

# Fairwork Kenya Ratings 2021: Labour Standards in the Gig Economy

## Executive Summary

The first annual Fairwork Kenya report presents a snapshot of a fast-growing platform economy, underpinned by a young population, a large informal sector, rapid digitalisation and Kenya's position as a global hub of technological innovation. There were estimated to be more than 35,000 workers in the Kenyan gig economy in 2019, with this number expected to grow to almost 100,000 in 2023. The economic fallout of the COVID-19 pandemic has made access to income and livelihoods for young people in Kenya all the more urgent.

The platform economy is poised to offer a solution to a constrained local labour market in Kenya, but as the Fairwork scores in this report show, the practices of digital labour platforms currently fall far short of offering minimum rights and protections to workers. For digital labour platforms to truly contribute to tackling youth unemployment and driving inclusive growth in Kenya, their shortfalls in labour standards must be addressed. This responsibility rests ultimately with platforms themselves, but change will rely on platforms being held accountable both by regulation, and by worker power, which in turn must be supported and encouraged within regulatory frameworks. This first Fairwork Kenya report provides a resource to all stakeholders in working towards a dynamic platform economy rooted in minimum standards of fairness.

Fairwork scores digital labour platforms based on five global principles of 'fair work', which were developed through multi-stakeholder meetings at UNCTAD, the International Labour Organisation, and stakeholder meetings across four continents. The five principles relate to Fair Pay, Fair Conditions, Fair Contracts, Fair Management, and Fair Representation. Evidence on whether platforms comply with these five principles is collected through desk research, interviews with workers, and platform-provided evidence. The evidence is used to assign a Fairwork score out of ten to individual platforms. With a basic and an advanced point awarded for each of the five principles, a platform can earn a maximum score of ten.

The Fairwork Project launched its research activities in Kenya in 2021. Led by researchers at Qhala Ltd., in collaboration with the Oxford Internet Institute (OII) at the University of Oxford, and the WZB Berlin Social Science Centre, we are now implementing the Fairwork rating system

in Kenya, to score ride hailing, delivery, and home cleaning services platforms. In this first year of scoring in Kenya, we found a spectrum of platform practices. As the scores demonstrate, a minority of platforms have institutionalised health and safety protections, communications and due process mechanisms, and avenues for worker representation. However, the majority of the platforms were unable to evidence documented policies and practices to ensure minimum labour standards. This report presents the first set of Fairwork ratings for nine platforms operating in Kenya—namely Bolt, Glovo, InDriver, Jumia, Little Cab, SweepSouth, Uber, Uber Eats, and Wasili.

While larger, international companies are perhaps more likely to have more institutionalised provisions for labour standards, locally-owned companies like Wasili are better positioned to ensure that value and benefits are retained by local communities. Unfortunately, few locally-owned companies could demonstrate compliance with Fairwork principles in this first scoring round. Greater support and resources may be required to lift standards across the board, while ensuring that the development of the platform economy is locally-driven, sustainable, and inclusive.

## Key findings

Platform's scores were mainly clustered between 0 and 2, with Glovo achieving a higher score of 7 out of ten, on the basis of a number of documented policies and practices advancing fairer working conditions. This spread of scores clearly shows that while the majority of platforms are not living up to minimum standards of fairness in Kenya, it is possible for platforms to implement better standards.

**Fair Pay:** Only one of the platforms in our study (Glovo) provided sufficient evidence to show that their workers did not fall below statutory minimum wage levels for their active working hours, after costs were taken into account.<sup>1</sup> While many of the workers in our study reported earning above minimum wages on platforms, we could not evidence that they were guaranteed minimum *net* earnings in line with statutory provisions.

**Fair Conditions:** Four platforms (Glovo, SweepSouth, Uber and Uber Eats) could show that they took steps to mitigate risks that workers faced in the course of their work for the platform, and as such received a point for Principle 2.1. Glovo also provided evidence of compensating workers

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<sup>1</sup> The minimum wage in Kenya depends on location and job type, ranging from Ksh.121.3 per hour for a labourer in a city, to Ksh. 275.95 for an artisan. While there is no obvious category that is relevant to most gig workers, we assessed the majority of platforms against the category of 'car driver'—at Ksh.164.9 per hour. See Africa Pay. 2021. Minimum Wage—Cities: Nairobi, Mombasa and Kisumu. <https://africapay.org/kenya/salary/minimum-wages/2182-cities-nairobi-mombasa-and-kisumu>

for loss of income if they needed to self-isolate as a result of becoming infected with COVID-19. In this first year of scoring, we judged that this provision, combined with Glovo’s wider insurance cover, was sufficient to evidence a “safety net” to award 2.2.

**Fair Contracts:** Only one platform—Glovo—received a point for Principle 3, Fair Contracts. Glovo provided the terms and conditions governing the relationship with their workers, and we were able to verify that it was accessible to workers, subject to the law of the local jurisdiction, and that there was a notice period in place (in practice) by which workers were informed of any changes to terms.

**Fair Management:** The risk of account blocks and dismissal from platforms without notice is high for most workers in our study. Workers can face deactivation from platforms for arbitrary reasons, without due process. Several workers told us that platforms often took a long time to respond to communications. On some platforms workers encountered significant challenges in communicating with a human platform representative at all. Glovo and SweepSouth were the only platforms that could evidence an official avenue for workers to appeal disciplinary decisions, including deactivation. This made Glovo and SweepSouth eligible to receive a point for 4.2 (equity in the management process). We awarded this point to both platforms due to their extensive anti-discrimination policies.

**Fair Representation:** Four platforms received a point for Principle 5, Fair Representation, in Kenya. In order to be awarded 5.1, platforms must have a formal policy of willingness to recognise and negotiate with collective representative bodies of workers. SweepSouth, Uber, Bolt and Little Cab could evidence that this was the case. However, none of these platforms met the higher bar for proactively supporting democratic governance for instance through collective bargaining in practice.

## Editorial: Rise of the Platform Economy: Is the future of work in Kenya fair?

There is little doubt that 2020 was a defining year for many economies globally. In Kenya COVID-19 emerged into a broader context of high informality and a young workforce. These conditions rendered workers especially vulnerable to the impacts of curfews and lockdown. However, Kenya has also experienced rapid digitalisation, and a proliferation in mobile payment systems (“Mobile Money”), which are hailed by some as a solution to the urgent challenge of improving livelihoods. The rapid growth of the platform economy and the ecosystem of digital work is

changing how people live and work much faster than regulatory bodies are able to keep up with. Platforms generally contractually classify their workers as independent, a contentious practice which circumvents standard employment relations and raises significant questions for regulators as to whether and how these workers are protected from the risks arising from their work. Nevertheless, we found that labour platforms offered opportunities for marginalised workers like women, young people, people with disabilities and refugees, and an avenue for income generation in an extremely limited local labour market, and that they offer a slightly higher level of protections than is found in the informal sector. Nevertheless, as the digital economy is seen as an important pillar of development in Kenya, it is crucial that the growth of digital labour platforms does not further entrench insecure and low-quality work outside formal employment relations as the norm.

