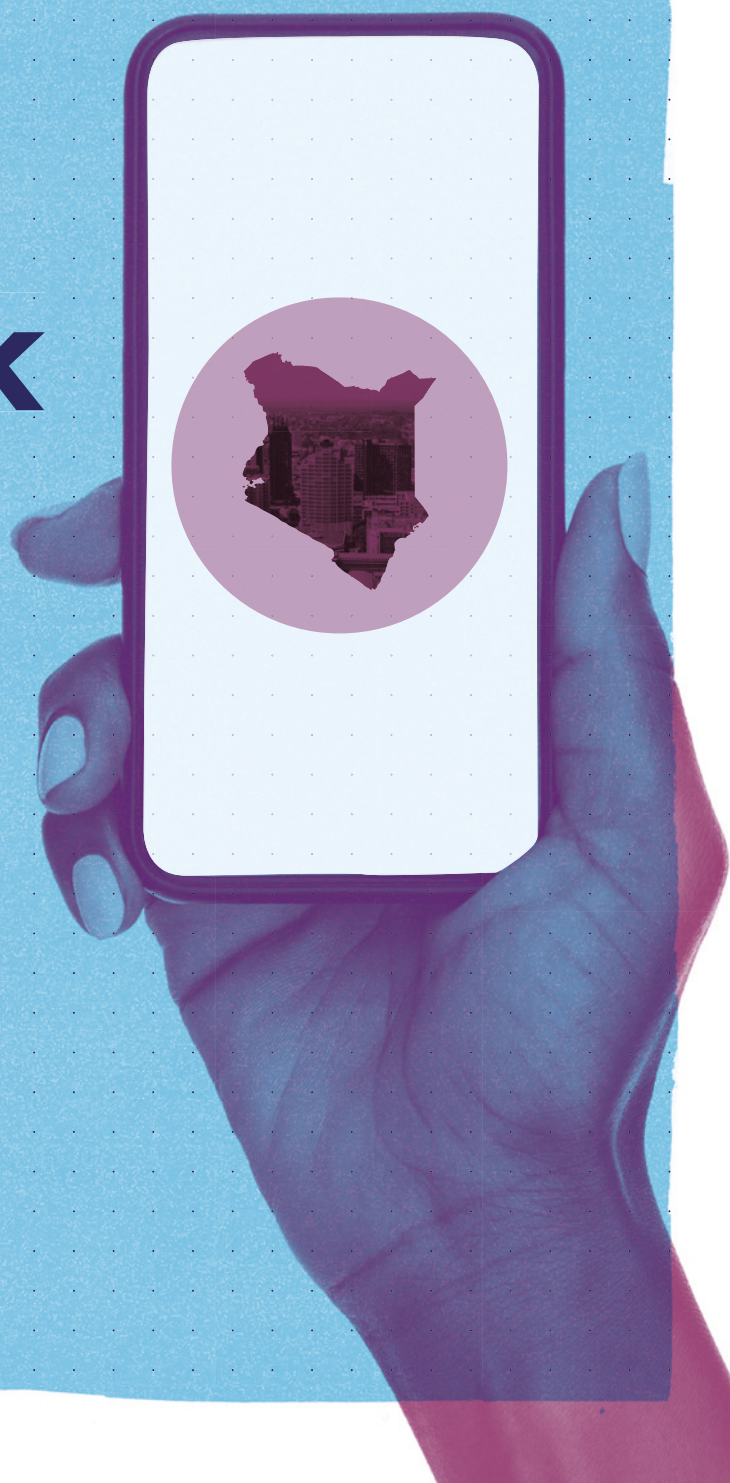


Fairwork

**TOWARDS REGULATING
THE PLATFORM ECONOMY**

Fairwork Kenya Ratings 2022



CONTENTS

03 Executive Summary

04 Key Findings

06 The Fairwork Project: Towards Decent Labour Standards in the Platform Economy

08 The Fairwork Framework

12 Background: Overview of the Kenyan Platform Economy

14 The Legal and Policy Context: What Makes a Worker an Employee?

16 Fairwork Kenya Scores 2022

20 Platforms in Focus: Glovo

22 Workers' Stories

24 Theme in Focus: NTSA Policy Changes and the Way Forward

26 Pathways to change

29 The Fairwork Pledge

30 Appendix: Fairwork Scoring System

35 Endnotes

37 Credits and Funding

Executive Summary

This second Fairwork report for Kenya continues to analyse digital labour platforms in a country where policy shift has been very slow even as the labour market continues to grow. Within the last two years, the industry has experienced the ravages of the COVID-19 pandemic as well as an election year that exposed the precarious situations that workers faced. The cost-of-living crisis has had an impact on all sectors of the economy and especially those that offer services that are not considered basic needs. Platform workers are affected directly and have experienced a significant impact on their livelihoods. With the rise of food, essential goods and fuel costs, platform workers have had to work longer hours or quit the industry altogether in order for it to make financial sense.

There are a number of improvements on some platform practices we can see compared to the Fairwork Kenya 2021 report.¹ Glovo is making significant improvements by launching and signing the “Couriers Pledge” in late 2022. This involves safety courses, improved insurance products, parental support coverage and learning programmes for workers. Platforms that use a self-employment model such as Little are taking a significantly lower commission from their drivers (18 percent), compared with other ride-hailing platforms who charge between 20-25 percent of earnings.² The recent worker strikes in Kenya were spurred on by a change in the legislation requiring platforms to standardise and cap their commissions at 18 percent. This met with resistance from platforms and a two-week “go slow” where platform workers rejected rides on platforms and chose to work off-platform in protest.

Our report looks at nine of Kenya’s digital labour platforms against five Principles of Fair Work —namely, fair pay, fair conditions, fair contracts, fair management, and fair representation—giving each a fairness rating out of 10. Both Glovo and Little top the Kenya 2022 table with scores of four points each, followed by SweepSouth and Uber with two points each, Bolt with one point, and Jumia Food, Uber Eats, Indriver, and Wasili, who do not score any points at all. While the report highlights some positive changes, it also calls for platforms to improve the overall conditions for their workers.

Key Findings



FAIR PAY

For the first point, there was insufficient evidence that workers for any of the nine platforms earned the minimum wage of KES 15,201 (\$122) after costs. For the second point, there was insufficient evidence that workers on any of the nine platforms earned the living wage of KES 25,400 (\$204) after costs.

Therefore, we were unable to award a score to any of the nine platforms on this principle.



FAIR CONDITIONS

Two (Glovo and Uber) out of nine platforms could provide evidence of mitigating task-specific risks by introducing insurance policies and practical measures for workers.

Both Uber and Glovo have insurance policies, emergency SOS buttons, and deliver relevant safety training. Glovo has a more comprehensive insurance policy, and they provide safety gear such as helmets and reflector jackets to workers on signing up to the platform. Other working equipment such as courier bags are provided at a subsidised fee. We however urge the platform to provide all safety gear to workers free of charge in the coming scoring year. Uber and Glovo also have elaborate data protection policies which were taken into consideration in awarding a point for this principle.

For the second threshold, only Glovo provided sufficient evidence that there are safety nets for workers, such as adequately compensating them for periods when they cannot work due to sickness, accidents, or unforeseen circumstances.



FAIR CONTRACTS

For the third principle, four (Bolt, Uber, Glovo and Little) of the nine platforms were awarded a point, as they provide clear and transparent terms and conditions subject to the law of Kenya.

However, the second point for this principle was not awarded to any platform, as we could not find evidence that platforms did not exclude liability for workers or prevent workers from seeking redress for grievances arising from their work.



FAIR MANAGEMENT

Three of the nine platforms (Glovo, Little, and SweepSouth) evidenced the provision of due process for decisions affecting workers. These platforms demonstrated effective communication channels and appeals processes in instances where workers have been deactivated from the platform.

The second point of this principle was not awarded to any platform as we could not find sufficient evidence that platforms are adopting clear anti-discrimination policies, proactive policies that are inclusive of disadvantaged groups, and clarity on how algorithms are used to determine work or remuneration.



FAIR REPRESENTATION

Two of nine platforms (Little and SweepSouth) provided evidence that they ensure freedom of association and collective worker voice, by demonstrating documented mechanisms for workers to freely express themselves and a formal policy of willingness to bargain with a collective body of workers.

In addition, Little formally and publicly recognised an independent collective body of workers by signing a Memorandum of Understanding (MOU) with the Organisation of Online Drivers (OOD) with clear terms that enable workers to be part of the decision-making process such as a fair hearing before disciplinary action. Little was thus awarded a point for the second threshold.

Towards Decent Labour Standards in the Platform Economy

Fairwork evaluates and ranks the working conditions of digital platforms. Our ratings are based on five principles that digital labour platforms should ensure in order to be considered to be offering Fairwork standards.

