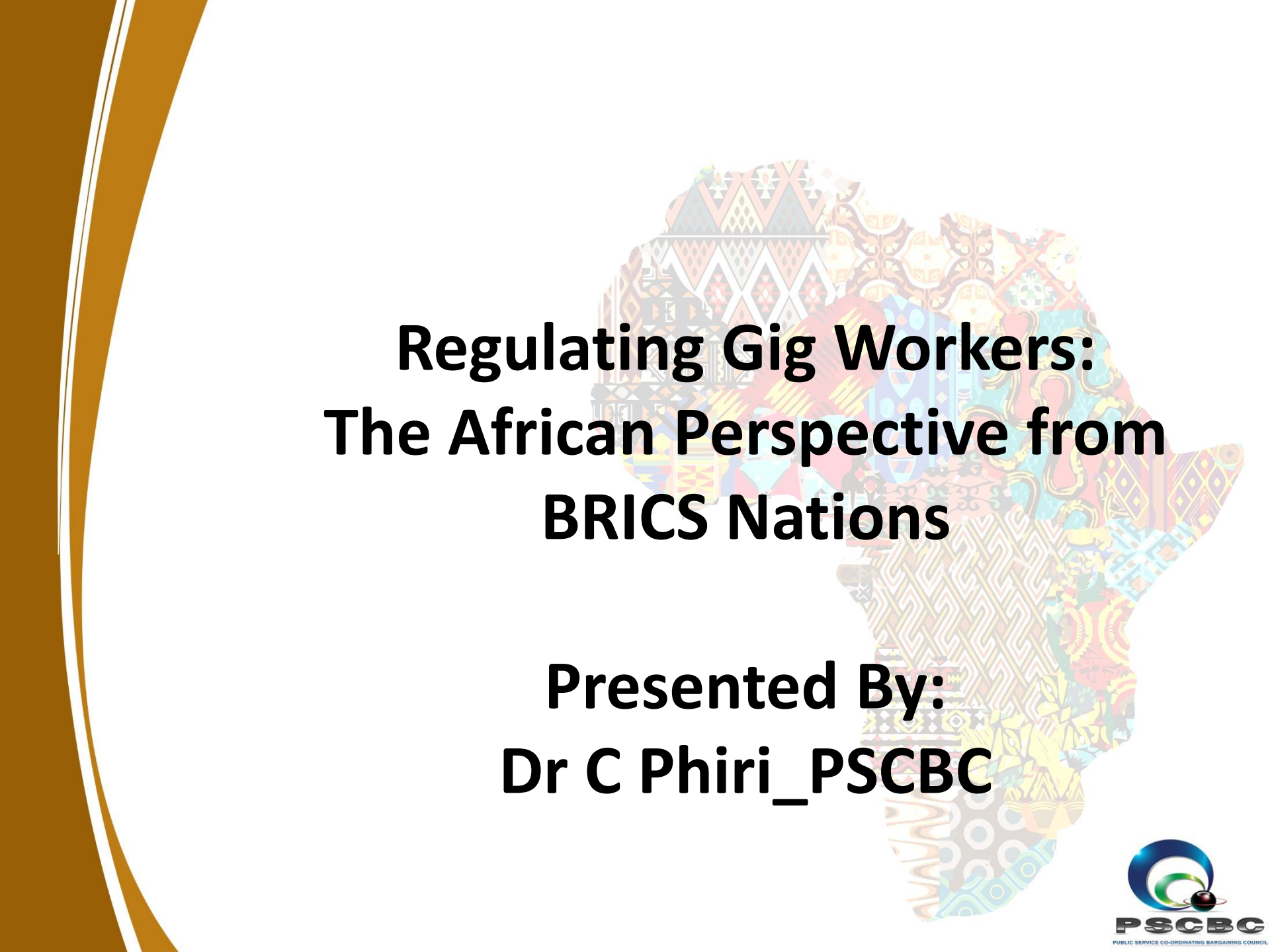




# ILERA **AFRICA** 9<sup>th</sup> Regional Congress

26 - 29 September 2021





# **Regulating Gig Workers: The African Perspective from BRICS Nations**

**Presented By:  
Dr C Phiri\_PSCBC**

# Background

- The developing world and the world at large have been witnessing the emergence of Gig workers.
- Gig workers are playing an important role in the developing economies.
- Gig workers are emerging as significant players in the production, service activities and business processes through a different business model.
- However, the regulation of these workers against the alignment with the business process and the emerging perspectives remain a significant discourse that need further exploration.

- The aim of the paper is to contribute to the debate around Gig workers in Africa and to identify the issues that need to be considered in the regulation of Gig workers as a new form of workforce engagement.
- The workforce engagement remain untested in the legal framework of African states and South Africa included.
- The paper examines debates on how legislatively Gig workers can claim consequential benefits as other labour force

- There has been a significant rise in the numbers of Gig workers across the globe.
- The growth of Gig workers has had effects on traditional workplaces.
- Often Gig workers work under circumstances that are reminiscent to independent contractors.
- Such Gig workers are stripped of their labour and social security protections.
- Exploitation occur with an erosion of health and safety issues, long hours of work, no holidays and protection and retirement.