The higher-scoring platforms in our study were international platforms, signalling that the larger international companies are more likely to have better-established policies and procedures. International companies like Uber, Bolt and Glovo dominate the labour platform market in Kenya, meaning value and rents from these activities are largely captured offshore. Regulatory settings which prioritise the development of the locally-owned digital economy, then, have the potential to ensure that greater benefits are retained in Kenya. However, it is unfortunate that the Kenyan platforms had fewer institutionalised labour standards in the first year of our research, as we also observed that they have a greater focus on rural livelihoods, and greater embeddedness in local communities. As such, we hope that the Fairwork framework we present in this report will provide a resource to Kenyan labour platforms in implementing best practice working conditions going forward, in order to ensure maximum benefit and value to local communities.

The pandemic has exerted significant influence on the direction of the platform economy over the past two years. While platform working (especially in the delivery and transport sectors) has offered much needed livelihoods during a time of economic contraction and crisis, the majority of platforms did not provide adequate safety measures or financial security during the peak of the pandemic and, with curfews in place, work hours were significantly reduced. Some of the platforms we examined did offer safety training and assisted drivers and riders by subsidising the cost of safety clothing, gloves and masks. The ongoing pandemic represents a vital opportunity for policymakers to enact labour standards to ensure fairer working conditions for platform workers. However, there has been little movement at the regulatory level in response to the risks posed to Kenyan platform workers by COVID-19.

The insights presented in this report suggest that companies and regulators still have a long way to go in providing protection to workers in the Kenyan platform economy. Due to high rates of unemployment, Kenyans are increasingly accessing gig work despite the absence of fair working

conditions—which will come to affect them down the road. However, the high levels of informality in Kenya and other countries in the global South should not be an excuse for platforms to provide lower protections to workers locally compared to those increasingly being won by workers in wealthy countries. Kenyan labour laws and worker representation frameworks need to be strengthened if platform workers are to enjoy fair working conditions in the gig economy.

## The Fairwork Framework

Fairwork evaluates the working conditions of digital platforms and ranks them on how well they do. Ultimately, our goal is to show that better, and fairer, jobs are possible in the platform economy. To do this, we use five principles that digital platforms should comply with in order to be considered to be offering ‘fair work’. We evaluate platforms against these principles to show not only what the platform economy is, but also what it can be.

The five Fairwork principles were developed at a number of multi-stakeholder workshops at the International Labour Organisation. Further details on the thresholds for each principle, and the criteria used to assess the collected evidence to score platforms can be found in the Appendix.

### The five principles

#### 1. Fair Pay

Workers, irrespective of their employment classification, should earn a decent income in their home jurisdiction after taking account of work-related costs. We assess earnings according to the mandated minimum wage in the home jurisdiction, as well as the current living wage.

#### 2. Fair Conditions

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.

#### 3. Fair Contracts

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 workers' employment status, the contract is free of clauses which unreasonably exclude liability on the part of the platform.

#### 4. Fair Management

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 to workers involving the ability to appeal management decisions or deactivation. The use of algorithms is transparent and results 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).

#### 5. Fair Representation

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.

## Methodology Overview

Scoring platforms according to the Fairwork principles relies on a range of different data sources collected by in-country research teams. These data include desk research, evidence submitted by the platforms, and semi-structured interviews with both workers and management from each platform.

### Desk research

The process starts with desk research to ascertain which platforms are currently operating in the country of study. From this list the largest and most influential platforms are selected to be part of the ranking process. If possible, more than one platform from each sector (e.g. ride-hailing or food delivery) are included to allow for within-sector comparisons. The platforms included in the ranking process are both large international ones as well as national / regional ones. Desk research also flags up any public information that could be used to score particular platforms (for instance the provision of particular services to workers, or ongoing disputes).

The desk research is also used to identify points of contact or ways to access workers. Once the list of platforms has been finalised, each platform is contacted to alert them about their inclusion in the annual ranking study and to provide them with information about the process. All platforms are asked to assist with evidence collection as well as with contacting workers for interviews.

## Platform interviews

The second method involves approaching platforms for evidence. Platform managers are invited to participate in semi-structured interviews as well as to submit evidence for each of the Fairwork principles. This provides insights into the operation and business model of the platform, while also opening up a dialogue through which the platform could agree to implement changes based on the principles. In cases where platform managers do not agree to interviews, we limit our scoring to evidence obtained through desk research and worker interviews.

## Worker interviews

The third method is interviewing platform workers directly. A sample of 5-10 workers are interviewed for each platform. These interviews do not aim to build a representative sample, but instead seek to understand the processes of work and the ways it is carried out and managed. These interviews enable the Fairwork researchers to see copies of the contracts issued to workers, and learn about platform policies that pertain to workers. The interviews also allow the team to confirm or refute that policies or practices are really in place on the platform.

Workers are approached using a range of different channels. In 2021 this included one of the platforms using their Whatsapp group to circulate our advertisement to their workers to reach interested workers. All the remaining platform workers were approached at their places of operation, e.g. taxi ranks, motorbike ranks, or a ride was hailed from them in order to facilitate the interview process. In all these strategies, our interviewers used a link to read a short synopsis of the Fairwork project as well as the interview process to gain consent.

The interviews were semi-structured and made use of a series of questions relating to the 10 Fairwork (sub)principles. In order to qualify for the interviews, workers had to be over the age of 18 and have worked with the platform for more than two months.

## Putting it all together

This threefold approach provides a way to cross-check the claims made by platforms, while also providing the opportunity to collect both positive and negative evidence from multiple sources. Final scores are collectively decided by the Fairwork team based on all three forms of evidence. Points are only awarded if clear evidence exists on each threshold.

## How we score

Each of the five Fairwork principles is broken down into two points: a basic point and a more advanced point that can only be awarded if the basic point has been fulfilled. Every platform receives a score out of 10. Platforms are only given a point when they can satisfactorily demonstrate their implementation of the principles. Failing to achieve a point does not necessarily mean that a platform does not comply with the principle in question. It simply means that we are not—for whatever reason—able to evidence its compliance.

The scoring involves a series of stages. First, the in-country team collates the evidence and assigns preliminary scores. The collated evidence is then sent to external reviewers for independent scoring. These reviewers comprise members of the Fairwork teams in other countries, as well as members of the central Fairwork team. Once the external reviewers have assigned their scoring, all reviewers meet to discuss the scores and decide final scoring. These scores, as well as the justification for them being awarded or not, are then passed to the platforms for review. Platforms are then given the opportunity to submit further evidence to earn points that they were initially not awarded. These scores then form the final annual scoring that is published in the annual country Fairwork reports.

Further details on the scoring system can be found in the Appendix.

## Background: Overview of the Kenyan Gig Economy

As the innovation hub of East and Central Africa, Kenya (and specifically Nairobi), has seen the emergence of local and international digital labour platforms looking to expand and capture a young and tech-savvy populace. Young people aged between 15 and 24 years old account for

20% of the Kenyan population—higher than the African average of 15.8%.<sup>2</sup> Unfortunately, the broader context of low formal employment in Kenya is also marked by high youth unemployment. While estimates and definitions of unemployment vary, Kenya’s most recent quarterly labour force survey estimates an unemployment rate (narrowly defined) of 16.3% for those aged 20-24, against a general unemployment rate (expanded definition) of 12.3%.<sup>3</sup> The high proportion of young people looking for work has contributed to rapid growth in the supply of workers in the gig economy, with many commentators viewing it as an innovative solution to the lack of decent job opportunities. The majority of stakeholders in the platform economy are young people who have been forced to create spaces for themselves and other youth in order to generate income.