We evaluate platforms annually against these principles to show not only what the platform economy is today, but also what it could be. The Fairwork ratings provide an independent perspective on labour conditions of platform work for policymakers, platform companies, workers, and consumers. Our goal is to show that better, and fairer, jobs are possible in the platform economy.

The Fairwork project is coordinated from the Oxford Internet Institute and the WZB Berlin Social Science Centre. Our growing network of researchers currently rates platforms in 38 countries across 5 continents. In every country, Fairwork collaborates closely with workers, platforms, advocates and policymakers to promote a fairer future of platform work.

Fairwork countries

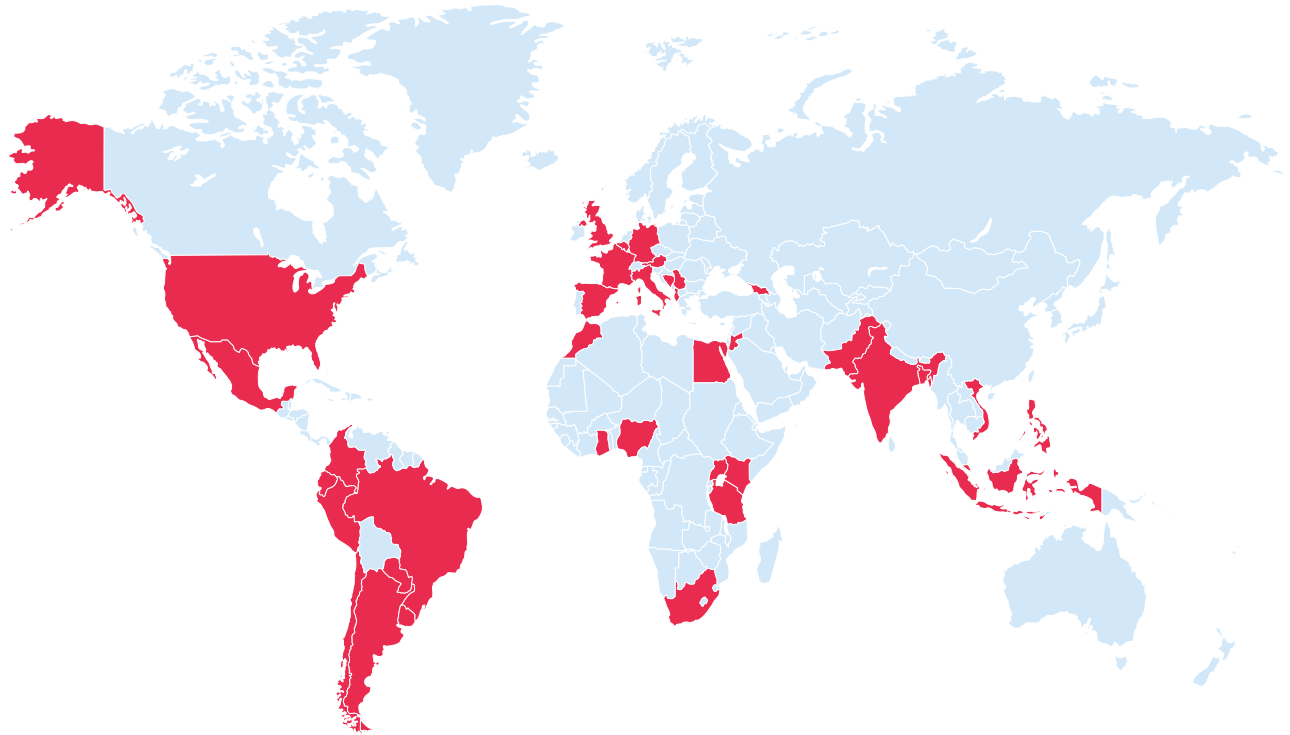


Figure 1. Fairwork currently rates platforms in 38 countries worldwide.

AFRICA

Egypt, Ghana, Kenya, Morocco, Nigeria, South Africa, Tanzania, Uganda

ASIA

Bangladesh, India, Indonesia, Jordan, Lebanon, Pakistan, Philippines, Singapore, Vietnam

EUROPE

Albania, Austria, Belgium, Bosnia, France, Georgia, Germany, Italy, UK, Serbia, Spain

SOUTH AMERICA

Argentina, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay

NORTH AMERICA

Mexico, USA

The Fairwork Framework

Fairwork evaluates the working conditions of digital labour 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 of Fairwork to evaluate digital labour platforms. 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 through multiple multi-stakeholder workshops at the International Labour Organisation. To ensure that these global principles were applicable in the Kenyan context, we have subsequently revised and fine-tuned them in consultation with platform workers, platforms, trade unions, regulators, academics, and labour lawyers.

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.



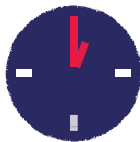
STEP 1

The five principles



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.



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.



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 service user and/or the platform.



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).



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.

STEP 2

Methodology

The Fairwork project uses three approaches to effectively measure fairness of working conditions at digital labour platforms: desk research, worker interviews and surveys, and interviews with platform management. Through these three methods, we seek evidence on whether platforms act in accordance with the five Fairwork Principles.

We recognise that not all platforms use a business model that allows them to impose certain contractual terms on service users and/or workers in such a way that meets the thresholds of the Fairwork principles. However, all platforms have the ability to influence the way in which users interact on the platform. Therefore, for platforms that do not set the terms on which workers are retained by service users, we look at a number of other factors including published policies and/or procedures, public statements, and website/app functionality to establish whether the platform has taken appropriate steps to ensure they meet the criteria for a point to be awarded against the relevant principle.

In the case of a location-based work platform, we seek evidence of compliance with our Fairwork principles for location-based or ‘gig work’ platforms, and in the case of a cloudwork platform, with our Fairwork principles for cloudwork platforms.

Desk research

Each annual Fairwork ratings cycle starts with desk research to map the range of platforms to be scored, identify points of contact with management, develop suitable interview guides and survey instruments, and design recruitment strategies to assess workers. For each platform, we also gather and analyse a wide range of documents including contracts, terms and conditions, published policies and procedures, as well as digital interfaces and website/app functionality. Desk research also flags up any publicly available information that could assist us in scoring different platforms, for instance the provision of particular services to workers, or the existence of past 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 involves interviewing workers of each platform. These interviews do not aim to be a statistically representative set of experiences. Rather, they are worker case-studies to examine platforms’ policies and practices in the field as they pertain to the Fairwork principles. Specifically, they seek to gain insight into how work is carried out, and how work processes are managed and experienced on platforms. More broadly, the interviews also situate platform work in the careers of workers by understanding their motivation for entry into a platform, how long they envision undertaking work on the current platform before seeking an alternative either on another platform or in a different sector, and how their experience of platform work is shaped by their interaction with fellow workers and the external labour market. See Appendix for details on recruitment of workers for interviews this year. For our 2022 ratings, this included, in addition to our tried and tested participant recruitment methods, snowballing from prior interviews. In all these strategies informed consent was established, with interviews conducted both in person and online.

The interviews were semi-structured and made use of a series of questions relating to the 5 Fairwork 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. All interviews were conducted in English primarily, but others were conducted in a mix of English and Swahili.

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 country team and the peer reviewers, based on all three forms of evidence. Points are only awarded if sufficient evidence or commitments exist for each threshold.

How we score

Each of the five Fairwork principles is broken down into two points: a first point and a second point that can only be awarded if the first point has been fulfilled. Every platform receives a score out of 10. Platforms are only awarded 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 are both members of the Fairwork teams in other countries, as well as members of the Fairwork team in Oxford and Berlin. Once the external reviewers have assigned their scoring, all reviewers meet to discuss the scores and decide final scoring. These scores then form the final scoring that is published in the Fairwork country reports. 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.

Acknowledging that the conditions platforms offer workers change in response to economic and social pressures, the report also showcases the changes that platforms are making toward implementing the principles – from measures just being initiated to nascent commitments that may not yet merit a point. Thus, the score for a platform must be read not in isolation, but alongside the Changes in Focus section to gain a glimpse into how the platform economy is likely to evolve.

**FURTHER DETAILS ON
THE FAIRWORK
SCORING SYSTEM ARE
IN THE APPENDIX**



BACKGROUND

Overview of the Kenyan Platform Economy

Kenya is considered a digital adoption leader in the global south, with 98 percent of Kenyans owning a SIM card, 65 percent have access to the internet and 52 percent owning a smartphone.³ The same study (from 2021) finds that 30 percent digital services,⁴ and that by 2030, over 50 percent of jobs in the Kenyan market will need some level of digital skills. This is due to the demand for digital skills in the job market because of the low cost and easy access to the internet, making remote work much easier to undertake. This is comparatively higher than other African countries.

