

Review of Policy Frameworks in Sub-Saharan Africa

A Policy Brief for Ghana with Respect to the Digital Labour Platforms and Platform Economy



Author

Dzifa Vanderpuye, *B.A., L.L.B.*

Editors

Daniel Arubayi, *Ph.D* (Fairwork)

Funda Ustek Spilda, *D.Phil* (Fairwork)

Introduction

The platform economy has grown significantly in Sub-Saharan Africa in recent years. This has provided new employment opportunities, with many people securing work through ride-hailing and delivery platforms like Uber, Bolt, Jumia Foods, etc. However, existing employment laws in Ghana do not protect platform workers due to their classification as independent contractors. This lack of protection means that platform workers are not entitled to standard labour protections and are expected to shoulder both the costs and risks of their work, without adequate support.

In recognition of this, Fairwork—an action research project coordinated by the Oxford Internet Institute, University of Oxford, and the WZB Berlin Social Science Centre—has commissioned research to highlight the best and worst practices in the platform economy. The project employs a three-fold methodology, comprising desk research, manager interviews and worker interviews and surveys, to evaluate the fairness of working conditions on location-based platforms, and cloudwork platforms. Each platform is given a score out of ten in accordance with the five Fairwork principles: pay, conditions, contracts, management, and representation. The project is currently running in 38 countries, across five continents. Each country team collaborates with workers, platforms, advocates, and policymakers to envision and build a more equitable future of platform work. Thus far, the project has succeeded in securing 189 pro-worker changes by 50 different platforms; and has published two reports assessing the platform economy in Ghana.

This policy brief focuses on the legal and policy context of platform workers in Ghana. Ghana's Labour Act, 2003 (Act 651) does not currently provide clear standards for decent platform work. This may undermine some of Ghana's international commitments in relation to the International Labour Organisation (ILO), the United Nations Sustainable Development Goals, and the International Covenant on Economic, Social and Cultural Rights. Thus, in Ghana, the growth of the platform economy has bypassed labour rights enforcement. Consequently, this policy brief aims to analyse the current regulation landscape for platform work in Ghana, whilst shedding light on the realities of platform work in Sub-Saharan Africa more generally. More specifically, the policy brief seeks to:

- Analyse the challenges facing ride-hailing platform drivers with specific reference to their conditions of work; and
- Propose recommendations through legislative and policy changes.

The brief is structured as follows. The first section provides an overview of the platform economy in Ghana, focusing primarily on the ride-hailing and food-delivery sectors—the dominant sectors within the country’s emerging and rapidly expanding platform economy. The section also explores the challenges facing the Ghanaian platform economy. The second section analyses the legal status of platform workers. This is done via a comparison of the characteristics of employment and self-employment within the contractual arrangements between workers and platform companies. Ultimately, this section highlights the absence of social and legal protections for platform workers in Ghana. The third section proceeds with an in-depth analysis of the benefits applicable to workers under Ghana’s labour laws and an overview of the laws and the institutions that currently oversee and should be regulating the activities of platform workers in Ghana. Following this, the last section concludes with recommendations for legislative and policy changes which would provide adequate social and legal protections for platform workers in Ghana.

Overview of Platform Work in Ghana

This section provides a brief overview of platform work in Ghana, focusing on the main activities undertaken in the sector and the challenges facing its workers.

First, a digital labour platform is a company that mediates and facilitates “labour exchange between different users, such as businesses, workers and consumers.¹ Digital platforms like Airbnb or eBay—where goods are exchanged—are not included within this definition. Second, among digital labour platforms, there are two broad types. In the first—‘geographically-tethered’ or ‘location-based’ platforms—the work is required to be done in a particular location (e.g., delivering food from a restaurant to an apartment or driving a person from one part of town to another). In contrast, in the second—‘cloudwork’ or ‘online work’ platforms—the work can, in theory, be performed from anywhere via the internet (e.g., data categorisation or online freelancing). In Ghana, online or cloudwork involves tasks such as writing and translation, graphic design, web development and so forth.² These are provided by platforms such as Fiverr, Jobs Upwork, and 99 Designs.

In Ghana, ride-hailing and delivery platforms are the main location-based platforms. Bolt, Uber and Yango are the largest ride-hailing platforms, while Bolt Foods, Glovo and Jumia dominate the delivery industry.³ These delivery platforms service a variety of businesses, including e-commerce and online retailers, restaurants, pharmacies, cosmetic shops, stationery distributors and spare parts dealers.⁴ The most significant of these businesses for delivery platforms are restaurants and e-commerce retailers.⁵ For the purposes of this policy brief, “platform workers refer to workers providing ride-hailing and delivery services”.

Fairwork Principles and Ghanaian Platform Ratings

In line with the Fairwork methodology outlined in the introduction, Fairwork Ghana has evaluated the fairness of the working conditions at 12 digital labour platforms operating in the country. The research, which took place in 2021 and 2022, highlights evidence of the poor working conditions in the Ghanaian platform economy.^{6,7} The 12 platforms included Bolt, Bolt Food, Feenix, Indriver, Jumia Food, Glovo, The Black Ride, Eziban, iFerch, SwiftWheels, Uber and Yango. The below outlines the top-line findings for each of the five principles.⁸

Fair Pay

The first Fairwork principle states that workers, irrespective of their employment classification, should earn a decent income in their home jurisdiction after taking account of work-related costs. Fairwork assesses earnings according to the mandated minimum wage in the home jurisdiction, as well as the current living wage.

In 2021, there was sufficient evidence that nine of the ten platforms assessed paid their workers a least the minimum wage of GHs12.53/day (approx. USD 1.10) after work-related costs. However, in 2022 Fairwork was not able to evidence that workers earned the minimum wage of GHs13.53/day (approx. USD 1.19) after work-related costs, for all nine platforms.⁹ The take-home pay of platform workers plummeted as a result of increased inflation, rising fuel prices and increased cost of living.

In both years of assessment, there was no evidence that platform workers earned the living wage of GHs35.4 in 2021 (approx. USD 3.12) and GHs39.1 in 2022 (approx. USD 3.45) respectively, after work-related costs.

Fair Conditions

The second principle states that platforms should have policies in place to protect workers from foundational risks arising from the processes of work and should take proactive measures to protect and promote the health and safety of workers.

In 2021, Fairwork found that five of the ten platforms assessed took action to protect workers from risks that arise on their jobs. However, unsafe and dangerous working conditions were found to be a key, daily concern for workers, particularly in the ride-hailing sector. The second threshold checks that platforms provide safety net for all its workers. Only one platform (Eziban) was able to demonstrate that it provided a safety net for workers, such as compensation when they are unable to work. In 2022, only one of the ten platforms assessed, Glovo, was able to provide evidence that they took actions to protect workers from risks that arise on the job. In the same year, Fairwork could not find any evidence that platforms provided safety nets for workers.

Fair Contracts

The third principle states that terms and conditions should be accessible, readable, and comprehensible. The party contracting with the worker must be subject to local law and must be identified in the contract. Regardless of the worker's employment status, the contract is free of clauses which unreasonably exclude liability on the part of the service user and/or the platform.

In both 2021 and 2022, only two (Glovo and The Black Ride) of the ten platforms assessed in each year provided sufficient evidence that their terms and conditions were clear and transparent. Only one platform (Glovo), could further evidence that it did not unreasonably exclude liability on the part of the platform, and that the contract did not contain clauses that prevent workers from seeking redress for grievances.

Fair Management

This principle states that there should be a documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions. There must be a clear channel of communication for workers to appeal management decisions or deactivation. The use of algorithms must be transparent and result in equitable

outcomes for workers. There should be an identifiable and documented policy that ensures equity in the way workers are managed on a platform (for example, in the hiring, disciplining, or firing of workers).

In 2021, Fairwork found evidence that five of ten platforms assessed provided due process for workers through a channel for workers to communicate and appeal disciplinary decisions including deactivations. Only The Black Ride and Eziban were awarded the second point, for issuing public anti-discrimination policies, and committing to proactive measures to advance equity on their platforms. In 2022, only two of ten platforms (Glovo and The Black Ride) were able to evidence the provision of due process for decisions affecting workers. For the second point, both provided evidence of equity in the management process by issuing anti-discrimination policies and commitment to measures that promoted diversity, equality, and inclusion for disadvantaged groups such as women.

Fair Representation

The final principle states that platforms should provide a documented process through which worker voice can be expressed. Irrespective of their employment classification, workers should have the right to organise in collective bodies, and platforms should be prepared to cooperate and negotiate with them.

In 2021 only two of the ten platforms assessed (The Black Ride and Eziban), provided sufficient evidence that they assured the freedom of association for workers and had a formal policy of willingness to recognise and bargain with a collective body of workers. In 2022, only one platform (the Black Ride), formally and publicly recognised an independent collective body of workers by signing an MOU with various associations.

These findings from both rounds of platform scoring demonstrate that significant improvements are needed across the Ghanaian platform economy in order for workers to be able to access fair working conditions.

Background of Ghana's Platform Economy

Ride-hailing and delivery platforms formally commenced operations in Ghana in 2016. Uber was the first to launch its operations, followed by Bolt, Yango and Glovo.¹⁰ Ghana's high mobile penetration facilitated a rapid uptake of such platforms by both workers and users/consumers.¹¹

The proliferation of the use of mobile money was also a factor: it was accessible to anyone with a mobile phone, and supported by Ghana’s electronic payment infrastructure.¹² Nevertheless, cash remains the dominant mode of payment for ride-hailing and delivery platform workers, and platform services are generally limited to metropolitan areas, namely the cities of Accra, Kumasi, Sekondi and Cape Coast.¹³ This is generally attributed to the sparsity of telecommunication infrastructure in rural areas.¹⁴

As well as the factors mentioned above, the steady growth of participation in platform work has been driven by high unemployment rates in Ghana, and the income opportunities offered by platforms.¹⁵ The growth and acceptance of ride-hailing services, for instance, can be credited to the fact that they provide a mechanism for individuals to commercialise their cars.¹⁶ Location-based platform work presents few barriers to entry for people—essentially the ability to drive a car or ride a motorbike.¹⁷

The number of people accessing work through digital labour platforms increased as a result of the COVID-19 pandemic, when demand for ride-hailing and delivery services increased.¹⁸ This was because people wanted to limit their exposure to others by reducing travel on public transportation to avoid infection.¹⁹ The demand for couriers also increased during the lockdown periods in Accra and Kumasi.²⁰

Platform work provides an income for many Ghanaians, including young people and the unemployed.²¹ Some of these individuals turned to platform work having lost their jobs in the financial sector following its restructuring.²² Others were auto mechanics, construction workers and taxi drivers.²³ In this context, platforms frame themselves as job-creators. According to the General Manager of Uber Sub-Saharan Africa, on signing the Statement of Understanding with the Ministry of Transport when it first launched in Ghana, Uber would create thousands of economic opportunities for Ghanaians.²⁴ While the actual number of people engaged in platform work in Ghana is uncertain,²⁵ Fairwork 2022 report estimates the number to be between 60,000 to 100,000 based on interviews with union representatives and desk research.²⁶

Research by Caribou Digital in 2021, indicates the dominance of male drivers in the ride-hailing sector.²⁷ This is contrasted with the fact that the majority of ride-hailing users are women.²⁸ According to Boateng and colleagues research in 2022, out of 15 users who participated in their study in Ghana, only one reported that they had ever met a female driver.²⁹ Although their small sample is not sufficient to conclude on the gender dynamic of platform work in general, it does

indicate to some extent the lack of participation of female workers within the transport and delivery sectors. It is also consistent with the overrepresentation of men in the commercial passenger transportation industry in Ghana.³⁰ An exception to that rule is the Metro Mass Transit—Ghana’s public transport company—which employs a significant number of female bus drivers.³¹

Anecdotal evidence suggests that the stereotyping of commercial driving as a male profession dissuades female participating within the industry.³² According to one female driver in Ghana – featured in a Pulse article in 2019 - her gender made it more difficult to secure work—with instances of customers cancelling requests once they realised she was a woman.³³ However, this is not to suggest that there are no female success stories in the ride hailing sector in Ghana.³⁴ In 2017, the B&FT Online reported that one woman was a fleet owner of seven vehicles operating on the Uber platform.³⁵ Other women have set up niche ride-hailing businesses to serve specific groups in Ghana, such as high-value customers.³⁶ For example, the all-female platform, Miss Taxi Ghana, targets the diplomatic community and embassy staff.³⁷ Another company, Ladybird Logistics – Ghana, is promoting female participation in long-distance oil delivery to Ghana’s mining industry.³⁸ To allow female truck drivers to successfully compete with men, the company has set up systems to proactively address the social norms and security risks that keep women off the road.³⁹ While some women are venturing gradually into delivery platforms like Jumia Foods, they are still massively underrepresented in the Ghanaian platform economy. A major reason for this is the high levels of insecurity and lack of safety on these jobs, with few or no policies that facilitate hiring women or that protect them on the job. Perhaps, this can be addressed with more local digital labour platforms like The Black Ride and Eziban in the coming years.