This influx of young workers has taken place against a wider context of informality. The Federation of Kenyan Employers and the ILO report that informal employment as a proportion of total employment ballooned from 10% in 1974 to 83% in 2019.<sup>4</sup> While different definitions of informal employment have been used in Kenya, its defining features tend to be ease of entry, and an employment relationship that is not subject (in law or practice) to regulations, taxation, social security provisions, and benefits such as paid annual or sick leave, and advance notice of dismissal.<sup>5</sup> The aforementioned report finds that informal workers in Kenya tend to make substantially below the statutory minimum wage (a labourer working for an informal enterprise in a city is estimated to make 26% of the statutory minimum monthly wage).<sup>6</sup> 75.7% of workers in the informal economy are not covered by the National Social Security Fund or the National Hospital Insurance Fund (NHIF), and 99% do not belong to any trade union.<sup>7</sup> Platform work, while generally falling short of formal labour standards, may therefore offer better protections than the informal job market.

According to many of our interviewees, the platform economy appeared to be relatively profitable for the early-adopter workers who took advantage of the low initial competition to make good returns. Some told us that they chose to quit formal employment and get into the business of ride hailing as their main source of income. The advent of ride hailing significantly disrupted the established taxi industry, and particularly the long-standing practice of price haggling, leading to a shift where ordinary Kenyans could now access taxis as an affordable

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<sup>2</sup> Next Billion. (n.d.). The Rise (and Rise) of the Gig Economy in Kenya – And How to Take It to the Next Level. <https://nextbillion.net/kenya-gig-economy-next-level/>

<sup>3</sup> KNBS. 2021. Quarterly Labour Force Report. Quarter 1, January-March 2021.

<sup>4</sup> Federation of Kenyan Employers. 2021. The Informal Economy in Kenya. FKE/ILO. [https://www.ilo.org/wcmsp5/groups/public/—ed\\_emp/—emp\\_ent/documents/publication/wcms\\_820312.pdf](https://www.ilo.org/wcmsp5/groups/public/—ed_emp/—emp_ent/documents/publication/wcms_820312.pdf)

<sup>5</sup> Ibid., p. 10.

<sup>6</sup> Ibid., p. 2.

<sup>7</sup> Ibid.

option. However, as competition amongst platforms in this sector increased, and the labour supply grew, workers experienced a race to the bottom in earnings. This has been compounded by the fact that platform workers are forced to cover all the costs associated with the labour process, including fuel, vehicle maintenance, and mobile data. Our research shows that when these costs are factored in, incomes are volatile and workers are in danger of falling below minimum wage. More than six years after Little Cab and Uber entered the Kenyan market (in January and June 2015, respectively), it is quite clear that policy makers and industry players are still grappling with the growth of the platform economy and how to regulate it.<sup>2</sup>

The nature of Kenya's workforce is changing, following a clear shift in emphasis and opportunity from the informal sector, to digital work. Digital labour platforms are currently estimated to account for 0.2% of Kenya's GDP. According to 2019 estimates, there are 36,573 gig workers in Kenya, across the cloudwork, location-based gig work, and online rental sectors (e.g. AirBnB, which we do not score),<sup>8</sup> of which the ride hailing sector alone numbers 13,000 workers, with an estimated value of US\$45.3 million. The gig economy is expanding, and is expected to grow to a value of US\$345 million and to employ 93,875 gig workers by 2023.<sup>9</sup> As the digital economy continues to grow, however, it is crucial that any predatory or exploitative labour practices are exposed and addressed.

## Nature of the relationship between platform and worker

In order to understand how labour laws and social protection apply to gig workers, we need to understand how platforms characterise their relationship with their workers. Kenyans have entered into gig work for its supposed flexibility, and due to a lack of alternative opportunities in the labour market. However, due to their practice of classifying workers as self-employed, platforms have claimed that current labour laws and social protection (such as protection from unfair dismissal, and provision of National Social Security and National Hospital Insurance) do not extend to their workers. While platforms claim that treating workers as “self-employed” is empowering for workers, giving them greater autonomy over their working hours for instance, there is a lack of consensus among commentators and stakeholders in Kenya as to whether workers are indeed liberated—or harmed—by these practices. According to Kenyan regulation, self-employed workers should have a high degree of control over where, when, and how they

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<sup>8</sup> Mercy Corps. 2019. TOWARDS A DIGITAL WORKFORCE: UNDERSTANDING THE BUILDING BLOCKS OF KENYA'S GIG ECONOMY. [https://www.mercycorps.org/sites/default/files/2020-01/Youth\\_Impact\\_Labs\\_Kenya\\_Gig\\_Economy\\_Report\\_2019\\_0\\_0.pdf](https://www.mercycorps.org/sites/default/files/2020-01/Youth_Impact_Labs_Kenya_Gig_Economy_Report_2019_0_0.pdf)

<sup>9</sup> Ibid.

work.<sup>10</sup> While this may appear to be the case in the platform economy, in reality workers are subordinated by complicated digital management systems which exert control over their behaviour—for example via ratings systems.

From what we have observed in this study, platforms' contractual classification of workers generally results in challenging work conditions, including low earnings, unfair termination of accounts, income volatility, and the absence of a safety net in the event of illness, injury or inability to work. Under these conditions, workers are unlikely to experience the autonomy that platforms claim, and instead are dependent on and controlled by them. Due to the high costs which they are forced to absorb, the majority end up working long hours in order to make ends meet, with deleterious effects on their health, and work–life balance. Platforms also hold a lot of power in setting their terms and conditions unilaterally, with no consultation with workers. Because platforms do not classify their workers as employees, in most cases they are able to avoid the costs associated with complying with labour protection legislation, and to bypass social dialogue processes.

Kenya's current employment legislation was passed over a decade ago, before the emergence of gig work. Platforms have therefore been able to circumvent statutory obligations by ensuring that their contracts with workers do not align within any of the categories in the Employment Act. Policy change is needed for instance to ensure that platforms allow workers to access and transfer benefits such as health insurance (NHIF) and pension from one platform to another. Yey, impending changes in legislation to address legal loopholes are not highly anticipated by experts, but some believe that platforms may soon seek to reverse some of the flexible aspects of gig work by making it more challenging for workers to work simultaneously for multiple platforms, in order to clamp down on the currently high level of 'multi-apping', or workers switching between platforms regularly throughout the day.<sup>11</sup>

In spite of the risks and harms faced by workers as a result of the labour platform model, it is widely claimed that digital work is the future of work in Africa, and a solution to the challenges of informality and unemployment.<sup>12</sup> Going forward, the pull of full-time formal sector work may therefore be overtaken by people working multiple gigs with patchy access to labour protections. While platform working can indeed provide livelihoods for those shut out of existing

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<sup>10</sup> CMS. n.d. GIG WORKING, PLATFORM COMPANIES AND THE FUTURE: A GLOBAL PERSPECTIVE FROM CMS EMPLOYMENT LAWYERS IN 16 COUNTRIES. <https://cms.law/en/int/publication/gig-working-platform-companies-and-the-future>.

<sup>11</sup> Ibid.

