there are promising signs of unions and workers organisations forming and advocating for worker's rights. In chapter 4, collective action was the most promising tool for platform workers and brought about the best results.

Stefano argues that the collective bargaining rights of workers in non-standard employment must be urgently enforced, as they face an implicit threat of losing work and are at the mercy of the employer who may engage in exploitative practices.³³⁸ Furthermore, it is equally important that a classification of self-employment does not prevent platform workers from exercising their collective labour rights.³³⁹ Collective labour rights are also human rights and excluding the self-employed from these rights would be a grave violation.³⁴⁰ In addition, limiting the power of the platform should also be applied to digital platforms and not only to formal employment relationships.³⁴¹ Allowing platform workers the ability to exercise their collective rights may also assist in the prevention of platform workers enforcing their rights through other more costly and difficult means such as litigation.³⁴² However, there are other laws that may conflict with platform workers organising themselves collectively, such as competition laws and anti-trust laws.³⁴³ If this is the case, competition laws may need to be reformed as they are not in sync with the current realities of labour markets, where large groups of self-employed workers are dependent on a single platform and also require collective action in order to counter-balance the unequal power of the platform.³⁴⁴ Only a genuinely self-employed person who owns an independent business organisation and provides goods or services should not be permitted to bargain collectively as this may violate competition laws.³⁴⁵ The burden of proving that an individual is genuinely self-employed should belong to the competition authority or those seeking

³³⁴ Ibid.

³³⁵ Ibid, para 95.

³³⁶ Mark Graham and others, (n 11) 155.

³³⁷ Ibid.

³³⁸ De Stefano and Aloisi (n 212), 13 .

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Ibid.

³⁴³ Ibid.

³⁴⁴ Ibid, 19.

³⁴⁵ Ibid, 19.

to restrict the right.³⁴⁶ This may conflict with current competition and anti-trust laws, however, the reform of competition laws may also be necessary as platform workers may be denied the right to collective action as they do not fit into the traditional tests for employment such as the control and subordination tests.³⁴⁷

Unions will also play an important role, and a few unions have already engaged platform workers regardless of their employment status, some at grassroots levels.³⁴⁸ This happened in Kenya where grassroots organisation engaged Uber drivers to protest the unilateral amendment to fees charged by Uber. Hence, active unions can organise platform workers and enforce the fundamental labour rights of platform workers.³⁴⁹ There is also much evidence that a workforce that is unionised is far less likely to suffer labour violations.³⁵⁰ Unions can provide workers with the information about their rights, how to enforce their rights and can also intervene on behalf of workers.³⁵¹ In addition, strikes and collective action can enforce compliance as sometimes legal action is not effective.³⁵² This is also evident in Africa, where legal action has been slow, costly and produced little success. Collective action is a more promising prospect. Graham also suggests the creation of a transnational digital workers union.³⁵³ This may be particularly useful in the African context and platform workers across the continent can learn from each other and coordinate efforts for resistance. Platform workers are dispersed around the globe and thus organisation is difficult, and this also makes it difficult to lobby politicians and gain recognition of their interests and concerns.³⁵⁴ This is a problem in Africa, in particular, where governments have done little to intervene on behalf of platform workers.

In this respect, African states can also learn from other jurisdictions where the regulation of platform work is currently contemplated. The European Commission has recently proposed a Directive for the improvement of the working conditions of platform work.³⁵⁵ The Directive has proposed a number of creative and interesting ways to deal with the regulation of platform work and the issues around collective bargaining and human interactions. For instance, Article 3 of the proposed Directive covers the correct determination of the employment status of platform workers, which may assist African courts when determining a status of employment. According to the Directive a determination of employment must be guided by the actual performance of work, considering the use of algorithms and irrespective of the definition of the relationship in the agreement between the platform and platform worker.³⁵⁶ In addition, Article 4 also establishes a legal presumption that there is an employment relationship between the platform worker and the platform if the platform controls the performance of a work in certain respects.³⁵⁷ The Directive also requires Member States to encourage legal education regarding the presumption of employment to ensure compliance and legal certainty.³⁵⁸ While article 5

³⁴⁶ Ibid 19.

³⁴⁷ Ibid 19.

³⁴⁸ Ibid, 13.