Kenya's online platform economy is valued at \$109 million and employs over 35,000 workers.⁵ This is anticipated to grow at a rate of 33 percent annually, employing over 90,000 workers by the end of 2023. This growth has also been pushed by local technology companies and start-ups that are creating solutions for unemployment and working to challenge international players in the ride-hailing and delivery industries.

These and other factors have seen platforms moving to smaller towns (particularly home grown and local platforms) as well as diversifying to alternative motorised rickshaws (Tuk-tuks) and electric bicycles, which are more suited to female delivery riders who cannot afford cars or who would not want to use motorbikes which are sometimes considered dangerous. As a result of smartphone penetration, these smaller towns offer room for growth, especially for local platforms that are not afraid to take risks.

As the platform economy was recovering from the effects of

the COVID-19 pandemic in 2020-2021, Kenya immediately embarked on campaigning for the 2022 general election—usually anticipated to be violent and to disrupt the economy and everyday life. Fortunately, the elections were completed by August 2022, and this brought a return to normalcy for the business sector after months of heightened campaign energy.

The National Transport Safety Authority (NTSA) grants operation licences to drivers, which is a source of revenue for the regulatory body. However, they do not limit the number of licences issued and as a result, there is an uncontrolled growth of numbers of drivers, contributing to the precariousness of labour for these workers. This is an advantage for the platforms as a large pool of drivers operating on their platforms at all times means a fast and low-cost service, which leads to lower prices for rides and better rates for users.⁶ Most drivers rent vehicles from owners who expect a daily, weekly or monthly fee for the use of the vehicle. With the increased number of drivers,

competition is consistently high, and many may not be able to meet their set targets, which can lead to debt. As many drivers are dropping out of the industry, the high number of unemployed young people ensures that platforms often have a constant supply of workers.⁷

With the continued growth of the ride-hailing and delivery industry, there is a significant impact on the UN's Sustainable Development Goal 8 on decent work. At the core of many business models is profits, whereas on the periphery are workers and their rights. In this regard labour unions are needed to advocate for the rights and welfare of workers. In the UK, collective worker bodies have successfully pushed for the reclassification of platform drivers from independent contractor status to limb-b worker status,⁸ which in theory is aimed at ensuring that workers earn the standard minimum wage per hour. In Kenya, the categorisation of workers as independent contractors indicates that drivers are not covered by the Employment Act of Kenya 2007,⁹ thus, depriving them of a basic salary, leave days, social protection, occupational health and safety and the ability to collectively bargain the lack of these things. Equally, their labour rights, as recommended in the various International Labour Standards provided by the ILO and also in Article 41 of the Kenyan constitution, have been curtailed considering that platform workers are restricted from forming or joining trade unions due to their status as self-employed workers¹⁰

THIS YEAR HAS WITNESSED PLATFORM DRIVERS IN KENYA GOING ON STRIKE IN A BID TO PUSH PLATFORMS TO LOWER THEIR COMMISSIONS CHARGED ON FARES

This year has witnessed platform drivers in Kenya going on strike in a bid to push platforms to lower their commissions charged on fares—influenced by increased cost of living and especially increased fuel costs, and by the directive from the NTSA that published new regulations to cap commissions charged by ride-hailing platform operators in the country at 18 percent.¹¹ The majority of the drivers from platforms held protests against the previous 25 percent and 20 percent commission per single ride,¹² They refused to accept rider requests from the ride-hailing firms across the country until their demands were met. The strike action lasted around a week. Unfortunately, these strikes are not new, with platform drivers long complaining of low pay and demanding

a reduction in the commission charged. Indeed, drivers on ride-hailing platforms established the Kenya Digital Taxi Association to address the ongoing issues with income and welfare. They have engaged in industrial action several times, but not much has changed from the stance of platforms over the years^{13 14}. With the NTSA policy changes which is highlighted later in this report, it remains to be seen how this will improve the advocacies by worker associations.



THE LEGAL AND POLICY CONTEXT

What Makes a Worker an Employee?

For the second year of our scoring exercise, there has been some changes in the legal landscape in Kenya for the ride-hailing industry. To understand how labour laws and social protection apply to platform workers, we need to understand how platforms characterise their relationship with workers. Kenyans have steadily entered into platform work and adopted it fully for its supposed flexibility, and due to a lack of alternative opportunities in the local labour market.

With the continued practice of classification of platform workers as self-employed, the current labour laws still do not apply to them (such as protection from unfair dismissal and provision of National Social Security and National Hospital Insurance). We have however seen a change with some platforms in the ride-hailing and delivery sectors that now provide private insurance to cover health costs, severe injuries, and death and burial benefits. Others have chosen to continue to provide the bare minimum protections, or in extreme cases, to offer none at all.

While platforms claim that treating workers as independent contractors is empowering for workers—giving more autonomy over their working hours, for example—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 work.¹⁵ While this may appear to be the case in the platform economy, in reality, workers are controlled by complicated digital management systems which exert control over their behaviour, for example, via ratings systems.

Based on our study, we have observed that digital labour platforms have persisted with a contractual classification of their workers that poses challenges for working 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 they have, and instead are dependent on and controlled by them. Due to the high costs which workers are forced to absorb, the majority end up working an average of 12 hours a day—and in extreme cases where drivers multi-app, some work between 18 to 24 hours and sleep in their vehicles, with deleterious effects on their health and wellbeing. Platforms also hold a lot of power in setting their terms and conditions unilaterally, without any 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 also bypass social dialogue processes.

Kenya's employment legislation is fairly outdated. However, in 2022, there was a legal notice under the NTSA which



in principle was aimed at amending different elements of the relationship between transport network companies, owners, drivers, and passengers.¹⁶ These included a standardised commission for all platforms, revised security and protection, reporting systems, capped working hours and data protection. Despite of these stipulations, platform workers still experience risks as a result of the platform model.

IF THE PLATFORM ECONOMY IS TO PRESENT A SOLUTION FOR THE FUTURE OF WORK IN AFRICA, KEY SHORTFALLS IN JOB QUALITY NEED TO BE ADDRESSED FIRST

It is widely claimed that digital work is the future of work in Africa, and a solution to the challenges of informality and unemployment.^{17 18} Going forward, the pull of full-time formal sector work may therefore be overtaken by people working multiple gigs with poor access to labour protections. While platform work can indeed provide livelihoods for those shut out of existing 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 platform 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 social safety nets.

Going forward, we need to think more about what policymakers and platforms should do in order to make the industry conducive for more platform workers to join and view it as a decent way to earn a living. While policymakers have identified work in the digital economy as an engine of development and income opportunities, there is still more that can be done to make the platform economy more sustainable. With the new NTSA policies in place, it was found in our research that only five ride-hailing platforms are legally licenced to operate in Kenya, because these platforms have complied with the regulations. However, platforms like inDriver are still active and common amongst drivers, especially because the platform does not have any physical locations in Kenya, and thus has not been banned or restricted. This means that several platforms are currently working without this licence and as such, we might question the protections currently extended to their drivers and passengers. There also 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 back as capital flight to the home countries of these international platforms, with intermediaries who own car fleets also capturing a significant share. As a result, the Kenyan platform 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 working conditions.¹⁹

Fairwork Kenya Scores 2022

Minimum standards
of fair work



THE BREAKDOWN OF SCORES FOR
INDIVIDUAL PLATFORMS
CAN BE SEEN ON OUR WEBSITE:

FAIR.WORK/KENYA

* Despite providing preliminary evidence, SweepSouth left the Kenyan market at the end of 2022.

Explaining the scores

Following our methodology, we conducted desk research on nine platforms, interviewed at least 10 platform workers per platform, and spoke to platform management, when possible. The scores explained below are based on the evidence we found and were provided to us during our research process.



Fair Pay

For platforms to be awarded this principle, the platform should take appropriate steps to ensure workers earn at least the local minimum wage after costs.

This year, we could not find sufficient evidence that any of the nine platforms we studied could ensure that workers earn at least the minimum wage of KES 15,201 (\$122) after work-related costs. According to the Central Bank of Kenya, the inflation rate as of October 2022, is at 9.6 percent from 9.2 percent in September, and platform workers still bear the costs associated with the job. When assessing minimum earnings, the scores took into account not only workers' earnings, but also their spending, such as the cost of providing

task-specific equipment and paying work-related costs out of pocket (such as unpaid waiting times, travel costs, vehicles, petrol, mobile phone data and insurance).

We were therefore unable to award a second point to any of the platforms, given the first threshold was not met. But in any case, we were unable to find sufficient evidence to conclude that any of the platforms we studied ensured that workers earned a living wage of KES 25,400 (\$204) after costs. It is worth noting that the inflation in Kenya has increased, which has led to a high cost of living compared to the last scoring year, which further impacts workers' wages.