<sup>12</sup> For example, see Mastercard Foundation. 2019. Digital Commerce and Youth Employment in Africa. [https://mastercardfdn.org/wp-content/uploads/2019/03/BFA\\_Digital-Commerce-White-Paper\\_FINAL\\_Feb-2019-aoda.pdf](https://mastercardfdn.org/wp-content/uploads/2019/03/BFA_Digital-Commerce-White-Paper_FINAL_Feb-2019-aoda.pdf); Centre for Global Development. 2018. Let's Be Real: The Informal Sector and the Gig Economy are the Future, and the Present, of Work in Africa. [https://www.cgdev.org/sites/default/files/lets-be-real-informal-sector-and-gig-economy-are-future-and-present-work-africa\\_0.pdf](https://www.cgdev.org/sites/default/files/lets-be-real-informal-sector-and-gig-economy-are-future-and-present-work-africa_0.pdf)

labour markets, if it is to present a solution for the future of work in Africa, key shortfalls in job quality need to be addressed first. While clarification and regulation of platform employment obligations from the government is urgently needed, even where gig workers are not extended the full legal benefits of full-time employment, platforms can still *choose* to provide them with fair pay, training opportunities, and protection in the event they are unable to work.

The main question going forward is therefore how platforms and the government will provide protection and benefits to platform workers equivalent to those of employees. While policymakers have identified work in the digital economy as an engine of development and income opportunities, there is a serious need for regulation to make the platform economy more sustainable to work in. Moreover, there needs to be a greater focus on the economic benefits of digital labour platforms at both a community and macro level. Though the number of platform workers is increasing rapidly, the bulk of the profits generated go to the (mostly international) platforms themselves, with intermediaries who own car fleets also capturing a significant share. As a result, the gig worker is working in a highly competitive environment where their service is an undifferentiated product, and thus—absent minimum protections—subject to a race to the bottom in prices and therefore conditions.<sup>13</sup>

## Fairwork Scores

### Score (out of 10)

Glovo: 7

SweepSouth: 4

Uber: 2

Bolt: 1

Little Cab: 1

UberEats: 1

InDriver: 0

Jumia: 0

Wasili: 0

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<sup>13</sup>ILO. (2021). World employment and social outlook: the role of digital labour platforms in transforming the world of work. International Labour Organisation. [workers.\(https://www.ilo.org/infostories/en-GB/Campaigns/WESOWorld-Employment-Social-Outlook-2021#COVID-19](https://www.ilo.org/infostories/en-GB/Campaigns/WESOWorld-Employment-Social-Outlook-2021#COVID-19)

The breakdown of scores for individual platforms can be seen on our website: [www.fair.work/ratings/](http://www.fair.work/ratings/).

## Explaining the scores

### Fair Pay

Only one of the platforms in our study (Glovo) provided sufficient evidence to show that their workers did not fall below statutory minimum wage levels for their active working hours, after costs were taken into account.<sup>14</sup> While many of the workers in our study reported earning above minimum wages on platforms, we could not evidence that they were guaranteed minimum *net* earnings in line with statutory provisions. Because the dominant model in the gig economy is piece-rate payment, rates of pay can fluctuate depending on circumstances outside workers' control, such as demand. Moreover, platform workers take on all the costs associated with the labour process, such as the costs of vehicles, maintenance, fuel, mobile data, and transport between jobs (for domestic workers). Traffic tickets are also a big concern for drivers and riders in Kenya. Glovo also showed us that they reimbursed riders for tickets.

As many platform workers reported earnings above minimum wage levels, particularly on Wasili and Little Cab, we encourage more platforms to institutionalise minimum payment thresholds in their policies and practices. This would provide greater reassurance and security to workers in line with government guidelines, with relatively minor impacts on or changes required of the platform.

### Fair Conditions

Four platforms (Glovo, SweepSouth, Uber and Uber Eats) could show that they took steps to mitigate risks that workers faced in the course of their work for the platform, and as such received a point for Principle 2.1. Risks to drivers and riders include traffic accidents, crime, and exposure to COVID-19. Glovo, Uber and Uber Eats all provide insurance to workers who experience an accident or injury on the job. However, it is important to note that for Uber and Uber Eats, this insurance only covers the time a worker is actively on a job, and not wait time.

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<sup>14</sup> The minimum wage in Kenya depends on location and job type, ranging from Ksh.121.3 per hour for a labourer in a city, to Ksh. 275.95 for an artisan. While there is no obvious category that is relevant to most gig workers, we assessed the majority of platforms against the category of 'car driver'—at Ksh.164.9 per hour. See Africa Pay. 2021. Minimum Wage—Cities: Nairobi, Mombasa and Kisumu. <https://africapay.org/kenya/salary/minimum-wages/2182-cities-nairobi-mombasa-and-kisumu>

This is an important limitation which we encourage Uber to take steps to address. Over and above insurance, these platforms have also adopted various safety initiatives including customer identification, and security response measures. Risks to domestic workers on the SweepSouth platform include harassment by clients, and the platform was able to point to systems they had in place for supporting workers in such situations.

Glovo also provided evidence of compensating workers for loss of income if they needed to self-isolate as a result of becoming infected with COVID-19. In this first year of scoring, we judged that this provision, combined with Glovo's wider insurance cover, was sufficient to evidence a "safety net" to award 2.2. However, there remain many other circumstances in which Glovo workers might find themselves unable to work due to unforeseen circumstances. We encourage Glovo and other platforms to implement a more comprehensive safety net, including through contributions to the National Social Security and Hospital Insurance Funds.

## Fair Contracts

Only one platform—Glovo—received a point for Principle 3, Fair Contracts. Glovo provided the terms and conditions governing the relationship with their workers, and we were able to verify that it was accessible to workers, subject to the law of the local jurisdiction, and that there was a notice period in place (in practice) by which workers were informed of any changes to terms. In addition, compared to the contracts imposed by other platforms, we judged that Glovo's contract did not unreasonably limit liability on the part of the platform, or require workers to waive their rights to reasonable legal recourse against the platform, such as through a mandatory arbitration clause.

Many other platforms did not provide us with copies of the contractual terms governing the relationship with their workers, and we were unable to source these terms and conditions through desk research. In subsequent scoring rounds, it may be possible to award this point to more platforms if we are able to access these terms. Uber's common global practice is to contract with workers as Uber B.V.—a limited liability company based in the Netherlands. These contracts stipulate their governing law as that of the Netherlands. This makes it extremely difficult for workers to take legal action or disputes against platforms in their local jurisdiction.

## Fair Management

The risk of account blocks and dismissal from platforms without notice is high for most workers in our study. Workers can face deactivation from platforms for arbitrary reasons, without due process. Several workers told us that they felt that the platform privileged the interests of customers over workers in disputes, and that platforms often took a long time to respond to

communications. On some platforms, including Bolt and InDriver, workers encountered significant challenges in communicating with a human platform representative at all.

The opposite was true for some of the local platforms. For instance, workers for Wasili told us that they tend to have a closer personal relationship with managers through which they could discuss and resolve issues informally. However, in order to satisfy Principle 4, it is important that due process for decisions affecting workers is documented in an official policy. Glovo and SweepSouth were the only platform that could evidence an official avenue for workers to appeal disciplinary decisions, including deactivation. This made Glovo and SweepSouth eligible to receive a point for 4.2 (equity in the management process). We awarded this point to both platforms due to their extensive anti-discrimination policies and enforcement mechanisms.