³⁴⁹ Davidov (n 321), 112.

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Graham and others (n 11) 154.

³⁵⁴ Ibid, 156.

³⁵⁵ European Commission, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, Brussels, 9 December 2021, COM(2021) 762 final.

³⁵⁶ COM(2021) 762 final, 15

³⁵⁷ COM(2021) 762 final, 15.

³⁵⁸ COM(2021) 762 final, 16.

places the burden of proof on the digital platform to prove there is no employment relationship, as opposed to the platform worker proving that there is an employment relationship.³⁵⁹ This would have certainly assisted the Ubers drivers in the Nigerian and South African cases.

Other articles that may prove useful are article 7, 8 and 15. According to Article 7, digital platforms should evaluate the risks and impact of automated monitoring and decision-making for any decisions that relate to the physical and mental health of platform workers. Furthermore, Article 7 requires that Member States ensure there are sufficient human resources for monitoring the impact of decisions on platform workers and that the person in charge of such decisions must have the necessary training and authority for enforcement.³⁶⁰ Article 8 details platform worker's right to request and obtain any information and explanation from the digital platform on decisions that significantly affects them.³⁶¹ Furthermore, Article 8 requires that platform workers are provided with access to a human person who can explain a decision and its reasoning.³⁶² Under Article 8, digital platforms must also provide a written statement for the reasons for a decision to suspend or terminate a platform worker from the platform, the refusal of remuneration and a decision on the contractual status of the worker.³⁶³ The proposed Directive also tackles the problem of isolation of platform workers under Article 15. According to Article 15, Member States must ensure that digital platforms create possibilities for persons performing platform work, and not only those classified as employees, to communicate with other workers and are contactable by representatives of platform workers.³⁶⁴ In addition Member States shall require digital labour platforms not to interfere, have access to or monitor these communication channels among persons performing platform work.³⁶⁵

5.3.3. Market-based strategies and moral campaigning

Market-based strategies are also important and can encourage improvements to the job quality of platform workers. If consumers and buyers are properly informed about the products and services they are purchasing, then the seller is less likely to engage in business that is unethical.³⁶⁶ There are numerous initiatives that have campaigned for better and improved working conditions for workers employed by large multinationals, but these have mostly related to physical goods, such as chocolate, coffee and clothing.³⁶⁷ These campaigns can be applied to digital labour, although, it may be more challenging as there is no physical product and tracing the origins of labour may also prove difficult in complex digital outsourcing cases.³⁶⁸ Despite the difficulties, this may be a helpful strategy. Industry watchdogs, certification schemes and activists can all assist in the improvement of job quality of platform workers.³⁶⁹ For example, an activist organisation can ensure the standards of the ILO are applied to platform workers in Africa including minimum wages and social security.³⁷⁰

³⁵⁹ COM(2021) 762 final, 16.

³⁶⁰ COM(2021) 762 final, 16.

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Graham and others (n 11) 154.

³⁶⁸ Ibid.

³⁶⁹ Ibid.

³⁷⁰ Ibid.

One such organisation is the Fairwork Foundation, which is a body that aims to improve the job quality of platform workers by intervening on behalf of platform workers, as many workers do not have the ability to engage in collective bargaining.³⁷¹ The Fairwork Foundation aims to achieve better regulation of platform work through public awareness, reputation ratings and consumer power.³⁷² The Foundation, as explained in chapter 3, uses a ratings system to score platforms, similar to other initiatives such as Fair Trade and the Living Wage initiative in London.³⁷³ The ratings systems provides useful information on whether a platform is providing work that is in line with the principles of fair pay, fair conditions, fair management and fair representation.³⁷⁴ These ratings systems can provide a helpful mechanism to measure digital platforms on labour standards and also provide an incentive for platforms to provide better working conditions.³⁷⁵ Public awareness of the law is essential to ensure compliance with labour laws.³⁷⁶ Public campaigns can also be initiated by government and not only the private sector.³⁷⁷ Inspectors can also assist platforms with providing work that is of a decent quality and enforce labour standards.³⁷⁸

5.3 Conclusion

There are various options available to platform workers and states in African to improve and achieve better regulation of platform work. Litigation and collective action have already utilised by platform workers and they should continue to use these strategies and in addition utilise market-based strategies. Current labour laws in Africa will need to be reformed to provide for a more inclusive interpretation of work to include platform work. Activist organisations and unions also have a vital role to play in the regulation of platform work in Africa. This chapter explored the final question posed in this thesis: what more can platform workers, in Africa, do to improve their job quality and what are their options, if any? In conclusion, collective bargain is perhaps the best and most useful tool for platform workers to enforce their rights.