For platforms to achieve points in this principle, platforms should take the necessary steps to ensure that there are practices and policies in place that mitigate task-specific risks (i.e., dangers involved in undertaking deliveries, driving, and domestic work). Platforms should also take the necessary steps to ensure that they provide safety nets for workers.

On average, we found that platform workers work 60 hours a week amidst daily risks and challenges such as accidents, robbery, difficult passengers and so forth. The first point of this principle was met by two (Uber and Glovo) out of nine platforms. These platforms provide safety training, insurance policies, and emergency buttons that protect platform workers against risks as well as protect them against any dangerous experiences on the job. While Uber's insurance covers drivers for on-trip time until 15 minutes following the end of a trip, Glovo has a comprehensive accident insurance which covers riders against personal accidents and third-party liabilities. It also provides couriers with

reflector jackets and helmets on joining the platform, and other work materials such as rain jackets and courier bags are provided at subsidised rates. However, we urge the platform to provide these materials for workers free of charge going forward. Both Uber and Glovo have an elaborate data protection policy that ensures the information of their workers are adequately protected.

For the second point, we only found sufficient evidence that Glovo (out of the nine platforms) provided a safety net for workers. Post-pandemic, the platform significantly compensates workers for their inability to work due to sickness or injury for at least 30 days. With workers that take longer than 30 days to recover, the platform also contributes to their medical expenses and welfare which is equivalent to workers' average earnings. Following the launch of their courier's pledge, Glovo has additionally provided support for sickness, and one-time payments for instances of birth, child adoption, or other urgent family expenses.

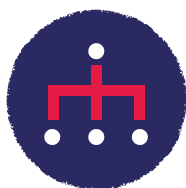


While platform workers are generally referred to as independent contractors, the transparency and legibility of their contracts is paramount to how they perceive the labour process.

To meet the first point, the platform should take appropriate steps to ensure 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 other party breaches those conditions. Four out of nine platforms (Bolt, Little, Glovo and Uber) were awarded the point.

It is interesting to note that the terms and conditions for all four platforms are subject to the law of Kenya, particularly with Little, Bolt, and Uber due to strict guidelines by the NTSA. As well as the contracts being accessible for platform workers, proposed changes are communicated to them within a reasonable timeframe before taking effect.

For the subsequent point, there was not enough evidence to award a point to any of the platforms.



Fair Management

With the use of algorithmic management and automated responses, platform management appears to be distant from platform workers. For platforms to meet this principle, they should take appropriate steps to provide due process for decisions affecting their workers. Subsequently, platforms should take appropriate steps to provide equity in the management process by adopting an anti-discrimination policy and other proactive policies are inclusive of disadvantaged groups such as women and disabled people.

Out of nine platforms, we found sufficient evidence for three platforms (Glovo, Little, and SweepSouth), that there is due process for decisions affecting their workers. For all

three platforms, workers can communicate with human representatives via email, telephone, and office visits. There was also evidence of appeals in situations where a platform worker is deactivated or limited access to the platform. It is important to note that, for all three platforms, workers are first communicated with to determine any issues before considering any disciplinary measures. For Little specifically, based on the MOU signed with the Organisation of Online Drivers (OOD) association, a fair hearing must take place before any decision is taken.

For the subsequent point, we did not find sufficient evidence to award a point to any of the platforms.



Fair Representation

The right for workers to organise, collectively express their wishes—and importantly—be listened to, is an important prerequisite for fair working conditions. For platforms to achieve the points in this principle, they need evidence that workers are assured freedom of association and expression. Also, platforms need to provide evidence that they support democratic governance.

For the first point, based on the evidence provided, Little and SweepSouth met this point. There were documented mechanisms for the expression of collective worker voice such as via independent social media chat groups, focus group discussions, and periodic communication with the platform management. There was also evidence of a formal policy of willingness to recognise and

bargain with a collective body of workers.





















For the subsequent point, Little signed an MOU with the Organisation of Online Drivers (OOD) to improve working conditions, in compliance with the NTSA regulations. For instance, Little was one of the first platforms to reduce the commissions of trips to 18 percent based on NTSA guidelines. The platform doesn't deactivate platform workers without a fair hearing from worker associations.

Platform workers should be able to challenge disciplinary decisions or arbitrary deactivations through a fair and accountable process. In sum, we encourage platform workers to be central to the decision-making process behind the scenes, which ultimately impact working conditions.

PLATFORM IN FOCUS

Glovo

For the second year in a row, Glovo tops the Kenya league table, with a score of 4/10 in 2022. Glovo was founded in 2015 in Barcelona, and is now present in over 100 cities in over 20 countries (including Ghana, Kenya, Madrid, Morocco and so forth). Glovo began its operations in Kenya in 2019 and experienced a surge during the COVID-19 pandemic because of an increase in on-demand delivery services.

Principle	First point	Second point	Total
 Principle 1: Fair Pay	 Ensures workers earn at least the local minimum wage after costs	 Ensures workers earn at least a local living wage after costs	
 Principle 2: Fair Conditions	 Mitigates task-specific risks	 Provides a safety net	
 Principle 3: Fair Contracts	 Provides clear and transparent terms and conditions	 Ensures that no unfair contract terms are imposed	
 Principle 4: Fair Management	 Provides due process for decisions affecting workers	 Provides equity in the management process	
 Principle 5: Fair Representation	 Assures freedom of association and the expression of collective worker voice	 Supports democratic governance	

Glovo's total score



Sopotnicki / Shutterstock



Glovo actively takes measures for workers' safety and to mitigate task-specific risks. Currently, riders receive helmets and reflectors upon signing up. They conduct comprehensive training on issues such as customer and parcel handling, safety on roads and while working, and other proactive strategies to improve working conditions for workers. The platform also makes provision for dealing with endangering situations in the course of work such as through an SOS button and third-party partner that rescues couriers in such incidents. Glovo issues a comprehensive insurance policy to its riders which covers personal accidents and third-party liabilities. If a worker gets into an accident, the platform ensures that the courier is compensated for the period they are unable to work. Perhaps a noteworthy aspect in all this is the collaboration with several couriers to ensure accessibility to the insurance in case couriers cannot do that from the app, due to a damaged mobile device, faulty app or any other challenges. In such instances, the courier can still make a claim with any of Glovo's insurance providers.

By October 2022, Glovo had rolled out financial support for sickness, a one-time payment on the occasion of the birth or adoption of a child, and an urgent Family Expense allowance in case of familial hardship. This initiative is part of the commitments made in its Couriers' Pledge.

According to the platform, they will implement more changes in the future, working with other stakeholders to deliver their plans in the pledge.

WHILE GLOVO IS MAKING PROGRESS TO IMPROVE WORKING CONDITIONS, WE ENCOURAGE IT TO PROVIDE ALL SAFETY GEAR FREE OF CHARGE TO COURIERS

While we acknowledge the platform's efforts towards achieving better working conditions, we encourage Glovo to invest more in fostering an active relationship that gives room to the collective voice of their riders, especially for decision-making processes. And while the platform is making progress to improve working conditions for workers, we encourage it to provide all safety gear free of charge to couriers, regardless of their working status. Following the launching of the Couriers' Pledge in Kenya, Glovo aims to improve the earnings of their couriers, but with the increase in inflation, the platform will need to ensure that all couriers earn at least the minimum wage after costs.

Workers' Stories

Chege*, Little

Chege has worked full-time for Little for the past two years. He is 25 years old and hails from Githurai 45 under the Riuru Constituency of Kiambu County. Chege was searching for a way to complement his income when he bumped into an agent who registered him on the platform. Previously he was running errands for businesses and customers in one of the major malls in Nairobi, a job whose pay was underwhelming. Chege has come to love what he does: “I love that I am able to work, they are responsive when I need support and I am guaranteed of getting jobs. It is a good platform to work for.” On a good month, he makes up to Ksh. 38,000 (\$306), an upgrade from his previous job, in which he earned less than Ksh. 1000 (\$8) per day.

Chege enjoys his job, but there are some aspects to it that frustrate him, or which affect his morale and ability to work—“for example, when it rains, I cannot work as it becomes difficult for me to move up and down. Dealing with customers is also a challenge as one may refuse to pay”. Despite this, Chege is still enthusiastic about working for the platform, and he feels he found the stability he was seeking.

Faced by the high cost of living that keeps rising every other day, Chege thinks it would be helpful if the platform revised prices in order to increase payment. He also thinks that while the platform has a responsive feedback mechanism, having a more direct way to get in touch with management would be great, if he were able to call them directly.