### Fair Representation

Four platforms received a point for Principle 5, Fair Representation, in Kenya. In order to be awarded 5.1, platforms must have a formal policy of willingness to recognise and negotiate with collective representative bodies of workers. SweepSouth adopted such a public facing policy in 2021 in response to engagement with the Fairwork South Africa team, and confirmed that this policy is not limited by geography and extends to workers in Kenya. In 2018, following strike action over fares by workers on Uber, Bolt (then Taxify), Little Cabs, and others in the taxi industry, an agreement was reached which laid the basis for such engagement. This Memorandum of Understanding, signed by the ride hailing companies, various groups representing workers, and the Ministry of Transport, provided a foundation for further engagement and negotiation on pay and worker welfare.

While this has allowed us to award Principle 5.1 to these companies, we are aware that meaningful engagement has not been continuously ongoing since the agreement was reached in 2018, and we encourage the companies to take further steps to adhere to the spirit of their agreement by proactively and regularly meeting with worker representative bodies. Because these meetings have not been proactive and regular, and further collective bargaining has not taken place, we are prevented from awarding Principle 5.2—“Supports Democratic Governance”.

## Platform in Focus: Glovo

1.1. Pays at least the local minimum wage after costs	1
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1.2. Pays at least a local living wage after costs	0
2.1. Mitigates task-specific risks	1
2.2. Provides a safety net	1
3.1. Provides clear and transparent terms and conditions	1
3.2. Does not impose unfair contract terms	1
4.1. Provides due process for decisions affecting workers	1
4.2. Provides equity in the management process	1
5.1. Assures freedom of association and the expression of worker voice	0
5.2. Supports democratic governance	0

Glovo was the highest scoring platform in Kenya in this scoring round, with 7/10. While Glovo performed relatively well compared to other platforms in Kenya, it fell short of receiving advanced points in two key areas of importance to workers, namely pay and representation. A Spanish on-demand delivery platform founded in Barcelona in 2015, Glovo now lists 65,000 active couriers in 24 countries and over 1,000 cities.<sup>15</sup> In Africa, Glovo operates in Morocco, Kenya, Ghana, Egypt, Cote d’Ivoire, Uganda, Nigeria and Tunisia. In Kenya, Glovo workers deliver food and other goods, primarily by motorcycle, or bicycle.

The company has recently expanded its African footprint, entering the Nigerian and Tunisian markets in the second half of 2021, and plans to double its investment in Africa in the year to September 2022, to US\$59.3m.<sup>16</sup> Despite (or perhaps because of) this rapid expansion, the company is still making overall losses. Nevertheless, executives have indicated an intention to take the company public in the next three years.<sup>17</sup>

Glovo has been the subject of strikes and unfavourable court rulings in various jurisdictions in recent months. Widespread strikes across Latin America and Spain in mid-2020 protested deteriorating conditions and rates of pay on a number of delivery platforms including Glovo. In November 2020, Spain’s High Court found that the platform had misclassified drivers as self-

<sup>15</sup> Glovo. (n.d.). ‘About Us’. <https://about.glovoapp.com/en/>

<sup>16</sup> Nasdaq. (2021). EXCLUSIVE-Glovo plans to double investment in Africa in next 12 months. <https://www.nasdaq.com/articles/exclusive-glovo-plans-to-double-investment-in-africa-in-next-12-months-2021-09-07>

<sup>17</sup> Ibid.

employed, judging them instead to be workers for the platform. In addition, a “Rider’s Law” introduced in Spain in 2021 established a presumption of employment for platform couriers. Following the decision, Glovo indicated that it would still only employ a minority of its couriers.<sup>18</sup>

Against the backdrop of these challenges from workers and regulators, and possible plans to go public, Glovo has recently announced a pathway towards improved conditions for its workers. The ‘Courier’s Pledge’ commits Glovo to a series of benchmarks of fair labour practice, including the provision of a living wage for all logged-in time.<sup>1920</sup> However, the Pledge is still in the pilot phase and has yet to be rolled out in Kenya. As these commitments have not yet been implemented in Kenya, Glovo has not yet provided evidence that they meet the living wage threshold. However, they could show that the distribution of earnings for full time equivalent workers were above statutory minimum wage levels after costs. Therefore this year they met 1.1, but not 1.2.

Despite their comparatively good performance, Glovo was not able to evidence that all the Fairwork criteria for Fair Representation are met in Kenya. Representation is a crucial pillar of fairness, and is enshrined in ILO conventions and the UN Declaration of Human Rights. While Glovo has taken encouraging steps in the right direction, engaging with workers through consultation and focus groups in cities across Kenya, in order to ensure fair representation we encourage the platform to adopt a formal policy of willingness to recognise and negotiate with a collective body representing workers.

## Workers’ Stories

Big A\* is a 30 year old Bolt driver in Nairobi. He joined Bolt about five months ago after being introduced to the platform by a friend. He works part-time, around all the other tasks he needs to take care of during the day. He finds the platform easy to use and considers that it provides good returns, given that Bolt doesn’t charge a high interest rate. In a good month, he says, he earns around Ksh.15,000 before costs, which is below the monthly minimum wage for a driver in a city of Ksh. 18.319..He has an ex wife and 2 children that he supports as well as his extended

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<sup>18</sup> Social Europe. (2021). Platforms put a spoke in the wheels of Spain’s ‘riders’ law’. <https://socialeurope.eu/platforms-put-a-spoke-in-the-wheels-of-spains-riders-law>

<sup>19</sup> Fairwork. (2021). Glovo announces improvements to the working conditions of couriers in consultation with the Fairwork Project. <https://fair.work/en/fw/blog/glovo-announces-improvements-to-the-working-conditions-of-couriers-in-consultation-with-the-fairwork-project/>.

<sup>20</sup> Fairwork has agreed to evaluate Glovo’s progress with the pledge against our five principles of fair work in a number of countries.

family, his mother and younger siblings who need his financial input. While he enjoys his work, he wouldn't call it a passion, seeing it instead as a means of gaining immediate employment at the time he needed it. Big A didn't get the chance to pursue further education beyond high school (which he completed in 2017) due to circumstances beyond his control.

While he hasn't encountered any major incidents in the course of his work, Big A hopes that taxi platforms will increase their security and protections for workers in the future. He says sometimes rides are requested from unsafe places which puts workers' lives at risk, and they have no backup in case of robbery, for instance. Indeed, Big A and his peers usually have to rely on each other, rather than the platform, for help in times of distress. Drivers stay in regular contact with other drivers on WhatsApp, where they discuss safe routes, police roadblocks, and fundraise for one another's expenses in the case of illness or accident in the course of their work, and help the families of drivers who have lost their lives.

Fred\* is a driver working for both Uber and Glovo. He has been an Uber driver for 3 years now but recently joined Glovo as well to earn extra income. Fred mostly operates in Nairobi though sometimes he also operates in Kenya's second-largest city, Mombasa, approximately 480kms away. He prefers Nairobi, though, since he can earn more there. Because Fred works long hours and is willing to change his location, in a good month he makes above Ksh. 50,000. How much one earns on the platforms mostly depends on how many extra hours one works, he told us.

Growing up, Fred always had a passion for driving and this is what most motivated him to become a driver when the need came to earn a living. While he loves his job, he admits that there are sometimes challenges, like route issues. When customers aren't specific about the exact location they would like to be dropped at, they usually decline to pay the full amount on arrival.