Arguably, while the Ghanaian platform economy was established by foreign multi-nationals, this has not blocked opportunities for local innovation, as has been noted by the World Bank Group (2019). Indeed, there has been a significant amount of Ghanaian investment in the ride-hailing and food delivery sectors, with several local platforms emerging.⁴⁰ Notable examples of these include The Black Ride, Ehyen Transport Limited, Dropyn, Eziban and Homechow. In certain cases, local platforms have established themselves in direct response to dissatisfaction with multi-nationals. For instance, in response to driver concerns with commission rates, Dropping Ghana and Uru have established themselves by eliminating surge charges and offering fixed booking fees per trip.⁴¹

Despite the relatively recent emergence of the sector, ride-hailing platforms constitute an important part of the Ghanaian transportation system in metropolitan areas, namely Accra, Kumasi, and Sekondi. For users/consumers, the ease and convenience of access, affordability, and predictability in terms of travel time and costs, make ride-hailing preferable to other modes of transport. This is especially the case among young people, with platform services generally used by younger, highly educated, and relatively high-earning people.⁴² Another reason for the popularity of ride-hailing platforms in Ghana is the security they provide. The ability to track and share journeys with friends and family members and identify drivers via the app makes ride hailing a safer option for users/consumers in many instances.⁴³ The safety provided by ride-hailing platforms is supplemented by the implementation of eligibility requirements by platforms, such as the refusal to register vehicles in poor condition or those without insurance.⁴⁴

Delivery service platforms have also become an integral part of the business of e-commerce and online retailers.⁴⁵ The main advantage of such platforms is the speed with which goods are delivered, and the relatively low cost at which services are provided.⁴⁶ This is achieved through a digitized system, route planning and route optimisation.⁴⁷

Challenges facing platform workers in the sector

Although workers' motivation for participation in platform economy was the high profits initially, the reality of platform work in Ghana is now far from this.⁴⁸ For instance, for delivery riders, increased competition resulting from the emergence of several local courier companies, along with the concentration of the business in certain parts of Accra, and direct investment in delivery services by some restaurants, has led to a gradual decline in income.⁴⁹ Furthermore, very few Ghanaians in the ride-hailing and delivery sectors are self-employed vehicle-owning entrepreneurs.⁵⁰ According to the Fairwork Ghana Ratings in 2022, platform workers are engaged under several sub-contracting arrangements operating according to one of two models: 'work-and-pay' or 'sales or rentals'.⁵¹ Under the work-and-pay arrangement, the driver can become the vehicle owner after paying fees to the vehicle owner for a specified duration of time. In the sales or rental model, the driver/rider works like an employee of the vehicle owner. These models involve payment of fees by the drivers/riders at specified periods either on a monthly, weekly or daily basis to the employer (in the case of the 'sales or rental model') or vehicle owner (in the case of the 'work-and-pay' model).⁵² In other cases, the drivers are entitled to a day's earnings out of six working days.⁵³ According to Boateng et al. (2022), the standard practice in

the Ghanaian market concerning the work-and-pay model is that car owners often double the car price through their agreements with drivers. Thus, the driver operates the car for the owner to earn 100 percent profit on the cost of the car before acquiring ownership after an agreed period, usually between three and five years. This excludes platforms' commissions, and costs for fuel, internet, and maintenance depending on the contract terms.⁵⁴ This is less common in the delivery sector as bike ownership is more common. It is estimated that 70 percent of delivery service riders own their own bikes, 30 percent operating under the 'work and pay' model.⁵⁵

To meet these financial obligations, drivers and riders are pressured to generate as much income as possible to make a decent living. High commission rates charged by platform companies ranging from 15 per cent to 25 per cent, coupled with the high inflation rates, have diminished the profitability of platform work.⁵⁶ Many of these platform workers have to work long hours without a break (which invariably endangers the lives of their passengers).⁵⁷ According to Fairwork's research in 2021 and 2022, platform workers on average work between 60 to 84 hours a week, with impacts on their health and wellbeing such as headaches, backaches, fatigue, and in some cases high blood pressure.⁵⁸

Delivery service riders face unique challenges in addition to the issues stated above. These include the fact that their income depends on restaurants which may delay fulfilling orders on time. This leads to longer turnaround times than would be expected.⁵⁹ The knock-on effect of this is that delivery service workers have a shorter window to deliver on time, which may result in them speeding and damaging meal packs. Some customers fail to collect orders on time at the delivery destination and in some instances are unreachable, which further impacts riders' work schedule.⁶⁰ Frequent police crackdowns due to the non-compliance of some motorbike riders in Ghana with road traffic laws, and security issues such as robbery of their mobile phones, cash and the motorbikes, makes delivery service work more challenging.⁶¹

Both ride-hailing and delivery workers experience high levels of risk, with the threat of robbery, assault, road accidents, and loss of life. In 2021, a young Uber driver who was also a head teacher at a private school in Atonsu, Kumasi, was killed by passengers.⁶² These are the risks and realities that platform drivers experience daily, and which they are forced to use their intuition to navigate because there are insufficient measures in place to mitigate these risks.

The effect of these issues is the growth in formation of trade unions especially by the ride-hailing platform drivers to protect the interests of the workers.⁶³ According to Fairwork Ghana campaign

flyer in 2022, there are currently over 20 ride-hailing trade unions and association in Ghana.⁶⁴ Akorsu and colleague's study in 2022 indicates that over sixteen of these unions are affiliated to the Trades Union Congress of Ghana and have an estimated membership ranging from 300 to 1,200 members.⁶⁵ These include the Ghana Online Drivers' Union (GODU), Ghana Online Drivers' Association (GODA), Online Drivers' Union, Ghana (ODUG), and the Online Drivers' Partners Association (ODPA). The most prominent amongst these unions are the GODU and the ODUG which have been able to articulate the concerns of their members to government and the public through strikes, protests, and threats of fixing their own fees.

Delivery service workers' associations include Alliance, Accra Dispatch Riders Association and the Riders Association of Ghana. The activities of delivery services have not gained as much traction compared to ride-hailing platform associations. However, the zonal association of the International Alliance of App-based Transport Workers (IAATW) in Ghana, was able to facilitate an increase in the base rate of pay for its members after it threatened a three-day strike against Bolt Foods.⁶⁶

Platform workers in Ghana have been agitating over the past few years for government intervention in the sector.⁶⁷ For ride-hailing platforms, drivers have also been demanding transparency regarding the destination as a condition for accepting ride requests.⁶⁸ Currently, drivers are unable to determine the destination on the platform applications until the passenger boards the vehicle, raising security concerns for drivers.⁶⁹ Recent inflation and economic hardship in Ghana have also led to calls for ride-hailing companies to reduce their commission rates and for the government to intervene to improve the working conditions for ride-hailing drivers.⁷⁰

In conclusion, this section has introduced the Ghanaian platform economy and challenges that exacerbate poor working conditions for workers. It calls for the need for proper recognition of platform worker status, and proactive policies that promote fair working conditions. The next two sections will discuss the implications of the misclassification of platform worker status and the regulatory regime in Ghana.

Legal Framework for Platform Workers in Ghana

This section analyses the legal status of platform workers by comparing the traditional worker status (i.e., employee and self-employed/independent contractor) with the contract terms of platform workers. Under Ghanaian law, persons engaged in paid work are categorised as employees/workers or independent contractors.⁷¹ This aligns with the traditional categorisation of paid workers globally. Employment relationships are carried out under “*contracts of service*” and distinguished from independent contractor relationships under “*contracts for service*”.⁷² The determination of the relationship is a question of law and fact, and is made by the courts based on the circumstances of the case.⁷³ The courts apply the tests of control, economic reality, integration, and sole or personal tests in determining whether an employment or an independent contractor relationship exists.⁷⁴

(i) *Control*

This relates to the control exercised by one party over the work of another.⁷⁵ Control is derived from subordination and the worker's economic dependence on the business, to which it provides the services.⁷⁶ It is assessed in degrees, such that the more control exercised by the business/establishment, the more likely the person is an employee, and the less control exercised, the more likely the person is an independent contractor. Control over an employee encapsulates directing what work is to be done, and the manner in which it is done, as well as the power to select/recruit and apply disciplinary sanctions, including suspension and termination.⁷⁷

(ii) *Economic reality test*

This test determines whether the person conducts business as an entrepreneur or self-employed person.⁷⁸ The court will find that a person is self-employed if they stand to gain all the profit from the business and take all the financial risks in relation to the services, they provide to a third party.⁷⁹

(iii) *The sole or personal service test*

This is the obligation of personal service and requires the courts to determine whether the person performing the services has the freedom to work, either by themselves or by delegating to another person.⁸⁰ A limitation on the power of delegation would be inconsistent with an independent contractor relationship.⁸¹ An employee cannot delegate duties to a third party, whilst an independent contractor can.

(iv) *Integration test*

The integration or organisation test considers whether the individual is an integral part of the company by the level of assimilation of the person in the business.⁸² A range of factors are considered to determine this, including the exclusivity of the engagement and whether the worker actively markets his services, or is recruited by the business as an integral part of its activities.⁸³ Restrictive covenants or exclusivity provisions imposed on the worker, which prevent them from working for other businesses or competitors, either during or after the termination of the arrangement are also considered, as is compliance with administrative requirements and policies, including dress codes and use of company-branded items.⁸⁴

(v) *Multifactor test*

Judicial decisions, however, indicate that no one test is decisive.⁸⁵ The courts have therefore resorted to the use of the multifactor test, which involves applying a combination of those mentioned above.⁸⁶ Furthermore, the nature of the relationship between the individual and the business will be determined on the basis of several factors: whether the business is being undertaken on the individual's account; the degree of control; power to delegate; integration; the exclusivity of the engagement; the duration; payment method; and the risk in the determination of the individual's status.⁸⁷

In addition, the mutuality of obligation test has been adopted in other jurisdictions, such as the UK, Australia, Ireland, and South Africa.⁸⁸ This test determines the status of the relationship via a consideration of the existence (or absence) of mutual obligations— the employer, to provide work for the employee, and by the employee to perform work provided by the employer.⁸⁹ Though this is not provided under Ghanaian law, the principle it upholds is encapsulated in duties of the employer and employee in the Labour Act, (2003). An employer has an obligation to “*provide work*” and the employee to work conscientiously and “*report for work regularly*”.⁹⁰

Based on these tests, the courts have outlined three conditions which must be fulfilled for a person to be an employee:⁹¹

- a. the person must agree that in consideration of a wage or other remuneration, he/she will work and/or provide their skills in the performance of a service for the employer;
- b. the person must agree, expressly or impliedly that in the performance of that service, he/she shall be subject to the employer's control to a sufficient degree for purposes of making the other the master/employer; and
- c. provisions consistent with a contract of service exist. These include the provision of necessary tools for employment, subjecting a person to the employer's rules and regulations, the provision of benefits or allowances, the payment of employee income taxes and social security contributions, and holding out the persons as employees.⁹²

Employment or Independent Contractor?

Although the employment relationship is based on a “contract of employment”, which infers the freedom of parties to negotiate at arm's length, this is a fallacy.⁹³ The reality of the relationship between worker and employer is *"in its inception... an act of submission, in its operation... a condition of subordination"*.⁹⁴ An employer is empowered by the very nature of the relationship to impose terms to regulate the conduct of employees, which may extend to conduct outside of the workplace.⁹⁵ The employee is in the weaker bargaining position as the employer has the opportunity to recruit new employees on an employee's rejection of any imposed terms. The relationship is conducted on a *"take-it-or-leave-it basis."* Labour legislation is enacted in recognition of the inherent inequality in the relationship between worker and employer and to counteract the unequal bargaining power of the employer in the employment relationship.⁹⁶ Labour legislation defines the parties and sets down minimum rights and obligations to protect workers, while also accommodating the interests of employers.

Ghana's Labour Act of 2003 uses the term “worker” to describe the person who provides services to the employer. A “worker” is *"a person employed under a contract of employment whether on a continuous, part-time, temporary or casual basis."*⁹⁷ “A contract of employment is a contract of service, whether express or implied and if express, whether oral or in writing”.⁹⁸

When the courts determine that an individual is an employee, legal and social protections are triggered, and the employee becomes entitled to employment-related benefits. Under Ghana's

Labour Act of 2003, employees are entitled to rest and leisure periods, rights to unionise, rights of non-discrimination, protection against unfair termination, provisions on occupational safety and access to resolution of disputes and remedies. Social protections include compensation for work-related injuries, diseases, or death, under the Workmen’s Compensation Act (1987) (P.N.D.C.L 187), and retirement income security under National Pensions Act 2008 (Act 766).

Incidents of an independent contractor agreement

On the other hand, an independent contractor relationship is not specifically regulated by legislation and is established on general contractual principles. An independent contractor has the autonomy to carry on business as they deem fit, and independent contractor relationships exclude elements of control by the person or business to whom the individual provides the services.⁹⁹ Therefore, independent contractors contract with their clients on equal footing and are not afforded any statutory protections.¹⁰⁰

The Relationship between Platform Workers and Platform Companies in Ghana

Platform work involves matching the supply and demand for labour for a fee through an online platform.¹⁰¹ The provision of the services involves three parties: the platform company, the worker, and the service user.

Contract terms of platform workers

A review of the contract between platform companies and workers will highlight unique characteristics of the arrangement which have enabled the evasion of the traditional categorisation of employment or independent contractor status. The following review covers the contract terms between four platform companies—The Black Ride, Bolt, Glovo and Uber—and workers. The contract terms described here do not necessarily reflect the situation with all platform companies operating in Ghana.

(i) Pre-contracting process

Engagement in platform work commences with the potential worker signing up to indicate his/her interest in working as a driver/courier through the company’s application (“**App**”). The applicant must be above the age of eighteen years, have the requisite licence and a motor vehicle (either car or motor bike) which must fulfil specific requirements. Corporate

entities are also permitted to sign on with a fleet they provide to individuals to operate. Following the initial sign-up, the individual must agree to the contract on terms provided by the platform company.

(ii) The contracting process

The contract governs the relationship between the workers and platform companies and may include the terms and conditions for the work, privacy notices and data protection, and standards for work performance, ethics, and codes of conduct.

Bolt's General Terms for Drivers governs the relationship between drivers and the company ("**Bolt Drivers' Terms**").¹⁰² The General Terms for Bolt Food Delivery Service with Courier apply to dispatch riders on Bolt's delivery platform Bolt Foods ("**Bolt Delivery Terms**").¹⁰³ Bolt's Drivers Terms includes additional documents displayed in the Bolt App, such as Special Terms, Price Information, ServiceGlovo provides Terms and Conditions of use of the Glovo Platform for Couriers ("**Glovo Terms**").¹⁰⁴ Uber's Community Guidelines apply to drivers, riders, delivery people and users of the platform.¹⁰⁵ The Black Ride has terms and conditions that apply to drivers and users of its service ("**Black Ride's Terms**"). The Black Ride's Terms are eight pages long. Bolt Drivers' Terms are 25 pages long and Bolt's Delivery Terms, 17 pages. Uber's terms are ten pages long, and Glovo's Terms and Conditions are over 30 pages.

Platform workers are required to agree to the terms electronically, usually by clicking or tapping an icon or button in the app. This contracting process is different from traditional commercial contracting as no negotiation takes place and it is controlled solely by the platform companies. This unilateral control from platforms, puts workers at risk especially because the terms and conditions are often not subject to the law of Ghana and most workers are often not aware of the data being collected about them or about the clauses that excludes platforms from shared liability or other unfair clauses which prevents workers from seeking redress for their grievances. Whilst the platform companies have provided terms and conditions carefully drafted by legal experts, the workers must accept these terms without any independent legal advice. Workers are not provided hard copies of the documents to enable them to get a review by lawyers prior to acceptance. Although, arguably, drivers are free to visit their lawyers' offices to review the terms online with them, this is impractical. Furthermore, the workers are not financially capable of situation

to paying for such legal advice. It is important to also note that according to the Fairwork Ghana research, workers are also often not given enough time to review proposed changes to the terms and conditions, even after months on the job.