Hakuna.Mazaza / Shutterstock



Jamala*, Uber

Jamala had just lost her job as a teller when she noticed a billboard advertising Uber. She did her research, downloaded the app and since she had a car registered as a driver. In five years of working at Uber full-time, Jamala describes her experience as good: “The fact that I am able to earn a stable income and work alongside Uber to get customers—unlike long ago when working as a taxi you had to look for customers yourself—makes my job fulfilling”. When Jamala started working, her monthly income was Ksh. 30,000 (\$241.5) after expenses, but this has improved over the years. Today she earns a monthly pay of Ksh. 45,000 (\$362), and in a good month, she makes Ksh. 50,000 (\$402). She believes it is possible to make a living by working at Uber only. Jamala pointed out that the platform has made improvements when it comes to training them: “The first time I registered as an Uber driver, there was not a lot of training. It just covered the app’s usage, how to keep your car in good condition, encouraged meeting clients in public spaces if possible, and always maintaining professionalism. Over time improvements have been made to the training”.

While Jamala has not encountered any issues such as sexual harassment, her job is not without challenges. One of the challenges she deals with often is drunk clients who are rowdy. She hopes that the platform undertakes a review of the pricing of services. She told us, “In some cases, you find that you are taking a customer for a very long distance, and they have been charged very little, which is not enough to cover the fuel you’ve used.” When asked what improvements the platform could use, Jamala stated the need for a more comprehensive communication channel beyond emails, indicating a responsive 24-hour hotline would be a great addition.



*Names changed to protect worker’s identity

NTSA Policy Changes and the Way Forward

We have seen from the 2022 reporting period that politics can act as a positive push for significant changes in the platform economy. With the presidential and general elections in August 2022, pending legislation specifically affecting the platform industry was pushed forward through the National Assembly and enacted into law.

This new regulation by the NTSA, passed new regulations which impact transport network companies²⁰. Some of the highlights from the regulations include:

Placing several requirements on transport network companies, including the need to be licensed to operate in Kenya. Providing a framework to govern the companies providing online-based ride-hailing services in Kenya, their drivers, and passengers. Introducing an 18 percent cap placed on the amount ride-hailing companies can charge as commission, and this cap does not include VAT/statutory levies or booking fees that will be paid by passengers.

It is important to note that, spontaneous strike actions by worker associations contributed to the NTSA establishing these new regulations. Although strike actions are often isolated efforts to facilitate change, the changes by the NTSA have brought about a positive step in the right direction. However, there is still a need for worker associations to collectively push platforms, especially with such regulations as a basis for more changes. On the other hand, these new regulations are in place to ensure

that all platforms comply, starting with dropping their commissions for instance. While only five ride-hailing platforms have fully and partially complied, the goal is to ensure that all platforms will comply. However, it remains to be seen how similar regulations can transcend to other platform sectors such as delivery and domestic work.

Commission rates are now standardised at 18 percent, with the big platforms forced to comply with this directive (although local and regional platforms were already collecting a lower commission, of between 12 and 15 percent).²¹ In the course of this research, we talked to a number of platform association officials and the worrying information they shared with us is that there has been an increase in the booking fee paid by drivers, from 4 to 11 percent, which is an evasive strategy by platforms to go beyond the 18percent mandated by the NTSA. Adding this to the mandated 18 percent, VAT and other charges, shows that drivers are receiving significantly less earnings than before the NTSA regulation, according to driver representatives we interviewed. This means that the percentage of the overall fees taken from drivers by platforms have increased significantly. However, worker organisations believe that platforms are circumventing these regulations with these additional booking charges and thus pushing workers into more precarious conditions when increased inflation and economic hardships are

taken into account. It is also clear that despite strict implementation by NTSA, worker organisations still complain about platforms not complying with the rules and regulations and how this is impacting them. As one driver told us, “we currently live from hand to mouth and soon we will not have anything to put in our mouths”. While there is a gradual progress in attempts to regulate the platform economy in Kenya following NTSA guidelines, worker collective groups still highlight that they are limited in challenging these evasion tactics by platforms. Accordingly, platform drivers will require a clear direction from the ministry of labour, labour movements, platform economy experts, and legal counsel to continually counter or resist platforms that do not comply with the letter of the NTSA regulations.

THE REGULATORY CONTEXT IN KENYA SEEMS TO HAVE IMPROVED SINCE 2021, THOUGH MANY DRIVERS STILL FEEL A LOT NEEDS TO BE DONE

The Kenyan economy is still undergoing the after effects of the COVID-19 pandemic in 2021 and an election period in 2022, and the issues that have always plagued ride-hailing, delivery and domestic platform workers still prevail. During COVID-19 lockdowns, many platform workers 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. Since then, only a few platforms have really shown a concerted effort to provide safety nets and adequate communication channels for their workers. Several platforms, specifically Glovo, have made steps to ensure that they are providing social protection schemes to their riders. Little has ensured that they communicate with their drivers before they deactivate their accounts and that this is done in line with the NTSA guidelines, giving room for an appeal before disciplinary action takes place.

Since the 2021 Fairwork ratings, the regulatory context in Kenya seems to have improved, though many drivers still feel a lot needs to be done. Even though drivers and riders informally have rights that include the right to join worker associations and collectively bargain, the same challenges we highlighted last year continue. Platform work is still a main source of livelihood for the majority of the workers and income volatility is a major issue. This is

because platform workers have no control over the income they earn on the platform, due to fluctuations in demand and oversupply of workers. The changes in key costs such as the price of fuel and higher cost of living also affects the unpredictability of their earnings. While workers may at times earn a minimum or living wage through platform work, they have no assurance that their operational costs will be covered in any given month. Thus, workers’ only option is to make up any shortfall by being available for jobs on multiple platforms for long hours, often waiting at taxi or delivery hubs for a gig.

Collective action and positive changes in policy are growing globally and Kenya will not be left behind. Platforms employ different standards in different labour markets to account for variations in local regulations—meaning that working conditions can vary significantly depending on the country in which they operate. However, workers are now communicating with their peers globally and influencing actions and strategies for organising themselves. Workers are very interested in being a part of this movement and formal and informal unions are picking up speed. Fairwork is keen to support platform workers in their struggle against poor working conditions, and in their fight to be formally recognised by platforms in Kenya.

Pathways to change

This is the second year of the Fairwork Kenya ratings. While there is some progress with some platforms, more work needs to be done. As Fairwork's reach and visibility increases, we see four avenues for contributing to the continued improvement of the Kenyan platform economy (see Figure 1).

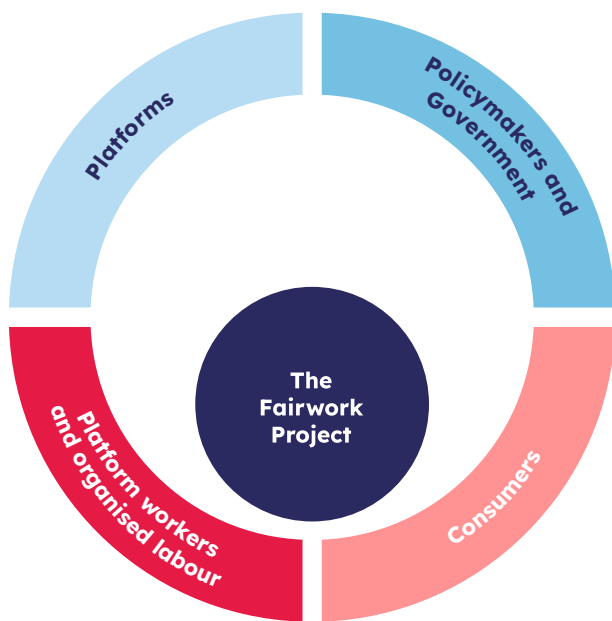


Figure 1: Pathways of Change

Platforms

One of the direct ways to create a fairer platform economy in Kenya starts by engaging with digital labour platforms. Building on the success of our report launch last year, platforms have become more familiar with Fairwork ratings, and they engaged more with Fairwork this year. For example, over the past year, three platforms (Glovo, SweepSouth and Little) have been working with the

Fairwork Kenya team to introduce new policies or improve their policies in line with the Fairwork principles. The Fairwork Kenya team also engaged with Bolt and Uber. Overall, we engaged with six out of nine platforms this year, compared to two platforms last year. While platforms are making changes due to the strict NTSA regulations, Fairwork plans to leverage this in order to push for more direct platform changes in our next scoring round.

Consumers

Second, we believe that, given the opportunity to make more informed choices, many consumers will choose the most ethical option when faced with a choice between a poor-scoring platform and a better-scoring one. Our yearly ratings allow consumers to select the highest scoring platform operating in a sector, thus contributing to pressure on platforms to improve their working conditions and scores. While the scores have been generally low this year, the aim will be to continue to put pressure on platforms through our engagement and research, which will urge platforms to score better and consumers to support better scoring platforms in Kenya.