³⁷¹ Graham and others (n 4), 101.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Davidov (n 321) 115.

³⁷⁷ Ibid.

³⁷⁸ Ibid.

Chapter 6 : Conclusion

The future of work in Africa lies to a large extent in digital platform work. This thesis explored platform work in Africa and assessed the legal framework, job quality and options for regulation. In chapter 1 the research question and sub-questions were identified and the scientific and societal relevance discussed.

In chapter 2, the following sub-question was examined: what is the legal framework applicable to gig workers in Africa? This chapter concluded that platform work is not adequately regulated in Africa by labour laws or another legal framework. Platform workers are labelled by platforms as independent contractors and thus, in current practice, fall outside the labour-law framework. An adequate legal framework or 'inclusive interpretation' of the current legal frameworks is, therefore, lacking.

Chapter 3 explored the job quality of platform workers in Africa and concluded that for the majority of platform workers in Africa, job quality is poor. This chapter explored the following sub-questions: what is the job quality of platform workers in Africa? Platform workers are often not paid well or barely paid minimum wage and they face discrimination, work long hours or in unsafe conditions, unclear terms and conditions and algorithmic management and lack a voice and fair due process. Platform work is thus contributing to precarious and non-standard employment in Africa. This may not be the case for all platform workers across all countries in Africa, but it appears to be so for a significant portion. It is thus important to provide platform workers with the tools and knowledge to challenge their working conditions.

Chapter 4 explored the experiences of platform workers in Africa and their attempts to change and improve their job quality and working conditions. This chapter explored the sub-question: can changes to the legal framework of platform workers in Africa lead to improvements in job quality and what are the successes and failures of platform workers thus far in attempting to change their job quality and working conditions? In summary, changes to the legal framework will improve the job quality of platform workers who are unhappy with their working conditions and have expressed this through collective action and litigation. However, platform workers have not been successful in regulating or substantially improving their working conditions in many cities. Platform work remains mostly unregulated in Africa, despite the challenges from workers through litigation and collective action.

Chapter 5 explored the final research question: what more can platform workers, in Africa, do to improve their job quality and what are their options, if any? There are various options available to platform workers and states in Africa to improve and achieve better regulation of platform work. Current labour laws in Africa will need to be reformed to provide for a more inclusive interpretation of work to include platform work. Platform workers in Africa should continue to engage in collective action and strikes to gain recognition of their interests and put pressure on digital platforms to recognise their legal rights. Activist organisations and unions also have a vital role to play in the regulation of platform work in Africa.

In conclusion and to answer the overall question of this thesis; what more can gig workers in Africa do to improve their job quality, if anything, without losing out on valuable work opportunities? Platform workers must engage in collective action as this remains the most important mechanism to improve working conditions, however, the implicit threat of deactivation from the platform remains and is a risk platform workers may have to accept to improve their working conditions. Platform workers must also recognise their power and if they engage in coordinated collective action they can

achieve results, as is evident from the limited successes in Kenya and Nigeria. If platform workers do not attempt to enforce their rights, platform work will remain precarious and non-standard and therefore it is vital that platform workers in Africa challenge digital labour platforms. It must not only fall to platform workers to improve their job quality and the solution will also require coordinated action through civil society, trade unions and the intervention of governments to regulate and improve job quality. Litigation through the courts is also useful and will have a role to play in the enforcement of labour standards. The regulation of platform work in Africa is necessary and possible to ensure that the gig economy brings valuable work opportunities to Africans and does not exacerbate inequality, poverty and precarious work.