Platforms should improve workers' awareness of contractual terms, because workers sometimes tend not to read them properly. As demonstrated by interviews from the Fairwork Ghana research in 2021 and 2022, most platform workers do not read the contracts provided by platform companies.^{106,107} This can be attributed to the length of the documents, and the medium for review (usually a mobile telephone screen), which makes them difficult to read. When the contract is read, it is not likely to be read with the thoroughness employed by a businessperson undertaking a commercial venture, in part because there is a lack of incentive for platform workers, given their inability to negotiate the terms. Furthermore, according to findings from Fairwork Ghana research 2021 and 2022, workers who read the contracts, more than half did not understand the terms. The effect is that workers accept the terms without any awareness of their rights or the obligations of the company to them. This means that they are unable to determine breaches by the company, or to demand redress where they do occur.¹⁰⁸

(iii) Parties

Even though platform workers sign up for work at platform companies registered or incorporated in Ghana, in the case of the companies with non-Ghanaian shareholding, the contracts are executed outside of the local jurisdiction. Major platforms operating in Ghana, like Uber, Bolt, and Glovo, are foreign-owned companies. The companies in Ghana are treated merely as intermediaries managing the apps in Ghana.

Contracting with platform companies registered outside of Ghana can create difficulties when workers seek to enforce their contractual rights or bring claims against the companies. This became a subject of litigation by Uber drivers in Kenya. As Techcabal reported in July 2016, Uber drivers sued Uber for breach of contract arising from a reduction of the minimum fare per trip, contrary to the terms.¹⁰⁹ The drivers sued because the breach left them unable to earn profits and maintain their vehicles in adherence to Uber's standards. Uber Kenya raised a preliminary objection that the drivers had been engaged under contracts with Uber BV LLC, a company registered in Amsterdam and a separate entity from Uber Kenya. Uber Kenya was therefore not liable for the breach of any

contractual obligations. In 2021, the High Court of Kenya issued its ruling stating that Uber BV LLC owned the rights to the Uber App in Kenya. Uber Kenya acted as a subsidiary of Uber BV, LLC, and the parties had an intricate link between them. Based on this, the court construed that Uber Kenya was a party to the contract, and the claims could be brought against Uber Kenya.

(iv) *Status of the parties*

The terminology used to describe the relationship between the parties is intentionally drafted to protect the platform companies from incurring liabilities, especially those arising from an inference of an employment relationship or transportation services under the law. Platform companies are described as technology service providers, intermediaries, marketplaces, or platforms. The drivers are referred to as independent contractors and in relation to the users or clients, third parties, logistics providers, or service providers. Uber's User Terms and Conditions state that the services are "*provided by independent third-party contractors who are not employed by Uber or any of its affiliates*".¹¹⁰ Bolt's Driver's Terms and Food Delivery Terms make similar claims. Express terms excluding employment liabilities further bolster these provisions. Bolt's Drivers' Terms require an undertaking from the drivers that there is no employment agreement or an employment relationship between the parties. Bolt takes it a step further by obtaining a waiver from the drivers relating to claims where any law reclassifies the relationship. To further indicate that workers are not employees, the terms and conditions provided by platform companies expressly state that the drivers are not restricted from working for other parties. For example, Glovo's Terms and Conditions provide that the relationship with the worker is not exclusive. These provisions seek to ensure that an employment relationship cannot be inferred.

Despite these elaborate provisions, the contracts do not explain the implications of the status of independent contractors to the drivers. What exactly does it mean to be an independent contractor in Ghana and specifically on the platform? Where can this information be found? Is there any advantage in being categorised as an independent contractor? Considering that several platform workers do not understand the terms and conditions of services, indicates the vagueness in the classification as independent contractors.

(v) *Compliance with law*

As part of the contracting process, platform workers must accept or confirm that they will comply with all applicable laws or regulations relating to the services they provide to users. The Black Ride's Terms state this without naming the specific laws the drivers must comply with. Glovo's Terms and Conditions names tax, labour, civil and criminal laws, laws on the transport of goods, health, safety and hygiene, and insurance policies as the applicable laws. Bolt's Drivers' Terms include tax, social security tax or any other tax, and the Food Delivery Terms include compliance with anti-money laundering rules.

Platform companies also limit their liability in relation to breaches of the applicable laws by the workers. Workers are fully liable for violation of any local laws and regulations and, in some cases, must "indemnify" or "hold the companies harmless" against losses arising from breaches of provisions relating to the transportation services.

Moreover, platform companies do not state specific requirements or obligations relating to the laws to which the workers must comply. What does anti-money laundering mean to an average person in Ghana? Why is it relevant to riders working in the food delivery sector? How might riders know if they are being used for money laundering? Is adequate training and education provided to enable riders to avoid inadvertent involvement? Regarding ride-hailing, are drivers aware of the regulations applicable to transport services or courier work? Under these circumstances, we may question the contention that workers are fully liable, and the obligation bestowed upon them to indemnify platform companies. The effect of such indemnity provision is that the low-income platform worker must reimburse the (significantly funded) platform company for any penalties, fees or charges that might be imposed as a result of the workers' failure to comply with local laws. Furthermore, the lack of information could leave workers liable for violations of state laws, which may carry severe sanctions. This may have a significant effect on the financial situation of the worker. Again, the impact of such penalties is of no consequence to platform companies, but the effect on platform workers is significant. Workers' obligations to provide for their families, pay fleet owners and to continue to work are not suspended whilst they are sanctioned. Whilst it is common for companies to be ordered to pay fines for non-compliance, it is only the worker that is liable for imprisonment. What emerges

then, is a situation in which the platform company is putting the burden of compliance onto the worker when it, alone, has the resources to ensure that compliance is achieved.

(vi) *Provision of tools and work equipment*

The terms of the contracts provided by platform companies require the workers to provide the tools necessary for their work and bear any incidental operating costs. In other words, it is the worker who provides the worker's vehicle and pays for resources such as fuel and data for access to the platform, as well as state levies, fees required for licencing, and charges. However, they do not take all the profits, especially considering the dominance of "work and pay" arrangements in Ghana. For example, reports on ride-hailing indicate that many drivers do not own the cars used for their work, and thus that profits from their activity are paid to owners of the vehicles.¹¹¹ Although the provision of their own work equipment leans towards an independent contractor-style relationship of platform workers, in some European countries this has been considered insignificant compared to the investment in the technology by platform companies. For example, a court in Madrid, in weighing the relevance of the tools provided by the parties i.e., between workers and platform companies, observed that: "*it is sufficient to compare the advanced technological instruments of which the defendant is the owner (digital platform and computer applications), and the very insignificant means provided by the applicant (mobile phone and motorcycle).*"¹¹² In the Spanish Tribunal's view, the essential tool of production in Glovo's delivery activity was its digital platform, not the motorbike or mobile phone of the workers.¹¹³ An example from the United States - district court of Pennsylvania, argue that workers such as Uber drivers make significant investments by buying their vehicles on the platforms.¹¹⁴ However, they conclude by stating that the difference in significance is minimal, because platform workers also heavily rely on the platform app for jobs which "marginally decreases their relative independence, because they multi-app i.e., use other competitors' platform interfaces to access jobs".¹¹⁵

(vii) *The discretion on working times*

Digital labour platforms present the narrative that platform work is flexible and autonomous, i.e., workers decide when and where to work. Delivery person or driver to decline requests, and state that they can log off if they do not want to work. However, this

is only true before a worker accepts a job, and there are consequences (e.g., suspensions, work restrictions) when they reject jobs sent via the app.

The narrative of autonomy and flexibility are significant motivations for undertaking platform work. Workers can, in theory, provide services for as long as they consistently have high acceptance or low cancellation rates, and also good ratings overall. Flexibility before accepting a work assignment via the app, means that workers can also perform platform work alongside other forms of employment or other personal matters. However, the more a worker earns, the more they are required to pay to platform companies and vehicle owners—in the case that they are engaged in an “work and pay” arrangement.

If platforms characterise the work as autonomous and flexible, but restrict workers from getting work assignments because they cancelled a certain number of trips, is this not a paradox? The effect of flexibility is to indicate a level of control by the workers over their activities. The courts in France have however discounted the notion of flexibility in the case of Uber, because in the court’s view the free choice of working hours does not in itself exclude an employment relationship.¹¹⁶ It is demonstrated that when the drivers connect to the platform, they are integrated into the service, as organised by the company, which gives the workers instructions, controls their execution of the service and exercises disciplinary power over them.¹¹⁷

(viii) *Fees and fares*

Platform companies provide the software or medium to connect the drivers with the clients requiring their services and thereby facilitating fare and service fee payments, which are subject to revision or amendment at any time. Drivers acknowledge, under Bolt’s Drivers’ Terms, that the fees may change. Glovo reserves the right to modify, change, increase or cancel the current fees at any time. In addition, the platform reserves the right to temporarily modify the fee, the policy and the rates of its services, in relation to promotions or discounts.

Platform companies’ fees are set without any negotiation with workers: they determine the fares the workers must charge for their services, in addition to setting their service fees. The contract is one-sided, deviating from any assumption that the parties are on equal terms. However, The Black Ride’s Terms provide for a prior engagement with drivers’

unions, to make changes to their transactional fees and fares to ensure that they are not detrimental to either party.¹¹⁸

As workers cannot set their fares, the effect is that the fare charged may not reflect the realities on the ground, with regards external factors, such as inflation, high fuel and operational costs. This is a significant reason for the recent agitations by the ride-hailing drivers in Ghana. In May 2021, it was reported by Citi News, a local radio station, that members of the Ghana Online Drivers Association (GODU) were undertaking a two-day sit-down strike in Takoradi. This was organised to protest conditions of work and to demand better remuneration.¹¹⁹ In November 2022, members of the Online Drivers Union Ghana (ODUG) threatened to charge passengers their own rates instead of the fares set by the ride-hailing companies. Drivers stated that the move had become necessary as the fares set by platforms were inadequate to meet the rising fuel costs. According to the General Secretary of the ODUG, Alex Okine, *“The Apps are not charging correctly, and the commissions are way too low when fuel prices are going up. ... There is no corresponding increase in the base fare for the drivers to survive.”*¹²⁰ Couriers on Bolt Food also threatened to strike in April 2023 in response to similar issues.¹²¹ Despite these examples of action against platform companies by workers, the financial situation that many workers find themselves in often prevents them from actively fighting for their rights. This is especially the case in the context of work and pay arrangements: any lost income due to strike action will not only affect take home pay, but also payments to vehicle owners. According one news report *“the last time Uber drivers went on strike, the company was not bothered because, as a staff rudely put it, they had over seven thousand drivers at the time and only about two hundred were on strike, while others were busily working.”*¹²² The nonchalance from Uber in this scenario can be attributed to its strategy of creating surplus pool of labour, by actively recruiting drivers daily to balance the demand of rider requests.

(ix) *Rating and sanctions*

Most of the Platform companies in Ghana provide a rating system through which consumers/users provide ratings about platform workers. Clients can also lodge complaints about workers through the platform. For example, Uber’s User Terms state that clients can rate their experience and leave additional feedback about the driver.¹²³ In response to customer feedback, platform companies have the power to penalise workers

by suspending accounts or prohibiting access to the platform. As Bolt’s Drivers’ Terms state, “*if you fail to meet the minimal service requirements, such as the minimal rating and activity score, we are entitled to immediately terminate the agreement without giving you any advance notice.*” This is the same on Uber, with the platform’s Community Guidelines stating that drivers who do not meet the minimum rating may lose access to the platform. Uber however provides remedial measures by providing drivers with information to help drivers improve their ratings. Drivers are required to adhere to certain standards, including showing respect and courteousness to users. Workers on the Glovo platform must accept Glovo’s Standards of Ethics and Business Conduct for Third Parties, as well as all policies applicable to the Glovo Community. The Black Ride’s Terms, however, provide for a fair hearing prior to any deactivation of the worker’s account and recourse to appeal decisions.

Sanctions are applied because of the ratings. This does not account for the fact that ratings are subjective and based entirely on the views of consumers/users. Workers do not have access to due process prior to the imposition of sanctions, and the impact of such sanctions on their livelihoods are not considered. Client ratings are an element of control that independent contractors would not typically be subjected to. They have also provided an avenue for arbitrary sanctioning as workers are not given any chance to respond to platform service users' complaints before their accounts are suspended.¹²⁴ In South Africa, the Commission for Conciliation, Mediation and Arbitration (CCMA) and independent arbitration body, pointed out the extent of control over Uber drivers, stating that “even though there is no direct or physical supervision, control is exercised through technology, to the point that even the movement of the cell phone can be detected, indicating reckless driving”.¹²⁵ Drivers interviewed by the Fairwork team who had been sanctioned as a result of customer complaints or bad rating stated that even though they could lodge a grievance in relation to suspension, in most cases, no action was taken, and the suspension lasted the duration for which it was imposed before their accounts were reactivated.¹²⁶

(x) *Variation of terms*

In addition to the right to set the terms and conditions of the contract with workers, platform companies also allocate themselves the power to unilaterally modify or vary the terms of the contracts with the workers at any time. The amendments become effective

on implementation, and the workers are deemed to have accepted the new terms by their continuous use. For instance, Glovo's Terms permit the company to amend the provisions at its sole discretion and without prior notice. They state that amendments shall take effect as soon as they are posted by Glovo; Glovo will however notify the workers about changes, and workers who do not agree to the amended terms may opt to cancel their accounts.

The Black Ride's Terms also allow revision any time with or without notice, and the workers agree to be bound by the updated terms. Although Bolt's Driver's Terms permit unilateral amendment by Bolt, it provides the workers with fifteen days' notice and those who do not agree can terminate their agreement with the company. These provisions are inconsistent with the independent contractor status, as there is no opportunity to negotiate.

(xi) *Breach of provisions of the contract terms*

The terms of the contracts with platform companies provide for breaches of the agreement by the parties. The consequences, however, are more punitive for the workers than the companies. The Black Ride's Terms oblige drivers to indemnify the company and its affiliates and officers for the liabilities it suffers due to breaches by the drivers. Bolt Drivers' Terms provide similar provisions. It is irrelevant how the breach of the contract arises on the part of the worker, whereas breaches by Bolt must be intentional, deliberate, negligent, or grossly negligent for it to be liable to the workers. In addition, Bolt restricts its financial liability to EUR 500, while there is no limitation on the amount workers are liable to pay for damages or loss.

In the case of Uber and Glovo, breaches to the contract on the part of the worker, result in the termination of the relationship. The sanctions for breach of the contracts, therefore, favour the platform companies, and put workers disadvantage.

(xii) *Jurisdiction and applicable law*

The contracts between platform companies and the workers include clauses on the law applicable to the contract, and the courts in which disputes will be resolved. Where the contracts are with local platform companies, such as The Black Ride, the contract is subject to Ghanaian laws and courts. In the case of Uber and Bolt, their contracts are

subject to foreign jurisdictions, with disputes to be settled in foreign courts. The contracts also include arbitration clauses which enable the parties to settle disputes without resorting to the courts. Where there is an arbitration clause, the venue for arbitration is also a foreign country.