Policymakers and Regulators

Thirdly, Fairwork is engaging with policymakers to advocate for the rights and protection of all platform workers in Kenya. The foremost issue that policymakers should pay attention to is the provision of adequate and meaningful protections for workers regardless of their employment classification. This should also extend to social protections such as overtime compensation, health insurance, accident insurance, and maternity and

paternity benefits. While some platforms are currently making efforts to include some of these benefits for workers, policymakers can introduce basic and mandatory social protection benefits that will be stipulated in law. In addition to reduced commissions, policymakers should also ensure that platforms pay workers at least the minimum wage for all their active hours worked.

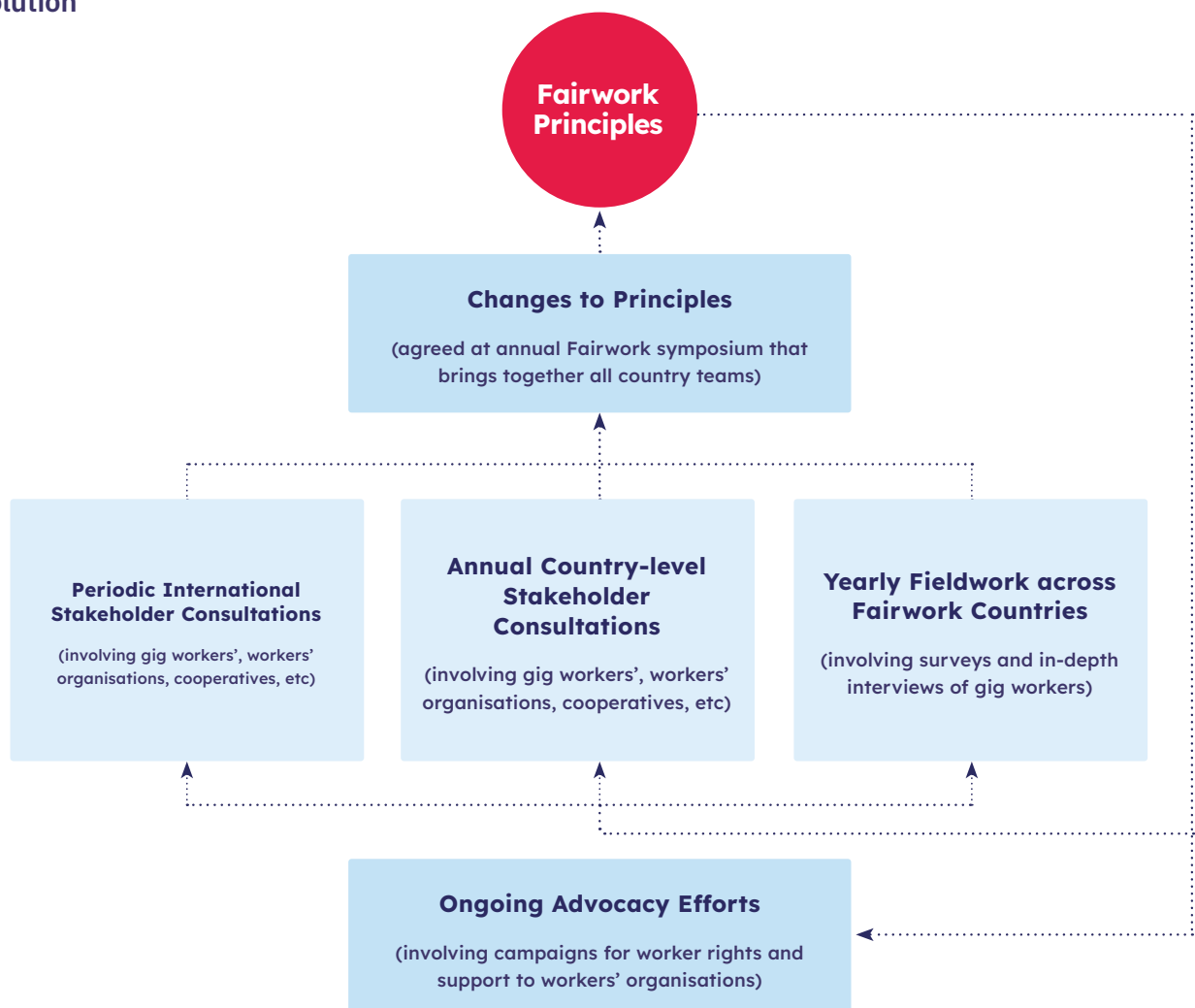
Platform Workers and Worker Associations

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 and feedback from workshops

and consultations involving workers inform how we systematically evolve the Fairwork principles to align with their needs.

Second, through continual engagement with workers' representatives and advocates, we aim to collectively support workers in asserting their rights. Some of such initiatives include providing a solidarity merchandise on our website with free posters which helps spread awareness of the challenges platform workers experience and facilitates an increase in collective worker groups. A key challenge in the platform economy is that workers are often isolated, atomised, and competing with one another. Furthermore, regulators do not fully comprehend the extent of platform work, and the independent contractor classifications which platforms exploit. As such, the

Figure 2 Fairwork's Principles: Continuous Worker-guided Evolution



platform work model by design prevents workers from connecting and developing solidarity networks. But unions and associations in Kenya, such as the Transport Workers Union (TAWU), Organisation of Online Drivers Association (OOD) and others have sought to represent platform workers in the ride-hailing sector. Some workers we interviewed indicated their interest in joining a union or collective worker body. While this is mainly a reality for mainly ride-hailing platforms, we urge collective worker bodies to form associations in the delivery sector platform work sectors in Kenya. Our principles can provide a starting point for envisioning a fairer future of work and setting out a pathway for workers to work together. The fifth Fairwork Principle, on the importance of fair representation, is a crucial way in which we aim to support workers to assert their collective agency in Kenya.

There is nothing inevitable about poor working conditions in the platform 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 platform 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 platform 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 harnesses ethically minded organisations' to support fairer platform work. Organisations like universities, schools, businesses, and non-profit organisations irrespective of whether or not they make use of platform labour, can make a difference by supporting labour practices guided by our five principles of fair work. Those who sign the pledge get to display our badge on organisational 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. 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 on the Pledge, and how to sign up, is on the Fairwork website.²²

**MORE INFORMATION ON THE
PLEDGE, AND HOW TO SIGN UP,
IS AVAILABLE AT**

WWW.FAIR.WORK/PLEDGE



APPENDIX

Fairwork Scoring System

Which companies are covered by the Fairwork principles?

The International Labour Organisation (ILO) defines a “digital labour platform” as an enterprise that mediates and facilitates “labour exchange between different users, such as businesses, workers and consumers”²³. That includes digital labour “marketplaces” where “businesses set up the tasks and requirements and the platforms match these to a global pool of workers who can complete the tasks within the specified time”²⁴. Marketplaces that do not facilitate labour exchanges - for example, Airbnb (which matches owners of accommodation with those seeking to rent short-term accommodation) and eBay (which matches buyers and sellers of goods) - are excluded from the definition. The ILO’s definition of “digital labour platform” is widely accepted and includes many different business models²⁵.

Fairwork’s research covers digital labour platforms that fall within this definition that aim to connect individual service providers with consumers of the service through the platform interface. Fairwork’s research does not cover platforms that mediate offers of employment between individuals and employers (whether on a long-term or a temporary basis).

Fairwork distinguishes between two types of these platforms. The first is ‘geographically-tethered’ platforms where the work is required to be done in a particular

location such as delivering food from a restaurant to an apartment, driving a person from one part of town to another or cleaning. These are often referred to as ‘gig work platforms’. The second is ‘cloudwork’ platforms where the work can, in theory, be performed from any location via the internet.

The thresholds for meeting each principle are different for location-based and cloudwork platforms because location-based work platforms can be benchmarked against local market factors, risks/harms, and regulations that apply in that country. In contrast, cloudwork platforms cannot because (by their nature) the work be performed from anywhere and so different market factors, risks/harms, and regulations apply, depending on where the work is performed.

The platforms covered by Fairwork’s research have different business, revenue, and governance models, including employment-based, subcontractor, commission-based, franchise, piece-rate, shift-based, and subscription models. Some of those models involve the platforms making direct payments to workers (including through sub-contractors).

How does the scoring system work?

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, policymakers, trade unions, and academics), and in-country meetings with local stakeholders.