- One other challenge that emerge is on supervision and control.
- How do Gig workers balance their work and social lives? Many gig workers work from home and this has the potential to blur the lines between family and work time.
- Some employers do not respect the borders between day and night, and between weekdays and weekends.
- There are certain unique characteristics of Gig workers which differentiate them from traditional workers

- South Africa, like India and Brazil have intensified adoption and implementation of the Gig workers.
- While there is need to have a re-look at issues relating to regulation of the employment and employment relations, there is need to develop a new framework in the context of regulation of Gig workers.

## The South African Context

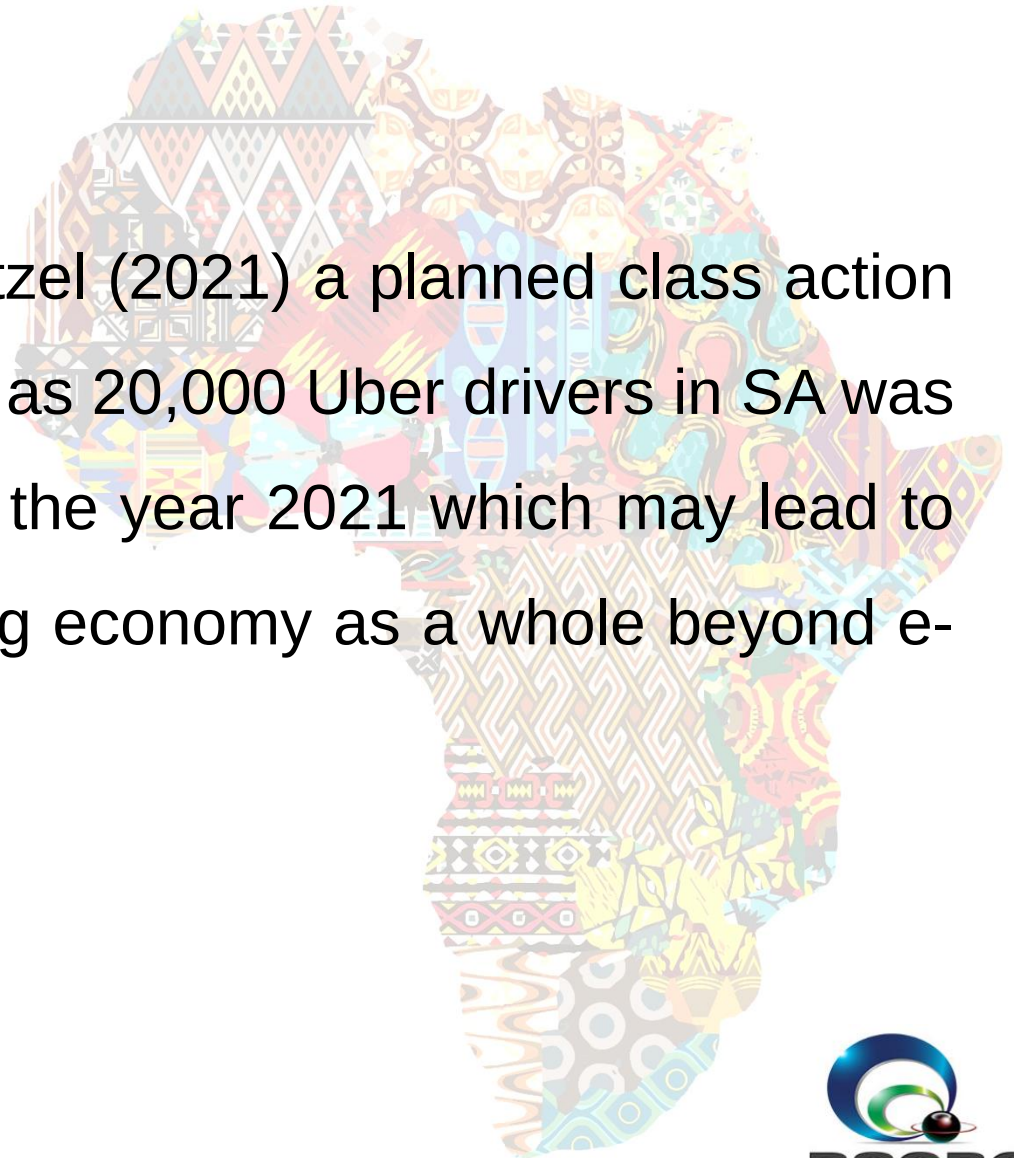
- The South African labour dispensation is balancing between the common law and the ever-changing employment relationships (Basic Conditions of Employment Act, 75 of 1997)
- The narrative is demonstrated by the emerging business model of Uber,
- The Uber business model within the labour market makes it difficult to determine the existence of employment relationship between Uber and its drivers (Nemusimbori, 2017)

- It has been argued in various jurisdictions, across the globe that Uber does not employ its drivers or either owns any vehicles and this make its drivers independent contractors (Nemusimbori, 2017).
- This has been rejected and the courts have concluded that drivers render their services to Uber and not to themselves and this make Uber to be their employer (Nemusimbori, 2017).