Though Glovo is a foreign company, its contract is subject to Ghanaian law and Ghanaian jurisdiction. Bolt is subject to the laws of Estonia, and the forum for dispute is Harju County Court in Tallinn, Estonia.

Under Ghanaian law, the law applicable to a contract and the jurisdiction for instituting a claim is a matter of contract negotiated by the parties. Therefore, this would pose no issues in a standard business-to-business contract as the parties will negotiate applicable laws and venues for arbitration and court proceedings. The consideration for these decisions would likely depend on the convenience of the parties and the financial resources available to pursue claims abroad.

The applicability of such a clause is, however, questionable in a business-to-individual relationship—such as between the platform company and the worker—in which the contract is wholly performed in Ghana. This is primarily because workers do not have the financial means to pursue a claim outside Ghana, under foreign law jurisdiction clauses. Furthermore, it is not far-fetched to conclude that jurisdiction clauses have been crafted in this way to deter workers from bringing claims against platform companies. This issue has been the subject of litigation, and the arbitration clause in Uber’s contract was held by the Supreme Court of Canada to be invalid in the case of *Heller v Uber*.¹²⁷ The court arrived at this conclusion by applying the equitable doctrine of unconscionability. This doctrine is used to set aside unfair agreements that result from an inequality of bargaining power, that is, when one party cannot adequately protect its interests in the contracting process.¹²⁸ According to the Canadian court, the doctrine is relevant in standard-form contracts which have the potential to enhance the advantage of the stronger party at the expense of the more vulnerable one, particularly through the choice of law, forum selection, and arbitration clauses that violate a party’s reasonable expectations by depriving them of remedies. In arriving at its decision, the Canadian court considered that the plaintiff’s annual income did not include the potential costs of travel, accommodation, legal representation, or lost wages. The costs of the arbitration were disproportionate to

the size of an arbitration award that could reasonably have been awarded. Since arbitration is a cost-effective and efficient method of resolving disputes, it runs the risk of amounting to no dispute resolution mechanism when arbitration is realistically unattainable. Though arbitration was the only way the plaintiff was permitted to vindicate his rights under the contract, in this case it was out of the plaintiff's reach. Based on the financial and logistical disadvantages he faced in his ability to protect his interests in bargaining, and the unfair terms arising from that, the arbitration clause was deemed unconscionable and, therefore, invalid.

The arbitration clause was also raised in the claims by the drivers in the case against Uber Kenya. In May 2022, the Kenyan courts ordered Uber Kenya to conduct the arbitration in Nairobi as opposed to the contractual terms of Uber BV requiring it to be conducted only in the Netherlands, as stated in the contractual terms.¹²⁹ The preliminary issues fought in litigation with platform companies can dissipate the financial resources of drivers which can lead to the abandonment of the main claims. For example, in the Kenyan case, it took over five years for the ruling on the arbitration clause to be brought against Uber, before the parties could get to the main issue which was the breach of contract by Uber.

The contract terms engage the equitable principles of the doctrine of unconscionable dealings under Ghanaian law. Under Ghanaian law, the courts can intervene in agreements made on unequal terms. In *CFC Construction Company (WA) Ltd v Ransome Divine Attitogbe*, the Supreme Court stated that “*the courts of Ghana have the power to set aside as unconscionable any dealing whether by contract or gift where on account of a special disability or in circumstances where he/she is placed at a serious disadvantage in relation to the other.*”¹³⁰ Circumstances which can justify the courts' intervention include age, sex, sickness or infirmity of body or mind, illiteracy, poverty or need of any kind, lack of education, and lack of assistance or explanation where assistance or explanation is necessary. The court is emphatic that this list is not exhaustive. Thus, where a party successfully makes a case of a special disability or the facts of the case require the application of the doctrine, the burden is on the dominant party to show that the transaction is just, fair, and reasonable. Failure of the dominant party to do so may result in the court setting aside the transaction or contract. In this case, the agreement to transfer shares of a company from a seventy-six-year-old woman to a person described by the court to be an “astute businessman” was found to be flawed and was set aside because the defendant failed to ensure that the woman obtained or had access to adequate independent legal advice.

The contract terms between drivers and platform companies may give rise to an equitable claim of unconscionable dealings against the latter. This is because, based on the review above, platform companies draw up contracts to exclude and, if not possible, limit their liabilities to the minimum. The manner of contracting places drivers at a serious disadvantage in relation to the platform companies. Arguably, the circumstances of the drivers constitute special disabilities, i.e., the contracts are provided without any negotiation with the drivers, with little or no education and explanation of the terms of the agreement, without independent legal advice, and inaccessibility to the contractual terms.

The review of the above contract terms shows that the relationship between the platform companies and workers are structured in a way that places onerous obligations on the worker. The drivers cannot negotiate the terms and conditions or make any input regarding how the relationship with the company should be governed, but yet work is not entirely flexible and autonomous. The ability to exercise any autonomy relates only to the flexibility in working times and provision of tools for their work, i.e., factors leaning towards a self-employed status. There is therefore an imbalance of power in the relationship, with the scales tipped heavily in favour of the platform companies. Platform workers' position as the weaker party in the relationship can be equated to the weaker bargaining power of employees. Section 3 therefore provides an in-depth analysis of the benefits applicable to employees under Ghana's labour laws which are absent for platform workers.

Social and Legal Protections for Employees under Ghana's Labour Laws

This section outlines the social and legal protections available to employees in Ghana's labour laws and the institutions for enforcement vis-à-vis those applicable to platform workers and attempts at regulation of the sector state institutions and agencies.

As the contract review has demonstrated, the contractual relationship between workers and platform companies implies both employment and independent contractor status simultaneously. Yet neither is a wholly appropriate characterisation for platform workers.

The workers provide the vehicles, bear the risks, and exercise discretion on when and how to work. However, many workers are economically dependent on the income from the relationship,

and the platform companies exercise a significant degree of control over workers via mechanisms like monitoring and client ratings, as well as the imposition of the required standard of conduct.

Subject to the determination of their status by the courts, platform workers are left in an undefined space between the employment relationship and the independent contractor relationship. They are denied the protections provided by employment law, whilst at the same time prevented from exercising the freedom and autonomy which is fundamental to the status of an independent contractor.

The ILO (2020) recognises that a grey zone has always existed i.e., between employees and self-employed workers, which has become more prominent due to recent changes in the organisation of work, and technological development.¹³¹ Thus, persons outside the scope of employment are not entitled to:¹³²

- protections for health and safety in relation to the performance of their work;
- social and legal protections for fundamental labour rights, such as the right to freedom of association and collective bargaining, and protection against discrimination and dispute resolution procedures or mechanisms to seek redress for violations; and
- social security or income security.

In Ghana, these protections are provided to employees defined as “workers” under the Labour Act (2003) outlined below:

(i) *Limitation on working hours*

The Labour Act (2003) imposes maximum working hours on employees which must not exceed eight hours a day, or forty hours a week.¹³³ Different hours may be prescribed if the hours, when calculated over specific periods, do not exceed the maximum weekly hours of forty hours.¹³⁴ Although employees can work additional hours as overtime, they must not be compelled to do so. An employer must set fixed pay rates for overtime work before the employee agrees to work overtime.¹³⁵

(ii) *Rest periods*

Employees are entitled to at least thirty minutes of rest within the working day, twelve hours between two consecutive working days, and forty-eight hours of rest every week.¹³⁶ The Labour Act (2003) also provides for time off work, through provision of annual leave, sick leave, maternity leave and leave to undertake civic duties.

(a) Annual leave

Employees are entitled to a minimum annual leave period of 15 working days with full pay, in each calendar year of continuous service.¹³⁷ Where work is not performed regularly throughout the year, an employee qualifies for leave if they have worked at least 200 days in that calendar year.¹³⁸ An employer is prohibited from paying an employee in lieu of leave so that the employee works during their annual leave. Consequently, the Labour Act (2003) provides that an agreement to forgo leave is void.¹³⁹ The employer can only pay for leave when the employment is terminated.¹⁴⁰ An employee is not permitted to roll over leave into the next year unless the employee started the leave at the end of the year which continued into following year.¹⁴¹

(b) *Maternity Leave*

A pregnant female employee is entitled to 12 weeks of paid maternity leave with full benefits.¹⁴² The period of maternity leave may be extended for at least two additional weeks where the employee delivers two or more children, or the delivery had complications.¹⁴³ Any leave accrued by the employee can be taken after the maternity leave ends.¹⁴⁴ On resumption of duty, the employee is entitled to an hour off every day to nurse her child until the child is 12 months old.¹⁴⁵ A female employee is also entitled to sick leave for sickness due to the pregnancy or delivery once the leave is certified by a medical doctor.¹⁴⁶ An employer cannot post or assign a pregnant woman outside her place of residence after the fourth month of her pregnancy,¹⁴⁷ compel a pregnant employee or a nursing mother with a child under eight months to work overtime,¹⁴⁸ or engage a pregnant woman for night work between the hours of 10:00 pm and 7:00 am.¹⁴⁹

(c) *Sick leave*

Employees are entitled to sick leave if they can provide a medical certificate authorising the absence from work.¹⁵⁰ Sick leave is not limited, although the employer has the right to terminate the employment if there is a permanency to the illness or uncertainty about the duration the employee will remain sick.¹⁵¹ However, terminating employment on the grounds of a temporary illness is an unfair termination. The duration for the absence sick leave provided by the employer must be reasonable.¹⁵² There is no requirement to pay an employee during sick leave. Under the Labour Act (2003), the employer must only state provisions on sick pay if the employer provides for it.¹⁵³ In practice, most employers pay employees during sickness for a reasonable period.

(d) *Leave for civic duties*

An employee may also be granted a period away from work to enable them to participate in voluntary communal work, or other civic duties with or without pay.¹⁵⁴

(e) *Public holidays*

An employee is entitled to have the day off on a public holiday with full pay.¹⁵⁵

The provisions covering working time, and time off work, clearly ensure that employees have adequate rest from work and a healthy work–life balance. The adequacy of provision is, however, called into question when considering the duration of maternity leave, the absence of paternity leave, and the choice of the employer to decide whether to pay sick pay. Nevertheless, such provisions at least guarantee minimum requirements and employers may provide more generous terms.

In comparison, for platform workers, there is either no limitation on the hours of work, or—where a limitation is provided by companies—it far exceeds the maximum prescribed for employees. Some ride-hailing companies such as Uber limit the hours the platform workers can work to 12 hours, after which drivers are expected to log off for at least six hours to rest. Bolt allows 16 hours of continuous work with five hours offline.¹⁵⁶ The average working week for many platform workers is 60 to 84 hours and more.¹⁵⁷ Akorsu and colleagues research in 2022 found that drivers on ride-hailing platforms have to work at least 15 hours a day to earn a minimum daily

wage.¹⁵⁸ Furthermore, in order to earn enough to make a living, many drivers switch between different platforms to enable them to work beyond the time limits imposed by the companies.¹⁵⁹ The hours of work of ride-hailing drivers whether on a single app or multi-apping, exceeds the limitation on maximum hours of driving under the Road Traffic Regulations, 2012 (LI 2180) (“Road Traffic Regulations”). Under the Road Traffic Regulations, an individual is prohibited from driving more than 500 kilometres a day, or for longer than eight hours. Additionally, drivers must not drive for a continuous period of more than four hours at a time.¹⁶⁰ These provisions are meant to prevent exhaustion and the resulting road accidents that may arise as a result. Boateng and colleagues research in 2022 states that some ride-hailing drivers sleep in their cars, as opposed to going home to sleep, in order to make enough money to cover their living costs and payments to vehicle owners, where applicable.¹⁶¹

Platform workers have no statutory right to rest periods, leave or public holidays. With regards to women specifically, this is a barrier to participation in platform work as they cannot earn an income due to cultural roles where women are expected to take care of children and the home.

(iii) *Income security*

Income security is provided under the Labour Act (2003) through various provisions. Every employee is entitled to equal pay for equal work without discrimination.¹⁶² Workers in all sectors of the economy are entitled to be paid a minimum wage, which is currently GHS14.88 (approx. \$1.31) per day. Workers are entitled to be paid a fixed amount, calculated daily, weekly, or monthly, depending on the nature of employment. The daily wage must not be lower than the minimum wage.

Remuneration earned by employees is protected from arbitrary deductions. An employer is therefore prohibited from imposing a financial penalty on an employee, via a deduction from their income, without the employee’s consent.¹⁶³ Deductions relating to loss or damage caused by an employee must be equal to the loss or damage suffered by the employer.¹⁶⁴ Before such deductions are applied, the employee must be provided with an opportunity to challenge the deduction, or the amount that is to be deducted. The employee may challenge the deduction on the grounds that it will cause hardship to themselves, and their dependents.¹⁶⁵ An employee aggrieved by deductions made by an employer may lodge a complaint with the National Labour Commission for resolution, and the decision made is final.¹⁶⁶

In contrast to employees, platform workers do not have a fixed income due to the nature of their work. Income depends on work performed hourly or per task, which fluctuates depending on user requests. This makes their work precarious. Income security is further exacerbated by platform companies' right to deactivate or suspend the accounts of workers due to user complaints or low ratings, persistent cancellation of client requests by workers, and delays in payment of fees to the platform companies.¹⁶⁷ In most cases, deactivations occur without recourse to the workers or consideration of the effect on their livelihood, as discussed in section 2.