Each Fairwork Principle is divided into two thresholds. Accordingly, for each Principle, the scoring system allows the first to be awarded corresponding to the first

threshold and an additional second point to be awarded corresponding to the second threshold (see Table 1). The second point under each Principle can only be awarded if the first 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

Principles	First point	Second point	Total
 Principle 1: Fair Pay	 Ensures workers earn at least the local minimum wage after costs	 Ensures workers earn at least a local living wage after costs	 2
 Principle 2: Fair Conditions	 Mitigates task-specific risks	 Provides a safety net	 2
 Principle 3: Fair Contracts	 Provides clear and transparent terms and conditions	 Ensures that no unfair contract terms are imposed	 2
 Principle 4: Fair Management	 Provides due process for decisions affecting workers	 Provides equity in the management process	 2
 Principle 5: Fair Representation	 Assures freedom of association and the expression of collective worker voice	 Supports democratic governance	 2

Maximum possible Fairwork Score



Principle 1: Fair Pay

1.1 Ensures workers earn 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, fuel, insurance, and maintenance on a vehicle²⁶. Workers' costs sometimes mean their take-home earnings may fall below the local minimum wage²⁷. Workers also absorb the costs of an 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 hours²⁸. To achieve this point, platforms must ensure that work-related costs do not push workers below the local minimum wage.

The platform takes appropriate steps to ensure:

- Workers earn at least the local minimum wage or the wage set by collective sectoral agreement (whichever is higher) where they work, in their active hours, after costs²⁹.

1.2 Ensures workers earn 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 work-related costs do not push workers below local living wage.

The platform takes appropriate steps to ensure:

- Workers earn at least a local living wage or the wage set by collective sectoral agreement (whichever is higher) where they work, in their active hours, after costs^{30,31}.

Principle 2: Fair Conditions

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.

The platform must satisfy the following:

- There are policies or practices in place that protect workers' health and safety from task-specific risks³².
- Platforms take adequate, responsible, and ethical data protection and management measures in a documented policy.

2.2 – Provides a safety net (one additional point)

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 they earn from platform work, platforms can achieve this point by ensuring that workers are compensated for loss of income due to inability to work.

The platform must satisfy BOTH of the following:

- Platforms take meaningful steps to ensure that workers are compensated 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

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 workers³³. To achieve this point, the platform must demonstrate that workers can understand, agree to, and access their work conditions at all times and that they have legal recourse if the other party breaches those conditions.

The platform must satisfy ALL of the following:

- 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.

3.2 – Ensures that no unfair contract terms are imposed (one additional point)

In some cases, especially under ‘independent contractor’ classifications, workers carry a disproportionate amount of risk for engaging in a contract with the service user. 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 the contractual status of the worker is classified, the platform must satisfy BOTH of the following:

- Takes appropriate steps to ensure that the contract does not include clauses which exclude liability for negligence nor unreasonably exempt the platform from liability for working conditions.
- Takes appropriate steps to ensure that 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

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 potentially losing their income. Workers may be subject to other penalties or disciplinary decisions without the ability to contact the service user or 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 a 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 a contract and available on the platform interface³⁴.
- 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.

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:

- 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, disability, religion or belief, age or any other status.
- Where persons from a disadvantaged group (such as women) are significantly under-represented among a pool of 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 or the type of work and pay scales available to workers seeking to use the platform, 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.
- 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

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. Whether or not platforms set the terms on which workers are retained by service users, platforms must demonstrate that they have taken appropriate steps to ensure that workers are informed of their rights (and have mechanisms in place to help protect those rights) and that workers are directed to appropriate collective bodies or trade unions.

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 workers³⁵.
- Freedom of association is not inhibited, and workers are not disadvantaged in any way for communicating their concerns, wishes, and demands to the platform³⁶.

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:

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.

ENDNOTES

- 1 Naoko Koyama, Swetha Totapally, Shruti Goyal, Petra Sonderegger, Priti Rao, and Jasper Gosselt. Kenya's Digital Economy: A People's Perspective Report 2021. Dalberg, 2021. https://www.digitaleconomy.ke/assets/download/Kenyas_Digital_Economy_Full_report_Aug_2021.pdf
- 2 N.B: While Little is the name of the platform company comprising of ride-hailing services and delivery services, we have only rated the ride-hailing side of the company.
- 3 Ngene, G. (2021). How gigs are changing Kenya's workforce daily. <https://www.businessdailyafrica.com/bd/special-reports/how-gigs-are-changing-kenya-s-workforce-daily-3931496>
- 4 Ngene, G. (2021). How gigs are changing Kenya's workforce daily. <https://www.businessdailyafrica.com/bd/special-reports/how-gigs-are-changing-kenya-s-workforce-daily-3931496>
- 5 Ngene, G. (2021). How gigs are changing Kenya's workforce daily. <https://www.businessdailyafrica.com/bd/special-reports/how-gigs-are-changing-kenya-s-workforce-daily-3931496>
- 6 Delauney, T. (2021). Towards a Ride-hailing Services Dependency in Nairobi? Uses, users and regulation. Available at: <https://mambo.hypotheses.org/3122>
- 7 Delauney, T. (2021). Towards a Ride-hailing Services Dependency in Nairobi? Uses, users and regulation. Available at: <https://mambo.hypotheses.org/3122>
- 8 UK Government. (n.d.). Employment Status. <https://www.gov.uk/employment-status/worker#:~:text=A%20person%20is%20generally%20classified,a%20contract%20or%20future%20work>
- 9 Kenya's Employment Act (2012). http://kenyalaw.org/kl/fileadmin/pdf-downloads/Acts/EmploymentAct_Cap226-No11of2007_01.pdf
- 10 The Constitution of Kenya. <https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/207-41-labour-relations>
- 11 Otieno, B. (2022). Uber, Bolt and Little drivers demand commission cut.
- 12 Otieno, B. (2022). Uber, Bolt and Little drivers demand commission cut.
- 13 Okafor, 2022. See why Uber and Bolt drivers staged a go-slow protest in Kenya. <https://africa.businessinsider.com/local/markets/uber-and-bolt-drivers-staged-a-go-slow-protest-in-kenya/x9xm3p9>
- 14 Kuo, L. (2016). Drivers in Kenya are protesting against being "Uber slaves". <https://qz.com/africa/748149/drivers-in-kenya-are-protesting-against-being-uber-slaves>
- 15 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>
- 16 National Transport and Safety Authority Act (2012). www.kenyalaw.org
- 17 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_Feb2019-aoda.pdf; Centre for Global Development. 2018.
- 18 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/letsbe-real-informal-sector-and-gig-economy-are-future-and-present-work-africa_0.pdf
- 19 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/enGB/Campaigns/WESO/World-Employment-Social-Outlook-2021#COVID-19>)
- 20 <https://www.nts.go.ke/site/files/downloads/TNC-rules-2022.pdf>
- 21 Musau, D., (2022). Only 5 Digital Taxi-Hailing Companies Licensed To Operate In Kenya – NTSA. <https://www.citizen.digital/tech/only-5-digital-taxi-hailing-companies-licensed-to-operate-in-kenya-nts-n308604>
- 22 Fairwork. (n.d.). Join the Pledge. <https://fair.work/en/fw/join-the-pledge-together-for-platform-work/> Accessed 8 December 2022.
- 23 ILO (2021). World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work. Geneva: International Labour Organization. p. 31. https://www.ilo.org/global/research/global-reports/weso/2021/WCMS_771749/lang--en/index.htm Accessed on 14 December 2022.
- 24 ILO, World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work, p. 107.
- 25 De Stefano, V. (2016). The rise of the 'just-in-time workforce': On-demand work, crowdwork and labour protection in the 'gig-economy.' Geneva: International Labour Organization. p. 1 https://www.ilo.org/travail/info/publications/WCMS_443267/lang--en/index.htm.
- 26 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.
- 27 The ILO defines minimum wage as the "minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract." Minimum wage laws protect workers from unduly low pay and help them attain a minimum standard of living. The ILO's Minimum Wage Fixing Convention, 1970 C135 sets the conditions and requirements of establishing minimum wages and calls upon all ratifying countries to act in accordance. Minimum wage laws exist in more than 90 percent of the ILO member states.
- 28 In addition to direct working hours where workers complete tasks, they also spend time performing unpaid activities necessary for their work, such as waiting for delivery orders at restaurants and traveling between jobs. These indirect working hours are also considered part of active hours as workers give this time to the platform. Thus, 'active hours' include both direct and indirect working hours.
- 29 In order to evidence this, where the platform is responsible for paying workers, the platform must either: (a) have a documented policy that ensures the workers receive at least the local minimum wage after costs in their active hours; or (b) provide summary statistics of transaction and cost.
- 30 Where a living wage does not exist, Fairwork will use the Global Living Wage Coalition's Anker Methodology to estimate one.
- 31 In order to evidence this, where the platform is responsible for paying workers, the platform must either: (a) have a documented policy that ensures the workers receive at least the local living wage after costs in their active hours; or (b) provide summary statistics of transaction and cost data evidencing all workers earn a minimum wage after costs.
- 32 Where the platform directly engages the worker, 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 health risk", 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 adverse effects on health.”