Bibliography

- Amolo Ng'weno and David Porteous, 'Let's Be Real: The Informal Sector and the Gig Economy Are the Future, and the Present, of Work in Africa' (2018) <<https://www.cgdev.org/publication/lets-be-real-informal-sector-and-gig-economy-are-future-and-present-work-africa>> accessed 6 October 2021.
- Mark Graham and others, 'The Fairwork Foundation: Strategies for Improving Platform Work in a Global Context' [2020] Geoforum.
- Kate Meagher, 'Rewiring the Social Contract- Digital Taxis and Economic Inclusion in Nigeria' (United Nations Research Institute for Social Development (UNRISD), Geneva, 2018).
- Herman Smit and et al, 'Africa's Digital Platforms and Financial Services: An Eight-Country Overview' (insight2impact 2019).
- Mohammed Amir Anwar and Mark Graham, 'Digital Labour at Economic Margins: African Workers and the Global Information Economy' (2020) 47 Review of African Political Economy.
- Richard Heeks, 'Decent Work and the Digital Gig Economy: A Developing Country Perspective on Employment Impacts and Standards in Online Outsourcing, Crowdfund, Etc' [2017] Development Informatics Working Paper no 71.
- Mark Graham and others, 'Digital Labor and Development: Impacts of Global Digital Labor Platforms and the Gig Economy on Worker Livelihoods' (2017) 23(2).
- Mohammed Amir Anwar and Mark Graham, 'Between a Rock and a Hard Place: Freedom, Flexibility, Precarity and Vulnerability in the Gig Economy in Africa' (2020) 25(2) Competition and Change.
- J Cilliers, 'The Future of Work in Africa' in Cilliers, J. (ed) *The future of Africa: Challenges and Opportunities* (Palgrave Macmillan 2021).
- Tabea Lakemann and Lay Jann, 'Digital Platforms in Africa: The "Uberisation" of Informal Work' [2019] (GIGA Focus Afrika, 7) Hamburg: GIGA German Institute of Global and Area Studies - Leibniz-Institut für Globale und Regionale Studien, Institut für Afrika-Studien.
- Alex J Wood and others, 'Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy' (2018) 33(1) Work, Employment and Society.
- Jeremias Prassl, *Humans as a Service* (Oxford Scholarship Online 2018).
- Debra Howcroft and Birgitta Bergvall-Kåreborn, 'Typology of Crowdfund Platforms' (2018) 33(1) Work, Employment and Society 21.
- Mark Graham and others, 'Fairwork Kenya Ratings 2021: Labour Standards in the Gig Economy' (2021). <<https://fair.work/wp-content/uploads/sites/131/2021/12/Fairwork-Kenya-2021-Report.pdf>> last accessed 8 January 2022, 11.
- Darcy Du Toit and others, 'Fairwork South Africa Ratings 2021: Labour Standards in the Gig Economy' (2021).
- Thomas Anning-Dorson and others, 'Fairwork Ghana Ratings 2021: Labour Standards in the Platform Economy' (2021) <<https://digitalfrontiersinstitute.org/blog/2019/05/07/africas-digital-platforms-and-financial-services-an-eight-country-overview/>>, last accessed 15 September 2021.
- Nagla Rizk, 'Fairwork Egypt Ratings 2021: Towards Decent Work in a Highly Informal Economy' (2021).
- The Employment Act of 2007 (Kenya 2007).