(iv) *Retirement Security*

Employees are entitled to income security during retirement. The National Pensions Act, 2008 (Act 766) ("**National Pensions Act**") imposes an obligation on an employer to ensure that its employees have retirement income security through contributions under a three-tier pension scheme, comprising:¹⁶⁸

- a mandatory basic national social security scheme operated by the Social Security and National Insurance Trust ("**SSNIT**");
- a mandatory fully funded and privately managed occupational pension scheme trustees; and
- a voluntary, fully funded and privately managed pension scheme trustee.¹⁶⁹

Under the three-tier pension scheme, an employer is required to deduct from the employee's salary 5.5 percent at the end of the month. In addition, the employer is expected to remit 13 percent of the employee's basic salary, bringing it to a total of 18.5%. The 18.5% is then distributed by the employer to the mandatory schemes on behalf of the employee, as follows:

- 13.5 percent to the basic national social security scheme managed by SSNIT within 14 days; and
- Out of the 13.5% paid to SSNIT, 2.5% goes to the National Health Insurance Authority (NHIA) for the member's health insurance;

- The residual 5 percent, goes to the occupational pension scheme managed privately by pension trustees licensed by the National Pensions Regulatory Authority (“**NPRA**”).¹⁷⁰

The employer, employee, or both may also contribute to the voluntary pension scheme. Failure of employers to comply with the obligation to deduct mandatory pensions incurs liabilities including a surcharge of 3 percent of the unpaid amount,¹⁷¹ fines and/or criminal sanctions, including imprisonment of up to five years.¹⁷²

Employees registered for pensions are entitled to superannuation benefits (i.e., monthly payments) from SSNIT on reaching the age of 60 years or on voluntary retirement after 55 years, and payment of lump sum benefits from the occupational pensions and voluntary pensions (if applicable).¹⁷³

Additional safety net provisions are provided under the National Pensions Act in the case of death or incapacity. An employee may receive pension benefits before the age of 60 years on certification by a medical board that they are mentally or physically incapable of performing the functions of the employee’s office, or that they are permanently disabled in mind or body.¹⁷⁴ In the case of death, a survivors’ lump sum is payable to the nominated beneficiaries of an employee by SSNIT.¹⁷⁵ Employees who contribute to occupational and voluntary pensions have the added advantage of using the contributions and benefits as security for acquiring a primary residence or home.¹⁷⁶

Platform workers are not guaranteed retirement security as applicable to employees. Although the National Pensions Act provides for enrolment under the personal pension schemes, there is no defined contribution or set amount in this case.¹⁷⁷ Contributions by self-employed persons are credited to two sub-accounts: the personal savings account and the retirement account.¹⁷⁸ A contributor may withdraw from the personal savings account, in accordance with the governing rules of the pension scheme.¹⁷⁹ The retirement account proceeds are paid on the retirement of self-employed persons as monthly or quarterly pensions.¹⁸⁰ In cases where the contributor opts to contribute under the personal pension schemes, the amounts may be insignificant and payments inconsistent, as there is no sanction for failure to comply. Platform workers are treated as self-employed persons and there is no compulsion for them to make pension contributions. In effect, platform workers are not entitled to any pensions benefit on retirement or if they cannot

work for health reasons; neither are they entitled to payments for their dependents, in the case of their death. The interview findings from Fairwork indicate that drivers typically do not contribute to pensions for their retirement, with workers independent contractor status as a typical excuse from platforms.¹⁸¹

(v) *Health and safety and compensation for work-related injury, disability, and death*

Employees are entitled to work under satisfactory, safe and healthy working conditions.¹⁸² An employer is obligated to take all practicable steps to ensure that its employees are free from the risk of personal injury or damage to their health during work.¹⁸³ This includes, amongst other things, providing a safe system of work and safe equipment, as well as ensuring that potential hazards inherent in the working environment are minimised.¹⁸⁴ The importance of the duty to protect the employee's health is evident in the sanction applicable to non-compliance. An employer who fails to fulfil their obligations with respect to health and safety, without a reasonable excuse, commits an offence and is liable, on summary conviction, to a fine and/or imprisonment for a term not exceeding three years.¹⁸⁵

Where an employee sustains an injury resulting in incapacity or death, due to the employment, the employer is obligated to pay compensation to the employee.¹⁸⁶ An employer must also pay the medical costs of an employee for sickness or accident suffered as a result of the employment.¹⁸⁷

The right to work under safe and healthy conditions is also guaranteed for every person under the 1992 Constitution of Ghana. Article 24 (1) states that “*every person has the right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind.*” There is, however, no enforcement mechanism in relation to persons who do not fall under the Labour Act (2003), such as platform workers because of their self-employed status. According to Fairwork's research, dispatch riders using motorbikes have complained of the lack of provision of protective clothing for their work. Dominant platform companies in Ghana have, however, made major strides in the provision of safer working conditions and compensation. In 2022, Jumia provided about 400 helmets to its riders to help them better protect themselves on the road¹⁸⁸ Glovo provided safety training to its delivery service workers, in collaboration with the Motor Transport and Traffic Directorate.¹⁸⁹ Bolt, Uber and Glovo currently have insurance

policies to cover the workers on their platforms whilst they are working or logged on to the app.¹⁹⁰ The policies cover medical expenses, income payment for a specified duration when the workers are unable to work due to accidents, compensation for temporary or permanent disability, payments for funeral costs, and compensation to dependents of the worker.¹⁹¹

In the event that there is no insurance cover, as is the case with many other platform companies, platform workers bear the costs of protective clothing and suffer the consequences of income loss when they are unable to work due to accident or injury. Where accidents are fatal, the workers' dependents are left with nothing and, the case of permanent incapacity, workers lose their means of earning a living.

(vi) *Mechanisms for dispute resolution and redress of violations*

Provisions of the Labour Act (2003), provide that employees are treated fairly through grievance resolution mechanisms, protection against unfair termination and remedies for breaches of the Labour Act (2003). The Labour Act (2003) requires an employer to provide mechanisms to address employees' grievances as part of the terms of employment.¹⁹² An employee engaged under an employment contract exceeding six months or more must be given the written terms of the employment within two months of starting work.¹⁹³ Terms of employment include working hours, duties, leave entitlement, sick pay (if any), grievance procedures, and notice of termination. This provides certainty and terms on which an employee can prove a breach of contract or unfair termination.

An employee is protected from unfair termination, with the Labour Act (2003) outlining the grounds on which a termination will be deemed to be unfair. These include termination of employment due to an employee's membership, participation or leadership in a trade union; pregnancy or temporary illness; filing a complaint or assisting another person in relation to a complaint against the employer; and refusal of an employee to work during a lawful strike.¹⁹⁴ The termination will also be deemed unfair if the employee terminates the contract of employment due to ill-treatment by the employer or failure of the employer to take action on repeated complaints of sexual harassment of the employee in the workplace.¹⁹⁵ Termination due to sickness, incompetence or poor performance, redundancy or misconduct are fair grounds for termination.¹⁹⁶

Termination for misconduct must be proven.¹⁹⁷ Ghanaian law imposes an obligation on employers to act fairly and to comply with the rules of natural justice in a termination for misconduct.¹⁹⁸ A dismissal contrary to the rules of natural justice would make an employer liable for an unfair termination.¹⁹⁹ The rules of natural justice ensure that employees are afforded a fair hearing. In this regard, a person accused of an offence must be given reasonable notice of the case to answer, and an opportunity to make statements explaining the case put against that person.²⁰⁰ In addition, the person implicated must be made fully aware of the charges and proceedings, and allowed to cross-examine any persons who testify against them.²⁰¹ Furthermore, parties interested in a matter must be excluded from participating in the disciplinary process.²⁰²

The Labour Department is empowered to enforce the provisions of the Labour Act (2003), including those which relate to hours of work, wages, safety, health and the welfare of workers.²⁰³ Officers of the Labour Department carry out workplace inspections to monitor and ensure compliance with the provisions of the Labour Act (2003).²⁰⁴ Where abuses are detected, the Labour Department may provide technical advice to assist employers or refer issues of non-compliance to the National Labour Commission for resolution.²⁰⁵ The National Labour Commission, which is empowered to address and resolve employee complaints regarding breaches of the Labour Act (2003), provides an affordable option for settling disputes through methods such as mediation, voluntary arbitration, or settlement by the commissioners of the National Labour Commission.²⁰⁶ An employee also has the right to complain to the Commission on Human Rights and Administrative Justice (“**CHRAJ**”) about violations of fundamental rights and freedoms, including discrimination.²⁰⁷ An employee found to have been unfairly terminated may be awarded compensation by the courts, CHRAJ or the National Labour Commission.²⁰⁸

As previously stated, majority of platform workers comprehend and identify breaches when they do occur. According to the Fairwork research interviews in 2021 and 2022, sanctions such as suspensions, temporary or permanent deactivations are applied on most ride-hailing platforms without due process. Platform workers sometimes are suspended or deactivated for leading or participating in strike actions for better working conditions. For example, some Bolt riders who protested for an increment in pay had their accounts deactivated by Bolt Foods.²⁰⁹ The accounts were reactivated after the company agreed to increase the base pay.²¹⁰

The avenues for dispute resolution for platform workers are limited. As they are not classified as employees, they are not entitled to lodge complaints with the National Labour Commission. In the case of foreign companies, dispute resolution processes under the workers' terms and conditions prevent the workers from submitting their disputes to the local courts for resolution. According to Fairwork (2022), most platforms in Ghana imposed penalties on the workers without due process, and the workers had no recourse to appeal. Only The Black Ride and Glovo were able to demonstrate the existence of a process for appealing any unfair decisions affecting workers.

(vii) Mechanisms for collective bargaining

Employees have the right to form or join any trade union of their choice to promote and protect their economic and social interests.²¹¹ An employee's right to representation is protected. Thus, interference by employers in the formation of a union, or participation in union affairs by an employee is prohibited.²¹² Employers are required to provide reasonable facilities and time to employees to engage in union activities during working hours.²¹³ A person who participates in anti-union acts and discrimination, is guilty of an unfair labour practice,²¹⁴ and an employer may be liable to pay compensation if found guilty of anti-union conduct.²¹⁵ Trade unions must register with the Labour Department, which issues certificates of registration as a trade union and collective bargaining certificates to enable workers to collectively bargain the terms of their employment with the employer.²¹⁶

The right to form or join a trade union is limited to workers under article 24 (3) of the Constitution.²¹⁷ However, article 21 (1) provides general fundamental freedoms to every person, including "*the freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest*". Thus, platform workers have the right to form and join a trade union for the protection of their interests. However, according to the Fairwork research in Ghana, no platform currently grants workers freedom of association or right to collectively organise.

Despite the high number of trade unions and associations within the platform space, unionisation presents complications for platform workers in Ghana. This includes the question whether workers must bargain separately with the platform companies and/or vehicle owners. The ability to negotiate depends on how amenable the platform

companies are to engaging with platform workers' unions, as they are not bound by law to do so. Delivery riders on Bolt Foods have complained about the lack of recognition given to their representatives in their capacity as a trade unionist.²¹⁸ Executives of platform associations have also indicated that some platform companies treat them with hostility, and, in some cases, only permit representatives who are their members to participate in meetings with the companies.

Regulatory Regime for the Platform Sector

Whilst employees therefore have protective laws and institutions of enforcement to regulate employment relationships, conditions of work, and to ensure compliance, the same cannot be said of the platform sector. The pervasive nature of platforms, veering into various sectors such as labour, commercial transportation, and information technology, has created challenges for the Government in its ability to regulate the sector. Although there have been attempts at regulation of platform work in Ghana. There is currently no legislation, directive, or guideline to regulate platform work in Ghana, especially the working conditions of workers in the ride-hailing and delivery sectors. The attempts at regulation have been limited to the licensing regime which do not directly influence working conditions but are worth noting as a work in progress in the platform economy.

In terms of governing working conditions—that is, the relationship between platform companies, drivers, and fleet owners—there are currently no rules, regulations, or guidelines. However, the parties identified below are involved in the licensing regime, regularisation of platform work, and arguably, going forward, should be involved in developing policies that promote fair working conditions in the Ghanaian platform economy.

Ministry of Transport

The activities of platform workers in Ghana are predominantly the transportation of persons. The Drivers' Vehicle and Licensing Authority ("DVLA") and the National Road Safety Commission, both agencies of the Ministry of Transport, actively regulate activities of ride-hailing and delivery services in Ghana. The Motor Traffic and Transport Directorate ("MTTD") of the Ghana Police Service collaborate with the Ministry of Transport to enforce all road traffic laws and regulations.²¹⁹

The objective of the DVLA is to promote good driving standards and ensure roadworthy vehicles are used on roads and other public places.²²⁰ The DVLA is empowered to issue driving licenses, inspect, test, and register motor vehicles.²²¹ The DVLA and the National Road Safety Commission collaborate with the MTTD to enforce all road traffic laws and regulations.

- Platform workers are subject to all motor traffic laws and regulations, including the Road Traffic Act 2004 (Act 683), the Road Road Traffic Regulations and the Ghana Highway Code. The Road Traffic Act provides for, among others, rules for the safe use of roads, offences regarding dangerous or careless driving, vehicle registration and driver's licences. Under these laws, ride-hailing and delivery service workers must have licence issued by the DVLA to use their vehicles which must also be registered with the DVLA.²²²
- The motor vehicles must be insured and have a motor insurance certificate. The motor insurance must cover the lives and property of third parties who may be at risk should accidents happen in using the motor vehicle.²²³

Apart from these general road user laws, attempts to specifically regulate the platform sector have not taken off. In 2019, the Ministry of Transport, National Road Safety Commission, and Police MTTD introduced the Guidelines for Operating Digital (Ridesharing) Transport Systems.²²⁴ The guidelines provide requirements for operating and signing up as a digital transport platform in the country. They outline the obligations of vehicle owners, drivers, and digital transport companies, as follows:²²⁵

- Drivers are required to present themselves with their driver's licence at the Digital Transport Centre (DTC) at the DVLA Headquarters for verification and authentication annually. The fee for this process is GHS 60 (approx. USD 5.4) annually.²²⁶ The licence must always be in the possession of the driver;
- The vehicle for ride-hailing must be presented with the vehicle registration certificate at the DTC. For this process, the owner or driver may be present. Where the owner cannot attend the verification, a representative must provide a duly signed power of attorney in the prescribed form and a valid identification to the DTC. The DTC charges a fee of GHS 60(approx. USD 5.4) for the verification process, which is renewable annually. The vehicle will be issued a unique identification which must be affixed on the car's windscreen. The vehicle must undergo a roadworthiness examination and certification every six (6) months, as applicable to all commercial vehicles;

- Ride-hailing companies are required to provide proof of company registration to be signed on to the Digital Transport System of the DVLA. Only verified and approved vehicles and drivers must be enrolled on platforms. Platform companies are required to submit quarterly reports in the form prescribed by the DVLA.

Although still visible on the DVLA’s website, there is no indication that the guidelines are being enforced in practice.²²⁷ Subsequently in April 2023, another attempt was made by the DVLA to charge a Digital Transport Booking Fee of GHS 1 (approx. USD 0.08) under the guidelines, which were quickly implemented by Uber and Bolt. Uber, Bolt and Yango. According to news reports, the DVLA noted that the fee would be reviewed periodically. It would cover a one-time driver licence verification at GHS 30 (approx. USD 2.64), a digital transport licence vehicle permit that is renewable every year at GHS33 (approx. USD 2.91), and information search for digital transport system operators at GHS 22 (approx. USD 1.9).²²⁸ The digital transport fee was subsequently suspended in a letter signed by the Chief Executive Officer of the DVLA on 5 April 2023.²²⁹ According to the letter addressed to Bolt, Uber and Yango, the DVLA “had observed the concerns and reactions of the public to the implementation of the Digital Transport Guidelines especially with regards to the Digital Transport Fee and instructed all digital transport operators to cease collection of the fees immediately”.²³⁰

The letter further stated that the DVLA would hold consultations with the Ministry of Transport and other stakeholders to ensure the introduction and implementation of the Digital Transport Fee is done with adequate input from all relevant stakeholders.²³¹ While these guidelines concern the technical side of driving for platforms (e.g., licensing), it will be important for platform workers to be included in such critical discussions which may impact their earnings on the job. The Executive Secretary of Ghana Online Driver Union has indicated that he has been participating in discussions regarding the implementation of the Digital Transport Fees.²³²

Special regulations for delivery or courier services

Delivery services are subject to specific provisions in addition to the general road traffic laws. Under the Road Traffic Regulations, “a person shall not permit a motorcycle or tricycle over which that person exercises control to be used for commercial purpose, except for courier and delivery services”.²³³ Therefore, road traffic laws permit using motorbikes for delivery or courier services.