The COVID 19 pandemic has affected Fred's work, given the drop in clients. While Fred's experience shows that platform working can provide good opportunities for some, there is always an underlying insecurity.

\*Names changed to protect anonymity

## Theme in Focus: The Precarity of Gig Work in Kenya

The ongoing COVID-19 pandemic has highlighted very clearly the risks faced by platform workers. Because platform workers are generally barred from accessing social protection due to their "self-employed" classification, the perils of working during the pandemic have been amplified for them. The majority of platform workers worldwide have not been able to afford to

self isolate or take days off, in the absence of paid sick leave or sickness benefits. According to a study by the ILO, 7 out of 10 platform workers could not receive compensation or paid leave if they tested positive—posing a risk to both themselves and others. The pandemic also slashed the incomes of 9 out of 10 ride hailing drivers and 7 out of 10 delivery workers in the countries surveyed, including Kenya.<sup>21</sup> As the Kenyan economy continues to open up after nearly a year’s lockdown, and people adjust to the new normal, the issues that have always plagued transport, delivery and domestic gig workers remain. However, COVID-19 has laid bare a stark reality—the precarity and insecurity of platform work overall.

We found in interviewing gig workers in Kenya for this report that the majority relied on platforms as the main source of income for themselves and their dependents. However, due to the fact that platforms do not observe labour regulations such as the minimum wage in establishing their relationship with their workers, workers are left vulnerable to income volatility. Incomes for platform workers are extremely unpredictable, as a consequence of circumstances they have no control over, including fluctuations in demand, an oversupply of new workers signing up to platforms, changes in key costs such as the price of fuel, and platforms’ ability to change their “commission” at any time. While workers may at times earn a minimum or living wage through platform work, they have no assurances that their living costs will be covered in a given month. Ultimately, workers’ only option is to make up any shortfall by being available for jobs on the platform for long hours, often spent waiting at taxi or delivery hubs for a gig. When COVID-19 lockdowns hit, the extreme degree of this income insecurity was felt by many platform workers, who either lost their incomes entirely if they were unable to work due to restrictions, or had no choice but to continue to work, and risk exposure to the virus.

Other realities imposed by the platform model of labour management lead to precarity and insecurity for platform workers in Kenya. One big issue is the threat of account suspension or deactivation, for instance if workers fall below a certain rating, if they receive a customer complaint, or as a result of technical errors in navigating platforms’ interfaces. In these cases, workers lose their ability to earn income through the app without warning, and as our research found in many cases, without the ability to appeal or rectify the situation. A post on the Facebook group Uber Drivers and Partners Kenya in April 2020 complained: “So inconsiderate are the Uber systems that they end up deactivating your account for documents expiry at this [...] time of the pandemic[...] when they know clearly that governments have shut down their offices as a combative measure.” Because workers are not protected by legal provisions guarding against unfair dismissal without notice, the threat of instant deactivation contributes to precarity and

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<sup>21</sup> ILO. (2021). World employment and social outlook: the role of digital labour platforms in transforming the world of work. International Labour Organisation. [workers.\(https://www.ilo.org/infostories/en-GB/Campaigns/WESOWorld-Employment-Social-Outlook-2021#COVID-19](https://www.ilo.org/infostories/en-GB/Campaigns/WESOWorld-Employment-Social-Outlook-2021#COVID-19)

insecurity in gig work—and also to undermining workers’ ability to organise and protest platform conditions, for fear of being deactivated as a result.

Gig workers face the constant risk of reduced or lost income without warning, lack of recourse, and lack of access to a safety net. In a post-COVID world, it is clear within the direction of state policy and the perspective of key development organisations, that the gig economy will not only grow but will also serve as a pillar in employment creation for the high youth unemployment being faced in Kenya.<sup>22</sup> Some international platforms may continue to resist providing platform workers with social protections and employment benefits. However, it is crucial in Kenya to have the government formally recognise gig work as a source of livelihood, and to thus ensure that protections are in place to develop platforms as a driver of employment in a safe and sustainable way for Kenya’s young workforce.

## Impact and Next Steps

This is the first annual round of Fairwork ratings for Kenyan platforms, and they establish a baseline for the spread of good practices. As Fairwork’s reach and visibility increases, we see four avenues for contributing to continued improvement in the Kenyan gig economy (see Figure 1). Our first and most direct pathway to improving working conditions in the gig economy is by engaging directly with platforms operating in Kenya. Many platforms are aware of our research, and eager to improve their performance relative to other platforms.

Fairwork’s theory of change also draws on the understanding that human empathy is a powerful force. Given enough information, many consumers will be intentional about the platforms they choose to interact with. Our yearly ratings give consumers the ability to choose the highest scoring platform operating in a sector, thus contributing to pressure on platforms to improve their working conditions and their scores. In this way, we enable consumers to be workers’ allies in the fight for a fairer gig economy. Beyond individual consumer choices, our scores can help inform the procurement, investment and partnership policies of large organisations. They can serve as a reference for institutions and companies who want to ensure they are supporting fair labour practices.

We also engage with policy makers and government to advocate for extending appropriate legal protections to all platform workers, irrespective of their legal classification. Building on our

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<sup>22</sup> African Development Bank Group. (n.d.) ‘Jobs for Youth in Africa’. <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/jobs-for-youth-in-africa>

research findings in Kenya, Fairwork will look to expand our policy advocacy efforts to help ensure that workers' needs and platforms' business imperatives are effectively balanced.

Finally, and most importantly, workers and workers' organisations are at the core of Fairwork's model. First, our principles have been developed and are continually refined in close consultation with workers and their representatives (see Figure 2). Our fieldwork data, combined with feedback from workshops and consultations involving workers, informs how we systematically evolve the Fairwork principles to remain in line with their needs. Second, through continual engagement with workers' representatives and advocates, we aim to support workers in asserting their rights and requirements in a collective way.

A key challenge in the gig economy is that workers are often isolated, atomised, and placed in competition with one another. Furthermore, regulatory frameworks do not readily support platform workers to establish representative bodies such as trade unions, as they are seen as self-employed or independent businesses. As such, the platform work model presents challenges for workers to connect and create networks of solidarity. But unions and associations in Kenya, including the Transport Workers Union, TAWU, and Coast Digital Cabs Association, have sought to represent platform workers in the ride hailing sector. Many of the workers we interviewed also said they would want to join a union. Our principles can provide a starting point for envisioning a fairer future of work, and setting out a pathway to realising that. Principle Five in particular, on the importance of fair representation, is a crucial way in which we aim to support workers to assert their collective agency.

There is nothing inevitable about poor working conditions in the gig economy. Notwithstanding their claims to the contrary, platforms have substantial control over the nature of the jobs that they mediate. Workers who find their jobs through platforms are ultimately still workers, and there is no basis for denying them the key rights and protections that their counterparts in the formal sector have long enjoyed. Our scores show that the gig economy, as we know it today, already takes many forms, with some platforms displaying greater concern for workers' needs than others. This means that we do not need to accept low pay, poor conditions, inequity, and a lack of agency and voice as the norm. We hope that our work—by highlighting the contours of today's gig economy—paints a picture of what it could become.