- Mark Graham and others, 'Fairwork Kenya Ratings 2021: Labour Standards in the Gig Economy' (2021), 12.
- N Ejims Enwukwe, 'The Employment Status of Nigerian Workers in the Gig' (2021) 107 Journal of Law, Policy and Globalization.
- Labour Act (LFN), 2004 (reads together with Labour Act (Amendment) Bill, 2019).
- Oladapo Olatunji & Others v Uber Technologies Sytems Nigeria No. Suit No NICN/LA/546/2017 (The National Industrial Court of Nigeria, Lagos Judicial Divison).
- Labour Relations Act 66 of 1995.
- Notice 1774 of 2006, 'Code of Good Practice: Who is an Employee' (1 December 2006).
- Labour Act, 2003 (Act 651).
- Kussasi v Ghana Handling Co and Another [1978] GLR 170-179.
- Montreal v Montreal Locomotive Works [1947] 1 DLR 161.
- Young & Woods Ltd v West [1980] IRLR 201.
- Trade Union (Amendment) Act, 2005.
- Katarzyna Cieslik and others, 'Offline Contexts of Online Jobs: Platform Drivers, Decent Work, and Informality in Lagos, Nigeria' (2022) e12595 Development Policy Review.
- Brendan Burchell and others, 'The Quality of Employment and Decent Work: Definitions, Methodologies, and Ongoing Debates' (2014) 38 Cambridge Journal of Economics 469.
- Brendan J Burchell and Adam P Coutts, 'The Experience of Self-Employment Among Young People: An Exploratory Analysis of 28 Low- to Middle-Income Countries' [2018] American Behavioural Scientist 1.
- Tammy Katsabian and Guy Davidov, 'Flexibility, Choice and Labour Law: The Challenge of On-Demand Platforms' Forthcoming in the University of Toronto Law Journal.
- Sageet Paul Choudary, 'The Architecture of Digital Labour Platforms: Policy Recommendations on Platform Design for Worker Well-Being' [2018] ILO Future of Work Research Paper Series, 203.
- Uma Rani and Marianne Furrer, 'Digital Labour Platforms and New Forms of Flexible Work in Developing Countries: Algorithmic Management of Work and Workers' (2021) 25(2) Competition and Change.
- Pitso Tsibolane and others, 'Digital Gig Work in Africa: An Exploratory Survey' (The Gig Economy in the Global South, IMPROVING AFRICAN LIVELIHOODS WITH DIGITAL INFORMATION & TECHNOLOGY, Cape Town, South Africa, January 2018).
- Padraig Carmody and Alicia Fortuin, "'Ride-Sharing,' Virtual Capital and Impacts on Labor in Cape Town, South Africa' (2019) 38:3 African Geographical Review, 202.
- Gianluca Lazzolino, "'Going Kanura": Colliding Subjectivities and Labour Struggle in Nairobi's Gig Economy' [2021] EPA: Economy and Space.
- Charles Wharton Kaye-Ession, "'Uberization" as Neoliberal Governmentality: A Global South Perspective' (2019) Vol. 55(5) Journal of Asia and African Studies.
- Sageet Paul Choudary, 'The Architecture of Digital Labour Platforms: Policy Recommendations on Platform Design for Worker Well-Being' [2018] ILO Future of Work Research Paper Series.

- Valerio De Stefano and Antonio Aloisi, 'Fundamental Labour Rights, Platform Work and Human Rights Protection of Non-Standard Workers' in Janice R. Bellace and Beryl ter Haar (eds) *Research Handbook on Labour, Business and Human Rights Law* (Edward Elgar Publishing Limited 2019), 1.
- *Kanuri Limited & 34 Others v Uber Kenya Limited* No. Civil Suit No 356 of 2016 (In the High Court of Kenya at Nairobi).
- *Kanuri Limited & 33 others v Uber Kenya Limited & 2 others* (Civil Case 356 of 2016) [2021] KEHC 138 (KLR) (Commercial and Tax) (7 October 2021) (Ruling).
- *Uber South Africa Technology Services (Pty) Ltd v National Union of Public Service and Allied Workers Union (SATAWU) and others* C 449/17 (Labour Court, Cape Town).
- *Oladapo Olatunji & Others v Uber Technologies Systems Nigeria* (n 53).
- Gwynne L Skinner, 'Beyond Kiobel: Providing Access to Judicial Remedies for Violations of International Human Rights Norms by Transnational Business in a New (Post-Kiobel) World' (no date) 46 *Columbia Human Rights Law Review* 15.
- Gianluca Lazzolino, "'Going Kanura": Colliding Subjectivities and Labour Struggle in Nairobi's Gig Economy' [2021] *EPA: Economy and Space*, 2.
- Guy Davidov, 'Compliance with and Enforcement of Labour Laws: An Overview and Some Timely Challenges' (2021) 3 *Soziales Recht*, 111.
- Guy Davidov and Eshet Edo, 'Improving Compliance with Labor Laws: The Role of Courts', *Comparative Labor Law and Policy Journal* (as a Special Section Lead Article, Followed by Several Commentaries)' [no date] Forthcoming in the *COMPARATIVE LABOR LAW & POLICY JOURNAL* (2022), 23.
- *Uber Technologies Inc., Uber Canada, Inc., Uber B.V. and Rasier Operations B.V. v David Heller* 2020 SCC.
- European Commission, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, Brussels, 9 December 2021, COM(2021) 762 final.