The Postal and Courier Services Regulatory Commission, an agency of the Ministry of Communication and Digitalisation, regulates courier services. Under the Postal and Courier Services Regulatory Commission Act, 2003 (Act 649) (“Postal and Courier Services Act”), persons or companies providing courier services must register and obtain a licence from the Postal and Courier Services Regulatory Commission to operate courier services in Ghana.²³⁴ Licences may be granted to sole proprietors, companies, or partnerships.²³⁵

The Postal and Courier Services Regulatory Commission also issues a special licence known as the Single Bike Operator Licence to those persons who provide courier services.²³⁶ The application form is GHS 50 (approx. USD 4.41) and the application fee is GHS1000 (approx. USD 88.26). On registration, the delivery service person is to be issued with a licence valid for a year at an amount of GHS 20 (approx. USD 1.76). The licence must be renewed annually at a cost of GHS600 (approx. USD 52.95). Failure to register or renew a licence will make a person liable to conviction to a maximum fine of GHS 3000 (approx. USD 264.78) or to a maximum term of imprisonment of 12 months, or both.²³⁷ According to the B&FT News in 2018, the Chief Executive Officer of the Postal and Courier Services Regulatory Commission noted that the advent and proliferation of online businesses (e-commerce) have led to an explosion of courier services, particularly the use of motorbikes to deliver goods purchased via online platforms. However, many of these delivery or courier companies have not registered to regularise their businesses.²³⁸ The Chief Executive Officer indicated that it would be collaborating with the Ghana Police Service to ensure enforcement and would prosecute offenders.

Ministry of Employment and Labour Relations

The Ministry of Employment (MELR) is the ministry responsible for employment and labour-related issues.²³⁹ The MELR works through its agencies, including the Labour Department and National Labour Commission. As persons providing services or labour in Ghana, platform workers fall within the remit of the MELR.

Interviews with MELR representatives indicate that no specific proposal or policy explicitly relates to platform workers. However, the MELR recognises the need to consider emerging issues in these new forms of work as part of the Labour Act (2003) review.²⁴⁰ Currently, input and suggestions are being received from other relevant stakeholders, which include platform workers.²⁴¹ Following a directive from the President of Ghana on 1 May 2020 to the Minister of the MELR, is also leading a national dialogue on the “Future of Work”. This will include

discussions on how other workers, such as platform workers, would be effectively regulated to maximise their contribution to the national economy.²⁴²

The Labour Department

Following my interview with the Chief Labour Officer in May 2023 indicate that there are currently engagements with platform companies, particularly in terms of registration of platform worker unions. That said, the Labour Department has not yet registered any platform worker union or issued any collective bargaining certificate. There are some challenges in this process, mainly due to the fact that the parties for the negotiation of collective bargaining certificates are not immediately clear; i.e., should the platform companies be the negotiating parties? Or in the case of the ‘work and pay arrangement’, should it be the fleet owners or individual vehicle owners given that they act as intermediaries?²⁴³

Notwithstanding, some platform workers’ associations, such as Ghana Online Drivers’ Union (GODU), have brought their challenges to the attention of the public and some relevant institutions. For example, in April 2022, GODU embarked on a two-day strike against Uber and Bolt, demanding commission reductions from 25 per cent to 15 per cent and measures to protect drivers against insecurity on the job.²⁴⁴ Although the protest did not yield immediate results, in March 2023, Bolt reduced its commissions to at least 20 percent, allowing drivers to keep more of their earnings.²⁴⁵ In addition, Bolt Food rider representatives organised a protest against low pay and demanded an increase in base pay levels from GHs9 to GHs12 between October 2022 to April 2023. Bolt Food responded by increasing base pay to at least GHs10.²⁴⁶

Hence, it is important to note that with support from international advocacy bodies such as the International Alliance of App-based Transport Workers (IAATW), platform worker representatives are experiencing small victories in Ghana. However, the Labour Department in Ghana needs to do more to protect platform workers’ interests, facilitate collective bargaining agreements, and prevent exploitation.

The National Labour Commission

The National Labour Commission, another agency of the MELR, is responsible for investigating, settling, and adjudicating industrial disputes.²⁴⁷ The National Labour Commission has stated that it has not yet received any complaints from platform workers.²⁴⁸ The challenge, however, is that there is no indication that the National Labour Commission has the jurisdiction to resolve

such disputes even when complaints are lodged. This is because, under the Labour Act, the definition of an industrial dispute is a dispute between an employer and one or more employees, or between employees and other employees.²⁴⁹ Since platform workers are not employees within the Labour Act, this will potentially be a challenge for the National Labour Commission. In addition, provisions in the contracts of some platform companies that require the parties to submit disputes to foreign courts may prevent the resolution of disputes by the National Labour Commission in Ghana.

General requirements applicable to ride-hailing and delivery services

The Ministry of Communications and Digitalisation has issued registration requirements for e-commerce, logistics, and other digital business, including delivery services and ride-hailing services, which became effective from August 2022 at the launch of the African Continental Free Trade Area Hub (“AfCFTA Hub”) an online portal.²⁵⁰ Registration is mandatory for all individuals and companies working in the digital space. Under this directive:

- Digital workers must obtain an AfCFTA number;
- Platform companies must make the provision of the AfCFTA number a requirement to be signed on as a platform worker;
- The AfCFTA number must be displayed throughout the provision of service;
- Platform companies must report the disengagement of platform workers if the basis of that disengagement is related to fraud, abuse, or unethical conduct; and
- Platform companies must implement systems that enable them to bar a service provider or contractor from their network if their AfCFTA number is blacklisted by a regulatory or security authority with the power to do so.²⁵¹

According to the Minister of Communication and Digitalisation speaking at the launch of the AfCFTA Hub, registration will ensure that customers of such businesses and services can verify and validate their regulatory and compliance status, increasing trust in the marketplace and uptake of digital services, suppressing fraud, and increasing the efficiency of doing business in Ghana.²⁵²

Ghana Revenue Authority

The Ghana Revenue Authority (“GRA”) is empowered to tax income in Ghana including income from the commercial transportation sector.²⁵³ The tax on commercial transportation is known as the Vehicle Income Tax (“VIT”) and is payable quarterly.²⁵⁴ Information from the GRA indicates that ride-hailing services are not taxed under the VIT.

The VIT was suspended during the COVID-19 pandemic and is due to be resumed following the 2023 budget. According to the GRA, on resumption of the VIT it will be applied to ride-hailing vehicles.²⁵⁵ The GRA is currently liaising with ride-hailing drivers on the taxation and amount to be charged as VIT.²⁵⁶

Currently, the GRA does not tax the activities of delivery platform workers in Ghana.²⁵⁷ Platform delivery services legally registered as companies and/or operating in compliance with the Postal Courier and Services Act are subject to payment of corporate tax as applicable to any other company. However, the proposal to tax ride-hailing workers will be unfair to those workers without proper recognition in Ghana’s labour law and appropriate regulations that ensure minimum wage after work-related costs, as workers would be paying tax contributions without enjoying any social protection benefits in return.

Social Security and Pensions

Regarding social protections for platform workers, SSNIT formally launched a self-employed enrolment drive (“SEED”) on 5 May 2023 to enrol persons in the informal sector.²⁵⁸ Although not explicitly created for platform workers, SSNIT has targeted platform workers and has started engaging them in discussions to enrol them on the scheme.²⁵⁹

In recognition of the fact that the income of self-employed persons is not fixed, SEED provides flexibility in the mode of contributions as follows:²⁶⁰

- The minimum amount of contribution is GHS 100 (approx. USD9.9), although the member may contribute more;
- Contributors may pay for multiple months in advance depending on their income to make up for months in which they cannot make the contribution in full or part; and
- Contributions are made easily and may be paid through mobile money.

The benefits and rules applicable to persons in the formal sector apply to the self-employed persons enrolled under SEED except for non-payment of penalties, as this is not mandatory. Contributors must be between the ages of 16-45 years to contribute. Where applicable, contributors will also qualify to receive retirement benefits, survivor's benefits for their families and an invalidity pension. As SEED is not mandatory, its impact on ensuring retirement income security is limited and is no different from voluntary pension schemes.

The regulatory regime for platform work in Ghana mainly monitors work activity and does not cover policies about the working conditions and the relationship between platform workers and the companies. Despite the current absence of legal and social protections for platform workers, Ghana's obligations under international law may provide the impetus needed to take action.

Ghana's obligations under the ILO

Ghana is a member of the ILO, the supranational organisation established to promote social justice and decent work.²⁶¹ Labour principles are provided under international labour standards in conventions and recommendations. In the case of conventions, member states are required to adopt and ratify them.²⁶² Once ratified, member states are bound by the provisions and must apply the convention in national law and practice.²⁶³ Recommendations are non-binding guidelines which may either supplement a convention by providing more detailed guidelines on how it could be applied, or be autonomous, i.e. not linked to a convention.²⁶⁴

Long before the inception of platform work, the ILO noted the issues relating to relationships that cannot be categorised as employment or self-employment, and adopted the Employment Relationship Recommendation, 2006 (No. 198). R198 is relevant to platform work because all the discussion and litigation about the status of platform workers concentrates on the nature of the relationship between platform workers and platforms, notably whether there is an employment relationship.²⁶⁵ This is because an employment status is how individuals enjoy employment, labour, and social protection.²⁶⁶

The preamble to R198 notes, among other things, the difficulties of establishing whether or not an employment relationship exists in situations (i) where the respective rights and obligations of the parties concerned are not clear, (ii) where there has been an attempt to disguise the employment relationship, or (iii) where inadequacies or limitations exist in the legal framework, or in its interpretation or application, which has the effect of depriving workers of the protection

they are due. The preamble recognises that protection should be accessible to all, particularly vulnerable workers.²⁶⁷ R198 requires member states to promote clear methods for guiding workers and employers to determine the existence of an employment relationship.²⁶⁸

Furthermore, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterised in any contractual arrangement between the parties.²⁶⁹

The effect of R198 is that the term “employee” is “a legal term which refers to a person who is a party to a certain kind of legal relationship which is normally called an employment relationship”.²⁷⁰ The term “worker” is a broader term that can be applied to any person who works. Self-employed workers fall within the category of workers, and as such are entitled to all the fundamental principles and rights at work.²⁷¹

As a member state of the ILO, the provisions of R198 are relevant to the issues of platform work in Ghana. In respect of platform workers, the ILO notes that whilst employment relationships should not interfere with genuine commercial relationships, “*national policy should prohibit the use of false civil or commercial contractual relationships to disguise any underlying relationships that in practice have the characteristics of an employment relationship*”. According to the ILO, “clarification of the concept and scope of the employment relationship is therefore helpful in combating concealment and addressing any grey zones.”²⁷²

Because of Ghana’s dualist system, treaties, agreements, or conventions signed by the Government of Ghana must be ratified by an Act of Parliament to be enforceable.²⁷³ As recommendations are not binding, there is no obligation on Ghana to enforce or apply ILO R198. ILO conventions which have not been ratified or adopted as part of Ghanaian laws are not applied by the courts of Ghana. However, the courts refer to relevant ILO treaty provisions in interpreting corresponding provisions applicable under the Labour Act (2003). For instance, in a claim in which the parties contested the constitutionality of their retrenchment in relation to the fundamental right of the freedom of association and the right to collective bargaining, the court noted that these rights are minimum standards for workers’ rights, which the courts of Ghana should not lightly allow to be eroded.²⁷⁴ In another case relating to dismissal, the court referred to the background and objectives of the Termination of Employment Convention, 1982 (No.

158), stating that it was intended to protect employees against arbitrary and unjustified dismissals.²⁷⁵

The courts only rely on convention provisions where they have been enacted into law, and Ghana is bound under the Labour Administration Convention, 1978 (No. 150) (“ILO C150”), which it ratified in 1986 to establish a system of labour administration. The Labour administration is required to formulate, implement, and supervise national labour standards through studies, research, and statistics on labour and shall provide²⁷⁶

ILO C150 obligates Ghana to promote and extend its labour administration functions relating to the conditions of work and working life to categories of workers who are not classified as employees under law, such as self-employed workers who employ other people to work for them and who are in the informal sector.²⁷⁷

The Labour Department is the labour administration of Ghana set up to carry out functions under C150.²⁷⁸ It is therefore obligated to extend its functions of securing good conditions of work to self-employed informal sector workers, including platform workers. The imbalance of power in the relationship between platform workers and the companies calls for immediate action by the Labour Department to protect platform workers through national policy.

Learning from Success and Failure

Regulation is needed in the Ghanaian platform economy for many reasons—primarily, for its benefits to the economy through provision of decent jobs and the efficient capturing of taxes, when platform workers have been duly recognised. Regulation could be implemented to prevent exploitation arising from the misclassification of workers as self-employed or independent contractors. The complexities of platform work existing between (a) the workers and the fleet owners; and (b) the workers and the platform companies, exacerbate poor working conditions for workers. This raises complications against the existing categorisation of worker status, because of multiple levels of subcontracting and third-party vehicle ownership allowed by platforms. Furthermore, misclassification of workers risks stalling adequate recognition of platform workers under the Ghanaian labour law. Platform work therefore challenges the validity of the traditional two-dimensional “employee or independent contractor” status. State intervention is required to clearly define the status of the platform workers and clarify their rights

within each platform work sector as well as the obligations of all relevant stakeholders such as the ministry of Labour, DVLA, and so forth.

Legislative action to this effect in other countries may offer both inspiration and justification for Ghanaian policy makers. This will provide a useful context for policy intervention, as many of the platform companies operating in Ghana are subsidiaries and affiliates of major multi-nationals.