33 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.

34 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 them for human mediation.

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

36 See ILO (2021) World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work International Labour Office

Credits and funding

Fairwork is a project run out of the Oxford Internet Institute, University of Oxford, and the WZB Berlin Social Science Center, and draws on the expertise and experience of staff Qhala, Access to Knowledge for Development Center (A2K4D) at the American University in Cairo's School of Business, Audencia Business School, Center for Development Evaluation and Social Science Research (CREDI), Centre for Labour Research, Chinese University of Hong Kong's Centre for Social Innovation Studies, CIPG Innovation Policy Governance, CIPPEC, CREDI, De La Salle University, FLACSO-Ecuador, Humboldt University of Berlin, Institute for a Fair Economy, International Institute of Information Technology Bangalore (IIITB), International University of Rabat, iSocial, KU Leuven, Lagos Business School, Luigi Gurakuqi University of Shkodër, National University of Singapore, Observatorio de Plataformas Perú, Phenix Center for Economics & Informatics Studies, Pollicy, Public Policy Research Center (CENTAR), REPOA, Sapienza University of Rome, Solidarity Center, Technical University of Berlin, TEDIC, The Policy Initiative, TU Wien, Universidad Adolfo Ibáñez, Universidad Católica del Uruguay, Universidad Complutense de Madrid, Universidad del Rosario, Universidade de São Paulo, Universitas Gadjah Mada's Center for Digital Society, University of California's Hastings College of the Law, University of Cape Town, University of Ghana Business School, University of Manchester, University of the Western Cape, Weizenbaum Institut and XU Exponential University.

Authors

Caroline Omware, Annmercy Wairimu, Daniel Arubayi, and Mark Graham.

Fairwork Team

Wirawan Agahari, Jana Ababneh, Eisha Afifi, Pablo Aguera Reneses, Iftikhar Ahmad, Gina Alaschkar, Maria Belen Albornoz, Luis Pablo Alonzo, Oğuz Alyanak, Hayford Amegbe, Branka Andjelkovic, Viridiana Ángel, Marcos Aragão, María Arnal, Arturo Arriagada, Daniel Arubayi, Sami Atallah, Tat Chor Au-Yeung, Ahmad Awad, Adam Badger, Ladin Bayurgil, Ariane Berthoin Antal, Alessio Bertolini, Gautam Bhatia, Virgel Binghay, Ameline Bordas, Maren Borkert, Álvaro Briaes, Joe Buckley, Callum Cant, Rodrigo Carelli, Eiser Carnero Apaza, Eduardo Carrillo,

Maria Catherine, Chris King Chi Chan, Henry Chavez, Hussein Cheaito, Aradhana Cherupara Vadekkethil, Ana Chkareuli, Andrea Ciarini, Antonio Corasaniti, Pamela Custodio, Adriansyah Dhani Darmawan, Kavita Dattani, Olayinka David-West, Nadia De Jesús Pacheco, Luisa De Vita, Alejandra S. Y. Dinegro Martínez, Brikena Kapisyzi Dionizi, Ha Do, Matias Dodel Schubert, Marta D'Onofrio, Elvira Drishti, Darcy du Toit, Veena Dubal, James Dunn-Willimason, Khatia Dzamukashvili, Nagham El Houssamy, Haya El Zayat, Dana Elbashbishy, Batoul ElMehdar, María Eloísa González Damián, Elisa Errico, Patrick Feuerstein, Roseli Figaro, Milena Franke, Sandra Fredman, Farah Galal, Jackeline Gameleira, Pia Garavaglia, Chana Garcia, Beatriz García, Sharon Geeling, Navneet Gidda, Shikoh Gitau, Slobodan Golusin, Saúl Gomez, Mark Graham, Markus Griesser, Rafael Grohmann, Martin Gruber-Risak, Khadiga Hassan, Richard Heeks, Teona Henderson, Mabel Rocío Hernández Díaz, Luis Jorge Hernández Flores, Victor Manuel Hernandez Lopez, Benjamin Herr, Nur Huda, Huynh Thi Ngoc Tuyet, Francisco Ibáñez, Shahidul Islam, Neema Iyer, Tanja Jakobi, Athar Jameel, Abdul Bashiru Jibril, Ermira Hoxha Kalaj, Zeynep Karlidag, Lucas Katera, Mishal Khan, Bresena Dema Kopliku, Maja Kovac, Anjali Krishan, Martin Krzywdzinski, Amela Kurta, Ilma Kurtović, Morad Kutkut, Tobias Kuttler, Arturo Lahera-Sánchez, Jorge Leyton, Georgina Lubke, Bilahari M, Raiyaan Mahbub, Wassim Maktabi, Melissa Malala, Oscar Javier Maldonado, Laura Clemencia Mantilla León, Claudia Marà, Paolo Marinaro, Ana Flavia Marques, Margreta Medina, Caterina Morbiato, Nacef Mouri, Jamal Msami, Hilda Mwakatumbula, Baraka Mwaura, Beka Natsvlishvili, Mounika Neerukonda, Ana Negro, Chau Nguyen Thi Minh, Sidra Nizambuddin, Claudia Nociolini Rebecchi, Anesthesia H. Noviana, Bonita Nyamwire, Oluwatobi A. Ogunmokun, Kemi Ogunyemi, Caroline A Omware, Nermin Oruc, Christian Nedu Osakwe, Balaji Parthasarathy, Francesca Pasqualone, Lucero Pinedo Huerta, Leonhard Plank, Frederick Pobe, Valeria Pulignano, Jack Linchuan Qiu, Jayvy R. Gamboa, Ananya Raihan, Antonio Ramírez, Juan-Carlos Revilla, Alberto Riesco-Sanz, Nagla Rizk, Moisés K. Rojas Ramos, Federico Rosenbaum Carli, Cheryll Ruth Soriano, Julice Salvagni, Derly Yohanna Sánchez Vargas, Maricarmen Sequera, Murali Shanmugavelan, Shanza Sohail, Janaki Srinivasan, Anna Sting, Zuly Bibiana

Suárez Morales, David Sutcliffe, Dinh Thi Chien, Kristin Thompson, Kiko Tovar, Pitso Tsibolane, Wing Yin Anna Tsui, Funda Ustek-Spilda, Jonas Valente, Jean-Paul Van Belle, Giulia Varaschin, Eduardo Vargas, Daniel Vizuete, Laura Vogel, Jing Wang, Robbie Warin, Nadine Weheba, Najlae Zhani and Sami Zoughaib

Scoring Peer Reviewer:

Sharon Geeling and Batoul Al Mehdar

Report Peer Reviewer:

Funda Ustek Spilda

Report Copy Editor:

David Sutcliffe

Please cite as:

Fairwork Kenya Ratings 2022: Towards Regulating the Platform Economy. Nairobi, Kenya; Oxford, United Kingdom.

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.

Designers

One Ltd. and ããã — Arwin Qaderi

Funders

This report was funded by the Federal Ministry for Economic Cooperation and Development (BMZ), commissioned by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

Special thanks to

Vicki Nash Katia Padvalkava, Duncan Passey, Maisy Gills, Sara Spinks, Lucy Hennings, Isabelle Malcolm, John Gilbert, Ornella Sciuto, Caroline Hampshire and David Sutcliffe at the University of Oxford for their extensive administrative support for the project since its inception. The project team is deeply grateful to Shakhlo Kakharova, Lukas Sonnenberg, and Kirsten Schuettler at GIZ for their continuing support and guidance as we take our work to the next stage. We would equally also like to thank the Qhala team under Dr Shikoh Gitau and communication team under Janet Onyango for their assistance and trust. We would like to thank the University of Oxford's Business Engagement and Partnerships Development Fund for supporting some of our workshops and outreach activities. Finally, we would like to acknowledge a large number of workers and platform managers in Kenya for taking the time to help us build our platform ratings. Their roles are understated by a simple acknowledgement. All of the work in this project was shared not just amongst our research team, but also amongst the stakeholders who our ratings ultimately affect.

Conflict of interest statement

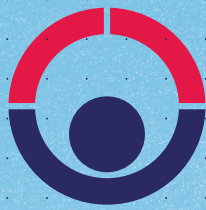
None of the researchers have any connection with any of the platforms and the work undertaken received no funding or support in kind from any platform or any other company, and we declare that there is no conflict of interest.

A COLLABORATION BETWEEN



FUNDED BY





Fairwork

Find out more

 fair.work

 info@fair.work

 [@TowardsFairWork](https://www.facebook.com/TowardsFairWork)

 [@TowardsFairWork](https://twitter.com/TowardsFairWork)