## The Fairwork Pledge

As part of this process of change, we have introduced a Fairwork pledge. This pledge leverages the power of organisations' procurement, investment, and partnership policies to support fairer platform work. Organisations like universities, schools, businesses, and charities who make use of platform labour can make a difference by supporting the best labour practices, guided by our

five principles of fair work. Organisations who sign the pledge get to display our badge on company materials.

The pledge constitutes two levels. This first is as an official Fairwork Supporter, which entails publicly demonstrating support for fairer platform work, and making resources available to staff and members to help them in deciding which platforms to engage with. We are proud to announce that the Good Business Charter is our first official Fairwork Supporter. A second level of the pledge entails organisations committing to concrete and meaningful changes in their own practices as official Fairwork Partners, for example by committing to using better-rated platforms where there is a choice. More information is available on the Pledge, and how to sign up, on the Fairwork website.

## Appendix: Fairwork Scoring System

The five Principles of Fairwork were developed through an extensive literature review of published research on job quality, stakeholder meetings at UNCTAD and the ILO in Geneva (involving platform operators, policy makers, trade unions, and academics), and in-country stakeholder meetings held in India (Bangalore and Ahmedabad), South Africa (Cape Town and Johannesburg) and Germany (Berlin). This appendix explains the Fairwork scoring system.

Each Fairwork Principle is divided into two thresholds. Accordingly, for each Principle, the scoring system allows one ‘basic point’ to be awarded corresponding to the first threshold, and an additional ‘advanced point’ to be awarded corresponding to the second threshold (see Table 1). The advanced point under each Principle can only be awarded if the basic point for that Principle has been awarded. The thresholds specify the evidence required for a platform to receive a given point. Where no verifiable evidence is available that meets a given threshold, the platform is not awarded that point.

*Table 1: Fairwork Scoring System*

<b>Principle</b>	<b>Basic Point</b>		<b>Advanced Point</b>		<b>Total</b>
Fair Pay	1	+	1	=	2
Fair Conditions	1	+	1	=	2

Fair Contracts	1	+	1	=	2
Fair Management	1	+	1	=	2
Fair Representation	1	+	1	=	2
<b>Maximum possible Fairwork Score:</b>					<b>10</b>

A platform can therefore receive a maximum Fairwork Score of ten points. Fairwork scores are updated on a yearly basis.

## Principle 1: Fair Pay

### Threshold 1.1 – Pays at least the local minimum wage after costs (one point)

Platform workers often have substantial work-related costs to cover, such as transport between jobs, supplies, or fuel, insurance, and maintenance on a vehicle.<sup>23</sup> Workers’ costs sometimes mean their take-home earnings may fall below the local minimum wage. Workers also absorb the costs of extra time commitment, when they spend time waiting or travelling between jobs, or other unpaid activities necessary for their work, which are also considered active hours.<sup>24</sup> To

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<sup>23</sup> Work-related costs include direct costs the worker may incur in performing the job. This may include, for instance, transport in between jobs, supplies, vehicle repair and maintenance, fuel, road tolls and vehicle insurance. However, it does not include transport to and from the job (unless in-between tasks) nor taxes, social security contributions or health insurance.

<sup>24</sup> In addition to direct working hours where workers are completing tasks, workers also spend time performing unpaid activities necessary for their work, such as waiting for delivery orders at restaurants and travelling between jobs. These indirect working hours are also considered part of active hours as workers are giving this time to the platform. Thus, ‘active hours’ are defined as including both direct and indirect working hours.

achieve this point platforms must demonstrate that work-related costs do not push workers below local minimum wage.

The platform must satisfy the following:

- Workers earn at least the local minimum wage, or the wage set by collective sectoral agreement (whichever is higher) in the place where they work, in their active hours, after costs.

In order to evidence this, the platform must either: (a) have a documented policy that guarantees the workers receive at least the local minimum wage after costs in their active hours; or (b) provide summary statistics of transaction and cost data. In case of (b), the platform must submit:

- An estimate for work-related costs, which are then checked by the Fairwork team through worker interviews; and,
- A weekly earnings table for any three-month period over the previous twelve months, in the format shown below. This is a two-way relative frequency table, which should contain information on the percentages of workers whose average weekly take-home earnings and active hours are distributed as follows in Table 2.

*Table 2: Earnings Table*

		<b>WORKER EARNINGS AFTER COSTS (E)</b>			
		[1] $e < M$	[2] $M \leq e < 1.5M$	[3] $1.5M \leq e < 2M$	[4] $2M \leq e$
<b>ACTIVE HOURS (H)</b>	$h < 0.9F$ (part-time)	%	%	%	%
	$0.9F \leq h < 1.2F$ (full-time)	%	%	%	%

	1.2F ≤ h (full-time plus overtime)	%	%	%	%
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- Table Notes:
  1. h = Average active hours worked by worker per week
  2. e = Average weekly earnings of worker
  3. F = the number of hours in a local standard working week.
  4. M = the local weekly minimum wage, calculated at F hours per week. The table’s header row and column are filled out by the Fairwork team, before giving it to the platform for completion.
  5. The rows represent workers who work part-time, full-time, and more than full-time. The percentages in each row should add up to 100%.
  6. The table is to be filled with four columns of data: Column [2] with the percentages of part-time, full-time, and full-time with overtime workers who earn less than the minimum weekly wage (X), and so on until Column [5].

**Threshold 1.2 – Pays at least a local living wage after costs (one additional point)**

In some places, the minimum wage is not enough to allow workers to afford a basic but decent standard of living. To achieve this point platforms must ensure that workers earn a living wage.

The platform must satisfy the following:

- Workers earn at least a local living wage, or the wage set by collective sectoral agreement (whichever is higher) in the place where they work, in their active hours, after costs.<sup>25,26</sup>

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<sup>25</sup> Where a living wage does not exist, Fairwork will use the Global Living Wage Coalition’s Anker Methodology to estimate one.

<sup>26</sup> In order to evidence this, the platform must either: (a) have a documented policy that guarantees the workers receive at least the local living wage after costs in their active

If the platform has completed Table 2, the mean weekly earnings minus the estimated work-related costs must be above the local minimum wage.

## **Principle 2: Fair Conditions**

### **Threshold 2.1 – Mitigates task-specific risks (one point)**

Platform workers may encounter a number of risks in the course of their work, including accidents and injuries, harmful materials, and crime and violence. To achieve this point platforms must show that they are aware of these risks and take steps to mitigate them.<sup>27</sup>

The platform must satisfy the following:

- There are policies or practices in place that protect workers' health and safety from task-specific risks.
- Platforms take adequate, responsible and ethical data protection and management measures, laid out in a documented policy.

### **Threshold 2.2 – Provides a safety net (one additional point)**

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hours; or (b) provide summary statistics of transaction and cost data. In case of (b), the platform must submit: (1) An estimate for work-related costs, which are then checked by the Fairwork team through worker interviews; and, (2) a weekly earnings table for any three-month period over the previous twelve months, in the format shown in Table 2.

<sup>27</sup> The starting point is the ILO's Occupational Safety and Health Convention, 1981 (C155). This stipulates that employers shall be required "so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health", and that "where necessary, adequate protective clothing and protective equipment [should be provided] to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health."