In the Sub-Saharan African region, some governments and courts have assumed an active role in ensuring that protections are provided to drivers working within the ride-hailing platform sector. In South Africa, the Commission for Conciliation, Mediation and Arbitration stated in 2017 that Uber drivers are the employees of the company and are fully covered by South Africa's labour legislation.²⁷⁹ The decision generally affected persons working in similar capacities with other companies in the platform economy. However, in 2018, the Labour Court overturned the ruling, citing that the drivers in the previous ruling could not prove that they had an employment relationship with Uber SA, and therefore were not employees of Uber SA.²⁸⁰

In Tanzania, the Land Transport Regulatory Authority (LATRA) recently issued a notice providing standard fares for online taxis and motorcycles. Before this notice, LATRA had imposed a cap on the commission for ride-hailing companies in Tanzania at 15 percent, reducing it from 33 percent and removing the booking fee, which was a source of income for the companies. This was successful for almost a year, forcing Uber and Bolt to temporarily halt their service in the country. However, due to unknown reasons, the commissions have been reinstated to 25 percent, with both platforms back in operation.²⁸¹

In 2022, The Kenyan High Court, issued a landmark decision ordering Uber to settle all its disputes via the pursuant to the arbitration agreement with drivers in Kenya, instead of Uber Netherlands, as stated by the jurisdiction.²⁸² Kenya's National Transport and Safety Authority (NTSA) also proposed draft regulations for digital hailing services, which stipulated that no digital hailing service provider could charge a commission of more than a cap of 18 percent.²⁸³ Uber attempted to challenge the cap in court on the grounds that Kenya is a free market, and thus, companies have the right to negotiate commercial agreements without external influence. Furthermore, the company also argued that the cap could stifle innovation and reduce Uber's economic feasibility in the Kenyan market. Although the regulation has been stalled, Uber has subsequently reduced its commission rate to the proposed 18 percent following a strike by drivers in October 2022.

While some of the rulings against platforms in Sub-Saharan Africa have been rolled back, they all count as small victories and lessons to Ghana policymakers. Ghana requires state intervention to streamline the sector for all parties—that is, the state, citizens, workers, and investors—to ensure equity of benefits from the ride-hailing platform sector.

This section has focused on the government bodies that could have a mandate to regulate platform work, but currently do not. It had a specific focus on the sectoral regulations that govern parts of platform work, highlighting that the important aspects on regulating working conditions and rights of workers remain unregulated and ungoverned in Ghana. As such, the regulatory regime still needs to catch up to emerging aspects of platform work. Without the proactiveness of regulatory bodies in Ghana, platforms will continue to exploit the regulatory loopholes, thereby putting platform workers at risk of poor working conditions, which will gradually impact the prospects of jobs in the country. The next section will provide recommendations for regulatory bodies and policymakers to create a fairer platform economy.

Policy Recommendations

The development of the platform economy has brought forth new structures and processes of work.²⁸⁴ Though many workers have benefitted from increased flexibility provided by platform work, this type of work challenges the employment norms that were established under the Fordist model—leaving workers without necessary protections and the stability provided by long-term contracts and fixed working hours.²⁸⁵ Responding both to platform work, and the new forms of work yet to emerge from technological change, the ILO has stipulated that employment policies must be crafted to take advantage of the opportunities created by technology, whilst counteracting its negative effects.

The emergence of platform work has ushered in a significant evolution in the world of work in Ghana. Though providing much needed employment opportunities, along with increased flexibility, the platform work available in Ghana is generally characterised by poor working conditions. This has been brought to light by the efforts of platform workers and unions who have been organising for better working conditions.

The challenges faced by platform workers highlight the need for regulation within the platform economy. To be effective, this must go beyond regularisation or licensing, and should include

clarification of the status of the parties involved in platform work. Only this can provide certainty about the rights and obligations of each party and mitigate against the adverse effects of the inequality inherent in the relationship between workers and platform companies. Regulation can also transform platform work into something more attractive for Ghanaians, thus reducing the pressure on government to provide employment opportunities. The improvement of platform work via regulation can also deliver long-term national benefits. For example, the provision of social protections like pensions can help to provide secure incomes during retirement, increase investment in the pensions sector, and reduce dependency on younger workers to provide for older family members.

This section outlines legislative and policy changes that could help to promote and facilitate fair and adequate protection for platform workers in Ghana.

Proposals for state intervention

Following a review of the traditional worker status and employment relationship, which is written into Ghanaian employment law, the government is advised to implement platform specific laws, and establish institutions for enforcement. It is important to note that, these recommendations do not call for platform workers to be recognised as employees, but that relevant stakeholders can draw from the current labour laws by making adequate assessment on what might be feasible and applicable to platform workers in Ghana. Definitely, this would also imply that the Ghana Labour Act, be revised to acknowledge platform workers, clearly define independent contractor status, and highlight clear rights for all workers in the platform economy.

Enactment of platform specific laws or regulations

Laws or regulations may be made specifically for platform companies in relation to the terms of the contracts and performance of the contracts to ensure that while investment of businesses is protected, individuals working in the platform sector are not exploited. Existing Ghanaian laws may provide some guidance. For instance, under the Ghana Investment Promotion Centre (“GIPC”) Act 2013 (Act 865), obligations are imposed on parties entering technology transfer agreements to ensure that the business in Ghana is not disadvantaged.²⁸⁶ Consequently, certain provisions are required under the technology transfer agreements without which the agreement will not be registered either as a technology transfer agreement. In addition, certain clauses are

unenforceable if provided and services fees are capped. The GIPC strictly monitors the agreements to ensure compliance. Failure to do so results in liabilities including revocation of incentives, suspension or cancellation of the company's registration with the GIPC, and suspension of payments or remittances of profits by the companies abroad.²⁸⁷ In view of the fact that the dominant platform companies in Ghana are foreign owned, a sanction of this nature may be an effective deterrent to comply. These laws can be useful guides for formulating platform specific legislation.

The Government can enact laws using the Fairwork principles as a guide. The section below will highlight changes for relevant regulatory bodies to consider within the platform economy in Ghana:

Fair Pay

Minimum wage legislation should be extended to all platform workers. The definition of working time used to calculate minimum wages should include both direct and indirect hours. In addition, platform workers should earn at least a living wage after work-related costs. Workers should be paid on time and for all work completed.

The minimum wage has increased over the span of two years from GHS 12.53 in 2021 to GHS 14.88 in 2023, to reflect the economic realities such as inflation and high cost of living in Ghana. Using fuel as a practical example. In 2021, the average price per litre of fuel ranged between GHS 4 to GHS 7 per litre.²⁸⁸ Between 2022 and today, the price of fuel has risen as high as GHS 18 per litre, and is currently GHS 13.21 per litre, which is almost as high as the minimum wage.²⁸⁹ This indicates that in most cases, platform workers are likely to drop below the minimum wage after including all work-related costs including indirect hours such as waiting time and travelling in between jobs.

Considering that workers can often fall below the minimum wage, platforms should also consider paying workers at least the living wage after all work-related costs. The adjusted living wage for Ghana for 2023 is GHS 2, 695 per month or GHS 124 per day for an individual.²⁹⁰ In addition, considering that workers go above the standard 40 hours a week (eight hours a day) working time, the regulatory policy can also prompt platforms to compensate workers for working overtime. According to the labour Act 2003 (Act 651), "a worker may not be required to perform overtime work, exceeding normal working hours, unless that undertaking has fixed

rates of pay for overtime work”.²⁹¹ There is no fixed rate for working overtime. Workers are simply paid 150 percent of the normal hourly wage rate. However, considering the status of platform workers, policies can ensure that platforms compensate workers who fall below the minimum wage based on the 150 percent of their hourly wage or in most cases piece-rate calculation.

In essence, regulatory bodies should implement policies that facilitate platforms to ensure that workers earn at least the minimum wage after work-related costs. Considering that traditional employees struggle to earn the living wage in Ghana,²⁹² it is still relevant to ensure that platforms pay workers as close as possible to the living wage, because of their low bargaining power and independent worker status.

Regulatory bodies may also consider other proactive policies that will help workers keep most of their income on the platform. Some of these include:

- Limiting the amount of service fees for use of platform companies Apps under the law. For example, drawing from the policy highlighted earlier, where the platform commissions are capped to 18 percent in Kenya by the NTSA for all digital labour platforms.
- Considering the prevalence of subcontracting or ‘work and pay’ arrangements in Ghana, regulators should ensure that platforms adopt policies that prompt third party employers or subcontractors to adhere to the letter of the law such as payment of minimum wages after work-related costs.

Fair Conditions

According to the Ghana Labour Act 2003 (Act 651), employers are responsible for providing protective equipment and training for free and must not charge or deduct any cost to the employee.²⁹³ Training is also compulsory according to the age, literacy level and other circumstances that will improve the health and safety of workers.²⁹⁴ Health and safety legislation should be extended to all platform workers. Platforms should have policies to protect workers from risks arising from their work and should take proactive measures to protect and promote workers’ health and safety. In this regard the provisions of the Workmen’s Compensation Act, 1987 (PNDC 187) provides adequate protections and should be extended to cover platform workers. Under where an employee sustains personal injury by accident arising out of, and in

the course of employment, the employer is liable.²⁹⁵ This also reflects the Fairwork principles. Therefore, regulators can implement directives that ensure that platforms provide have policies that protective equipment and all safety gear free of charge. In addition, because of the isolating nature of platform worker, there should be legislation instructing platforms to implementing other proactive policies that mitigate risk against lone working such as periodic risk assessment exercises, regular check-ins with riders, and effective emergency helplines or buttons.

The Workmen's Compensation Act further provides that a contract under which an employee relinquishes a right to compensation from an employer for an injury arising out of and in the course of employment, is void in so far as the contract purports to remove or reduce the liability of a person to pay a compensation.²⁹⁶ Extension of the provisions of the Workmen's Compensation Act will therefore ensure that platform workers are protected in the case of accidents arising out of their work. The Labour Act (Act 651), to employees grants women maternity leave of 12 weeks with full pay, and an additional two weeks in an abnormal delivery such as caesarean delivery.²⁹⁷ This regulation can be extended to platform work by implementing a policy that prompts platforms can grant maternity leave to their female workers with pay that reflects their work for the previous three months.

Platforms should be made responsible for paying social security contributions on behalf of all their workers. Currently platform workers are not classified as persons in formal work, thus the mandatory pensions are not applicable to them. Platform companies and workers may contribute to pensions in the same way as employers and employees do in the formal sector. Due to the fluctuation in incomes of platform workers, contributions could be fixed amounts and tiered so that contributions are as high as possible, commensurate with the income earned. The contributions should be reviewed periodically to align with changes in the economic conditions and earning abilities of workers. Pensions for this sector could be mandated under the National Pensions Act. This may require an amendment of existing pensions laws and regulations. Platform companies should remit payments to relevant pension trustees.

Though Ghana does not provide state benefits, platform companies should be encouraged to provide benefits, such as medical and disability insurance as provided by some employers to its employees.

Fair Contracts

The right to information on terms and conditions should be extended to platform workers. The contract and/or terms and conditions should be communicated in a language that workers can be reasonably expected to understand.

Ghana is currently undertaking a review of the Labour Act (2003).²⁹⁸ The review presents an opportunity to address the gaps in the labour laws that enable the exclusion of platform workers from the rights and protections bestowed upon employees. For the review of the employment relationship, the provisions of ILO's Employment Relationship Recommendation, 2006 (No. 198) will be helpful.

Pursuant to ILO R198, Ghana may:

- a. Determine indicators of the employment relationship and enact them in law.²⁹⁹ This involves:³⁰⁰
 - allowing a broad range of means for determining the existence of an employment relationship. These include the tests of employment or independent control, personal service, integration, economic reality, etc., discussed in section 2;
 - devising legal presumptions to conclude on the worker's status where one or more relevant indicators are present;
 - determine that workers with specific characteristics, in general, or in a sector, must be deemed to be either employed or self-employed following prior consultations with representatives of employers and workers.

The ILO suggests clearly defining the conditions applied for determining the existence of an employment relationship, for example, using subordination or dependence.³⁰¹ Application of subordination and dependence as conditions for employment are relevant to platform workers.

ILO R198 gives the option to choose the appropriate means of implementing and monitoring changes. These include laws and regulations, collective bargaining agreements, judicial decisions, codes of practice, or a combination of these means.³⁰²

Enactment of the indicators of an employment relationship in legislation is advisable for Ghana. This is because the Ghanaian courts already apply the tests for employment and use the

indicators to determine an employment relationship. However, such decisions do not bind third parties who are not part of the proceedings in court. For instance, though the equitable principle of unconscionable dealings may be relevant to the contractual terms of platform workers, it is of limited use. This is because workers cannot demand fairer contract terms from platform companies simply by invoking the decision. Platform workers would have to institute proceedings and allow the courts to determine. Although other platform companies may voluntarily change their policies following a court decision, they will not be obliged to do so unless a law is enacted to that effect.

The provision of the indicators of the employment relationship in legislation also provides legal certainty and predictability, in cases of conflicting judicial decisions on the status of workers, or the employment relationship.

Gambia's Labour Act (2007) may serve as an example in this respect as it provides definitions of the parties involved in the employment relationship. Under Gambia's Labour Act (2007) an employee is:³⁰³

- a. "a person who offers his or her services under an oral or written contract of employment whether express or implied;
- b. a person, including a tenant sharecropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he or she is in relation to that person:
 - in a position of economic dependence; and
 - under an obligation to perform duties far that person more closely resembling the relationship of employee than that of an independent contractor; or
 - where the context requires, a former employee."

Gambia's Labour Act (2007) makes control and economic dependence determinants of the employment relationship. In a similar manner, expanding the labour classifications in Ghana, will cover persons engaged in platform work because it should address the uncertainty of the status of platform workers where those indicators are found and trigger relevant employment protections. Provision of the indicators and the presumption of employment based on certain indicators will contribute to addressing some of the issues related to platform work in Ghana.

Legislation and review of the worker status should not be aimed at confining new forms of work to the confines of traditional employment relationships. The laws must recognise platform work and provide protections for those performing it, whilst preserving its uniqueness and the benefits it offers.

For this purpose, it may be relevant to:

- redefine “worker” under the Labour Act (2003) broadly to cover any person in paid work including platform workers.
- expressly define “employee” under law as persons in an employment relationship based on the indicators of employment and presumptions provided under law; and
- expressly define independent contractors as self-employed persons who have specific characteristics including the ability to negotiate their own terms on an equal footing with the companies to which they provide their services. Specific indicators such as the income earned may be used in this respect.

The contract and/or terms and conditions should be accessible to workers and the applicable law should be that of the country where the worker works. Regulations should prohibit clauses which unreasonably exempt the platform from liability for working conditions or negligence and should also prohibit clauses which prevent workers from effectively seeking redress for grievances which arise from the working relationship and those that require workers to waive statutory rights and obligations in favour of platform companies. The provisions must balance the inequality in the relationship between platform workers and platform companies.

Platforms should be obligated to provide training on the laws applicable to the activities undertaken by the workers, through online workshops or in person as part of the onboarding process for platform workers, and as periodic training sessions.