- As a result of this emerged technological innovation, app-based platforms, such as Uber, provide a host of services, which threaten the traditional taxi industry.
- This type of service has penetrated modern economies at an alarming rate.
- There is uncertainty regarding legal status of the Uber drivers who are displaced from a wide range of the common traditional jobs (Nemusimbori, 2017).

- Uber has taken over the South African taxi industry by creating a technology-based solution which attempts to make it considerably easier and cheaper for commuters to use taxi services (). It is convenient to many users as the smartphone-based app easily connects them to drivers.
- The South African Constitution recognizes the relevance of customary international law as one of the sources of our law.

- South Africa is committed in its international obligation
- According to Wentzel (2021) a planned class action involving as many as 20,000 Uber drivers in SA was being expected in the year 2021 which may lead to changes for the gig economy as a whole beyond e-hailing.



- Uber drivers are currently classified as independent contractors in South Africa, but there are plans to launch a class-action lawsuit to compel Uber to confer several key rights on its drivers, which, if successful, will affect the rights of platform workers in the country.
- Uber classifies its drivers as independent contractors in its terms and conditions of service.

- This means that Uber drivers typically are not entitled to the statutory protections afforded to employees in the various countries in which Uber operates.
- In South Africa, this means drivers can be fired at will, are not entitled to paid leave and are not subject to restrictions on hours of work (Wentzel, 2021).
- The South African courts have so far developed various tests for distinguishing an employment relationship from that between an independent contractor and his or her client.

- There has been recent decision made by the CCMA in the South African labour law that determined the question as to whether Uber drivers are employees for the purpose of the LRA, in particular the right not to be unfairly dismissed.
- Despite the fact that Uber has always argued that it does not employ any drivers but instead partners with them.
- There is a need to evaluate the Services Agreement in order to see how they fit within the South African labour law to determine as to whether Uber drivers are indeed employees for the purposes of the labour legislation.

- The drivers argued that they are not independent contractors but employees of Uber. The drivers submitted that Uber controls them in various ways.
- Uber controls their conduct and how they perform their work through a system of ratings by the Users and the consequences of failure to meet the average minimum rates (Uber South Africa Technological Services Vs NUPSAW, 2020)
- Uber through the digital technology platform control how the drivers should perform their services, including chargeable fare and how they get hold of Users for transportation services and the location that they should operate their business.

## Concluding remarks

- South Africa continue to acknowledge the current labour market which has many forms of employment relationship that shifts from the traditional common law contract of employment.
- The current labour market which is associated with globalization and new technological innovation, creates a growing number of persons who cannot meaningfully be called employees and have no protection within the labour legislation.

- The assessment based on the Services Agreement of Uber with the rebuttable presumption and Code guidance found that Uber drivers are actually employees of Uber and deserve protection under labour legislation.
- The general view is that the nature of employment relationships globally has changed significantly.
- There has been a change in purpose and orientation, from elucidation of legal rules governing employment relationships and industry relations, to the analysis of regulatory strategies and mechanisms affecting the labour market (Bursztynsky, 2021).

- South Africa is not immune to the global dynamics that had some bearings on the labour market.
- There has been a profound increase in precarious work that departs from the normative model of the standard employment relationship.
- The need for the capacity of the labour law to respond to the realities of these new work relations is vital, since the central rationale of labour law has been to protect those who are vulnerable and powerless in the labour market (Daniel, 2021; Nemusimbori, 2017)

- The emerged changes in the labour market have resulted in situations in which the legal standard of employment relationships does not accord with the realities of working relationships.
- Most workers like Uber drivers find themselves falling outside the legal standard of employment relationships and do not enjoy labour protection befitting those who are defined as “employee” in the labour legislation.

## References

1. Basic Conditions of Employment Act, 75 of 1997
2. Bursztynsky, J. (2021). Uber, Lyft, DoorDash stocks close down after U.S. Labor secretary says gig workers should be classified as employees. Published, APR 29 2021
3. Daniel, L. (2021). Uber labour fight: SA may soon get a third kind of worker, says gig employer Sweep South. Business Insider SA
4. Labour Relations Act, 66 of 1995
5. Nemusimbori, N. (2017). An appraisal of the status of Uber drivers in South Africa Labour law. Masters Thesis. University of Pretoria.
6. Uber South Africa Technological Services (Pty) Ltd v NUPSAW
7. Wentzel, W. (2021). Uber class action in SA could affect entire gig economy, says law firm. BL Premium



Thank you!!!