Platform workers are vulnerable to the possibility of abruptly losing their income as the result of unexpected or external circumstances, such as sickness or injury. Most countries provide a social safety net to ensure workers don't experience sudden poverty due to circumstances outside their control. However, platform workers usually don't qualify for protections such as sick pay, because of their independent contractor status. In recognition of the fact that most workers are dependent on income from the platform for their livelihood, platforms can achieve this point by providing compensation for loss of income due to inability to work.

The platform must satisfy BOTH of the following:

- Platforms take meaningful steps to compensate workers for income loss due to inability to work commensurate with the worker's average earnings over the past three months.
- Where workers are unable to work for an extended period due to unexpected circumstances, their standing on the platform is not negatively impacted.

### **Principle 3: Fair Contracts**

#### **Threshold 3.1 – Provides clear and transparent terms and conditions (one point)**

The terms and conditions governing platform work are not always clear and accessible to workers.<sup>28</sup> To achieve this point, the platform must demonstrate that workers are able to understand, agree to, and access the conditions of their work at all times, and that they have legal recourse if the platform breaches those conditions.

The platform must satisfy ALL of the following:

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<sup>28</sup> The ILO's Maritime Labour Convention, 2006 (MLC 2006), Reg. 2.1, and the Domestic Workers Convention, 2011 (C189), Articles 7 and 15, serve as helpful guiding examples of adequate provisions in workers' terms and conditions, as well as worker access to those terms and conditions.

- The party contracting with the worker must be identified in the contract, and subject to the law of the place in which the worker works.
- The contract is communicated in full in clear and comprehensible language that workers could be expected to understand.
- The contract is accessible to workers at all times.
- Every worker is notified of proposed changes in a reasonable timeframe before changes come into effect; and the changes should not reverse existing accrued benefits and reasonable expectations on which workers have relied.

### **Threshold 3.2 – Does not impose unfair contract terms (one additional point)**

In some cases, especially under ‘independent contractor’ classifications, workers carry a disproportionate amount of risk for engaging in the contract. They may be liable for any damage arising in the course of their work, and they may be prevented by unfair clauses from seeking legal redress for grievances. To achieve this point, platforms must demonstrate that risks and liability of engaging in the work is shared between parties.

Regardless of how the platform classifies the contractual status of workers, the platform must satisfy BOTH of the following:

- The contract does not include clauses which exclude liability for negligence nor unreasonably exempt the platform from liability for working conditions.
- The contract does not include clauses which prevent workers from effectively seeking redress for grievances which arise from the working relationship.

## **Principle 4: Fair Management**

### **Threshold 4.1 – Provides due process for decisions affecting workers (one point)**

Platform workers can experience arbitrary deactivation; being barred from accessing the platform without explanation, and losing their income. Workers may be subject to other penalties or disciplinary decisions without the ability to contact the platform to challenge or

appeal them if they believe they are unfair. To achieve this point, platforms must demonstrate an avenue for workers to meaningfully appeal disciplinary actions.

The platform must satisfy ALL of the following:

- There is a channel for workers to communicate with a human representative of the platform. This channel is documented in the contract and available on the platform interface. Platforms should respond to workers within a reasonable timeframe.
- There is a process for workers to meaningfully appeal low ratings, non-payment, payment issues, deactivations, and other penalties and disciplinary actions. This process is documented in the contract and available on the platform interface.<sup>29</sup>
- In the case of deactivations, the appeals process must be available to workers who no longer have access to the platform.
- Workers are not disadvantaged for voicing concerns or appealing disciplinary actions.

#### **Threshold 4.2 – Provides equity in the management process (one additional point)**

The majority of platforms do not actively discriminate against particular groups of workers. However, they may inadvertently exacerbate already existing inequalities in their design and management. For example, there is a lot of gender segregation between different types of platform work. To achieve this point, platforms must show not only that they have policies against discrimination, but also that they seek to remove barriers for disadvantaged groups, and promote inclusion.

Platforms must satisfy ALL of the following:

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<sup>29</sup> Workers should have the option of escalating grievances that have not been satisfactorily addressed and, in the case of automated decisions, should have the option of escalating it for human mediation.

- There is a policy which ensures the platform does not discriminate on grounds such as race, social origin, caste, ethnicity, nationality, gender, sex, gender identity and expression, sexual orientation, disability, religion or belief, age or any other status.
- Where persons from a disadvantaged group (such as women) are significantly under-represented among its workers, it seeks to identify and remove barriers to access by persons from that group.
- It takes practical measures to promote equality of opportunity for workers from disadvantaged groups, including reasonable accommodation for pregnancy, disability, and religion or belief.
- If algorithms are used to determine access to work or remuneration, these are transparent and do not result in inequitable outcomes for workers from historically or currently disadvantaged groups.
- It has mechanisms to reduce the risk of users discriminating against workers from disadvantaged groups in accessing and carrying out work.

## **Principle 5: Fair Representation**

### **Threshold 5.1 – Assures freedom of association and the expression of worker voice (one point)**

Freedom of association is a fundamental right for all workers, and enshrined in the constitution of the International Labour Organisation, and the Universal Declaration of Human Rights. The right for workers to organise, collectively express their wishes – and importantly – be listened to, is an important prerequisite for fair working conditions. However, rates of organisation amongst platform workers remain low. To achieve this point, platforms must ensure that the conditions are in place to encourage the expression of collective worker voice.

Platforms must satisfy ALL of the following:

- There is a documented mechanism for the expression of collective worker voice.

- There is a formal policy of willingness to recognise, or bargain with, a collective body of workers or trade union, that is clearly communicated to all workers.<sup>30</sup>
- Freedom of association is not inhibited, and workers are not disadvantaged in any way for communicating their concerns, wishes and demands to the platform.<sup>31</sup>

### **Threshold 5.2 – Supports democratic governance (one additional point)**

While rates of organisation remain low, platform workers’ associations are emerging in many sectors and countries. We are also seeing a growing number of cooperative worker-owned platforms. To realise fair representation, workers must have a say in the conditions of their work. This could be through a democratically-governed cooperative model, a formally recognised union, or the ability to undertake collective bargaining with the platform.

The platform must satisfy at least ONE of the following:

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<sup>30</sup> For example, “[the platform] will support any effort by its workers to collectively organise or form a trade union. Collective bargaining through trade unions can often bring about more favourable working conditions.”

<sup>31</sup> See the ILO’s Freedom of Association and Protection of the Right to Organise Convention, 1948 (C087), which stipulates that “workers and employers, without distinction, shall have the right to establish and join organisations of their own choosing without previous authorisation” (Article 2); “the public authorities shall refrain from any interference which would restrict the right or impede the lawful exercise thereof” (Article 3) and that “workers’ and employers’ organisations shall not be liable to be dissolved or suspended by administrative authority” (Article 4). Similarly the ILO’s Right to Organise and Collective Bargaining Convention, 1949 (C098) protects the workers against acts of anti-union discrimination in respect of their employment, explaining that not joining a union or relinquishing trade union membership cannot be made a condition of employment or cause for dismissal. Out of the 185 ILO member states, currently 155 ratified C087 and 167 ratified C098.

1. Workers play a meaningful role in governing it.
2. It publicly and formally recognises an independent collective body of workers, an elected works council, or trade union.
3. It seeks to implement meaningful mechanisms for collective representation or bargaining.

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Please note that this report contains sections in common with other Fairwork reports, notably the Fairwork Framework, parts of the Impact and Next Steps section, and the Appendix.

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