Platforms should notify workers of proposed changes in a reasonable timeframe before they take effect and should be prohibited from reversing accrued benefits or reasonable expectations on which workers have relied.

Platform workers’ contracts should also include mandatory terms, without which the contract will not be enforceable under Ghanaian law. These may include:

- the platform contracting with the worker must be registered or incorporated under the laws of Ghana. This will prevent any difficulty in enforcing contract terms against absentee or inaccessible platform companies;
- contracts must be governed by the laws of Ghana and the jurisdiction for dispute resolution must be the Ghanaian courts. This will make dispute resolution effective, speedy, and affordable for platform workers;
- dispute resolution clauses must recognise the limited financial means of platform workers. Parties must make reasonable efforts to obtain amicable resolutions of disputes through negotiations, and other alternative mechanisms, under the auspices of national institutions, such as the Ghana Arbitration and National Labour Commission, before resorting to the courts.

Fair Management

Because of the isolated nature of platform work, responses often tend to be automated and slow. Platforms should provide a channel for workers to communicate with a human representative, and to respond to workers within a reasonable timeframe. Regulatory bodies should ensure that platforms adopt policies that requires human representatives to communicate with workers and most especially in helping with dispute resolutions. Workers should be able to appeal decisions affecting them such as low ratings, deactivations, payment issues or other disciplinary actions. Parties should make reasonable efforts to obtain amicable resolutions of disputes through negotiations, and other alternative mechanisms, under the auspices of national institutions, such as the Ghana Arbitration and National Labour Commission, before resorting to the courts. Before dispute resolutions, there should be regulatory policies that prevent platforms from automatically sanctioning workers without any fair hearing process or proper investigation. Evidence from the Black Ride in Ghana has shown the possibility of this, by first issuing warnings to drivers, and in extreme cases the platform management opens a dialogue with platform associations and an investigation before taking any action.³⁰⁴ Platform workers should have the right to fair hearing and regulatory policies should ensure that platforms uphold these standards for a better working environment, improved working conditions, and job security.

All platform workers, regardless of their employment status, should be afforded effective protection against discrimination. According to the 1992 constitution of Ghana, all human beings

are equal before the law, no worker should be discriminated on the grounds of ethnic origin, creed, gender, colour, sex, and social or economic status.³⁰⁵ Considering that few platforms have an anti-discrimination policy in Ghana, regulators should ensure that platforms adopt such policies to mitigate against discrimination on the job. This is also critical for disadvantaged groups like disabled persons and women. The Persons with Disability Act requires that people with disabilities are not mistreated, exploited, or subjected to abusive or degrading language.³⁰⁶ This is another legislation that can be extended to platform work and should also include other disadvantaged groups like women for better protection on the job.

Platforms should promote equality of opportunity for workers from disadvantaged groups, such as women. Considering that women and disabled people have been historically disadvantaged within the transport or couriers' sector in Ghana, regulators should prompt platforms to adopt a diversity and inclusion statement in their policies when hiring their workers. This awareness will create a welcoming environment for potential platform workers from disadvantaged groups. In addition to anti-discrimination policies, platforms should also be encouraged to adopt an anti-sexual harassment policy and measures in place that help mitigate against women getting harassed. While there are no specific laws to protect women against sexual harassment, the Ghana Labour Act requires employers to take actions when reported.³⁰⁷ Regulators can also extend this to platform companies with clear statements of the consequences and measures in place to protect platform workers, especially women, because of the risky nature of the job.

Finally, the use of algorithms by platforms indicates that can be tendencies for biases, especially because of the technical language which are complex for platform workers to comprehend. Biases may be built at different stages of the algorithm creation, resulting in indirect discrimination against particular groups because of their age, gender, ethnicity, caste or other attributes.³⁰⁸ Regulators should investigate the process of algorithmic management and platform work through research and design adaptable guidelines for platforms. This will enable transparency, limit biases, and ultimately eliminate discrimination based on pay, race, gender, sex, religion, creed, social and economic status of platform workers.

Fair Representation

Platforms should allow and set up mechanisms for the expression of collective worker voice, including recognising or bargaining with an independent collective body of workers or a trade union representing workers. Legislation should be revised to allow platform workers to

collectively organise and bargain with a platform. Existing collective labour rights such as the article 21 and 22 of the 1992 constitution of Ghana, the 79 to 95 and 131 of the Labour Act 2003 (Act 651),¹ should be adequately aligned to the conditions of platform work. As highlighted earlier, platforms like the Black Ride are making efforts to ensure grant workers freedom of association and collective bargaining rights, which has been beneficial to these workers. The government, specifically the ministry of labour and the ministry of employment should take the step to grant platform associations an official recognition as a union in Ghana. For example, the recognition of the Amalgamated Union of App-based Transport Workers in Nigeria (AUATWON) by the Federal Ministry of Labour and Employment, is a structural change which puts workers in a stronger position against platforms. While this is still a new initiative, it shows potential to improve collective bargaining with platforms, especially due to its affiliation with the Nigeria Labour Congress (NLC). The Ministry of Labour and Employment and adopt a similar approach to boost the bargaining power of platform workers.

II. Imposition of sanctions for non-compliance

Platform legislation should include sanctions to deter platform companies from non-compliance with the laws—for example, fines may be calculated on a percentage of the companies’ profits, instead of a standard amount, to ensure that the sanction is commensurate with the size and financial resources of the company.

III. Ensuring effective implementation and enforcement of platform laws

To effectively carry out the functions stipulated by the laws. the Government should do the following:

- *Data collection*

Research must be carried out to ensure that the policies and decisions relating to the conditions of platform workers are based on accurate data. Currently, the Ghana Statistical Service does not have any data on platform workers. Because of the isolating nature of the job and lack of an official employment classification, it is difficult to acquire accurate figures of platform workers. In addition, platform companies do not share such

¹ Article 21 (e) and 24 of the Ghana Constitution 1992; 79 to 95 & 131 of the Labour Act 2003 (Act 651)

information with external bodies. Data may however be obtained from several sources including the DVLA and the AfCFTA Hub. The data can provide a basis for the Government to determine the impact on workers and the wider platform economy, and to harness their contribution for national development.

- *Provision of quick and effective dispute resolution mechanisms*

To ensure that there is adequate legislation or policy, regulators must provide access to appropriate and efficient mechanisms for settling disputes regarding the existence and terms of an employment relationship, to both platform workers and companies.³⁰⁹ The regular litigation route in court will not suffice due to the length of the adjudication process and the costs associated with it. A separate system must be used for this purpose. The National Labour Commission could be empowered in the amended Labour Act to include the resolution of worker status in its functions. Currently, the definition of industrial disputes does not include any matter concerning the interpretation of a collective agreement, or contract of employment, or any other agreement which give cause for industrial action or lockout.³¹⁰ The proceedings at the National Labour Commission, though inexpensive and quicker than the courts, will need to be further expedited to achieve appropriate speedy and effective resolution.

- *Provision of training of relevant officers*

New labour or platform laws must include a policy to provide appropriate and adequate training in relevant international labour standards and comparative case law.³¹¹ This training must be provided to all persons responsible for resolving disputes and enforcing national employment laws and standards.³¹² This might include: the judiciary, arbitrators, mediators, and labour inspectors, amongst other persons. Knowledge of how work is organised by platforms, the role of technology and the methods by which workers are controlled will be relevant in determining the status of the workers. Although platform companies all use technology for matching workers to consumers/users, each platform company is organised differently. The relevant adjudicators and enforcement officers will need to be cognisant of this.

Conclusion

The legislative process can be incredibly time consuming. Pending the enactment of new laws, platform workers will continue to face significant challenges in relation to the conditions provided by platform companies. While the legislative process ensues, guidelines or directives should be implemented to minimise the plight of platform workers. Under Ghanaian law, ministers and agencies are empowered to pass regulations, directives or guidelines to regulate the activities of their sectors. The DVLA, along with its partner agencies, have taken the lead in doing so to regulate the platformisation of its sector. Other agencies should follow suit. Some of the recommendations listed above may be implemented through directives and guidelines, prior to their implementation as laws. These may include:

- setting standard fares or charges for platform work;
- limiting the fees or capping commission payable for use of platform companies' apps by workers;
- providing a forum for resolving issues by a tribunal specifically relating to changes in commission rates or fares.

These interim measures must be implemented in consultation with both platform companies and platform workers or their representatives. The system adopted for legislation or interim measures must be workable in an administrative sense, and not place onerous obligations on the state, platform workers or companies for ease of compliance. Ghana may draw on the experiences of other countries, including those in Sub-Saharan Africa, which have taken the lead in formulating laws and regulations for platform workers. For example, in Kenya, where the National Transport and Safety Authority (NTSA), capped the commissions of platform companies at 18 per cent from 25 percent.³¹³

A concerted effort of all relevant institutions such as the Ministry of Employment, the Ministry of Transport, the Ministry of Communication and Digitalisation, and their agencies is required to successfully enact, implement and enforce laws to regulate the platform economy. Agencies such as GRA, SSNIT, and CHRAJ will also be required to contribute to the implementation of laws and their enforcement. Due to the relevance of the platform economy to young Ghanaians, –with regards to the provision of employment opportunities, - the input of the National Youth Authority (NYA) and the Youth Employment Agency (YEA) will also be required. The NYA facilitates youth development in all sectors. The objectives of the YEA include developing,

coordinating, and supervising the creation of jobs for the youth in Ghana. The YEA also sets standards and procedures for employment of the youth and facilitates and monitors their employment. These youth agencies can collaborate with the other stakeholders to develop these standards and supervise the performance of aspects of the laws enacted to provide platform workers.

To address the issues faced by platform workers in Ghana, the Government should review the Labour Act, and provide clear indicators to determine the existence of an employment relationship in specific sectors. Platform specific regulations or laws should be aligned with the Fairwork's principles on fair pay, fair conditions, fair contracts, fair management, and fair representation. Institutions and agencies should be created to enforce and monitor compliance, and to adjudicate dispute resolution between platform workers and companies. A concerted effort is required from various ministries, agencies and departments to achieve effective legal and social protections for platform workers in Ghana.

About the author

Dzifa Vanderpuye is a lawyer qualified in Ghana with extensive experience in Employment Law, actively contributing to the legal community in Ghana through her practice, research, and participation in relevant initiatives.

She holds an undergraduate degree of Bachelor of Arts in Philosophy with Political Science (First Class Honours) as well as a degree of Bachelor Laws from the University of Ghana, Legon.

Her legal career spans over a decade, majority of which was with the prestigious law firm, Bentsi-Enchill Letsa & Ankomah where she gained valuable experience working with various clients, including private companies, multinational corporations, and global businesses. She has also collaborated with leading UK and US law firms on a wide range of employment-related matters. Her expertise covers both contentious and non-contentious issues, such as senior executive appointments and exits, employment disputes, redundancies, transfers of employment resulting from mergers and acquisitions, and specialised immigration advice and assistance within the Ghanaian context.

In addition to her legal practice, Dzifa Vanderpuye has actively contributed to the legal community in Ghana. She served as a member of the Consultative Group on the Review of the Persons with Disability Bill in 2020, demonstrating her commitment to advocating for the rights of individuals with disabilities. Furthermore, she acts as a resource person for the Human Resource Certification Centre, which provides practical training and certification courses for human resource personnel in Ghana.

Currently, Dzifa Vanderpuye is pursuing a program in Employment law (LLM) with the University of Leicester in the United Kingdom to further enhance her expertise in the field.

As a member of the Ghana Bar Association, Dzifa Vanderpuye upholds professional standards and ethics within the legal profession in Ghana. Her dedication to staying informed and sharing knowledge is evident through her written contributions. She has authored articles such as "What you need to know about the Domestic Workers Regulations 2020 (LI 2408)" published by Bentsi-Enchill Letsa and Ankomah on 20 September 2022, and "Rescuing Employment Contracts in Times of Disruption - A COVID-19 Case Study," which appeared in Graphic Online (April 23, 2020) and Business & Financial Times (April 24, 2020).

In addition to her legal practice and contributions to the legal community, Dzifa Vanderpuye actively gives back by providing pro-bono employment advice to the National Council on Persons with Disability and has made significant contributions to the Legal and Case Management Manual for the Case Management Unit of the Council.

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Authors: Dzifa Vanderpuye

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²⁹⁰ The last reported living wage was in 2018 by the WageIndicator Foundation at GHS 1720 per month. However, considering the time lapse, we have adjusted it to reflect the current reality by using the inflation rate as at 2018 at 9.4 percent according to the Ghana Statistical Service (GSS).

²⁹¹ <https://africapay.org/ghana/labour-law/compensation>

²⁹² <https://www.ghanabusinessnews.com/2022/05/01/may-day-workers-deserve-living-wage-not-minimum-wage-ppp/>

²⁹³ The Ghana labour Act 2003 (Act 651), article 118 - 121 <https://africapay.org/ghana/labour-law/health-and-safety-at-work>

²⁹⁴ Ghana Labour Act 2003 (Act 651), article 118(2)(e) & 118(3) <https://africapay.org/ghana/labour-law/health-and-safety-at-work>

²⁹⁵ Workmen's Compensation Act, 1987 (PNDCL 187), section 2(1)

²⁹⁶ *id*, 26 (1)

²⁹⁷ 57 (1 & 3-5) of the Labour Act (Act 651)

²⁹⁸ Response from MELR regarding status of the current Labour Act, 2003 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_COUNTRY_ID:4115623,103231

²⁹⁹ ILO R198, article (13)

³⁰⁰ *id*, 11 (a) to (c)

³⁰¹ id, 12

³⁰² id, 13; ILO, Promoting Employment and Decent Work in a Changing Landscape: Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) (articles 19, 22 and 35 of the Constitution), ILC109/ III(B), 2020, 90

³⁰³ Gambian Labour Act (2007), section 1

³⁰⁴ https://fair.work/wp-content/uploads/sites/17/2022/11/221103_fairwork_ghana-report-2022_RZ.pdf

³⁰⁵ Article 17 of the Constitution of Ghana 1992; article 14, 87 and 127 of the Labour Act 2003 (Act 651).

³⁰⁶ Article 4 and 9 – 15 of the Persons with Disability Act 2006 (Act 715)

³⁰⁷ 15, 63 and 175 of the Ghana Labour Act 2003

³⁰⁸ https://fair.work/wp-content/uploads/sites/17/2022/10/ILO-Manifesto_Final-Draft-1.pdf

³⁰⁹ ILO R198, 4 (e)

³¹⁰ Labour Act, (2003), section 175

³¹¹ ILO R198, article 4 (g)

³¹² *ibid*

³¹³ Sehloho., M, 2022. Uber Kenya cuts commission to 18% after driver protest.