

Fairwork

**LABOUR STANDARDS IN
THE PLATFORM ECONOMY**

Vietnam Ratings 2023



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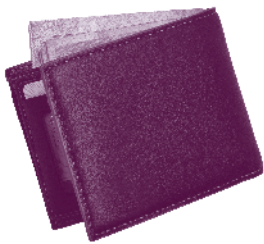
Executive Summary

In this year's inaugural scoring round for Vietnam, the Fairwork Vietnam team rated nine platforms across six of Vietnam's most dominant digital labour platform companies. Of these, five are food delivery services, three are ride-hailing services, and one provides domestic services. The research focused on the country's biggest city, Ho Chi Minh City, where the platform economy is most developed.

Fairwork Vietnam Ratings 2023: Labour Standards in the Platform Economy provides the first comprehensive baseline assessment of working conditions in the sector, assessing platforms against Fairwork's five principles of fairness. While some good practices were identified, our team did not find sufficient evidence to award points to

any of the platforms. Nevertheless, Fairwork Vietnam encourages platforms, policymakers, and unions to build on the existing good practices as a way to begin moving towards ensuring decent work for all in Vietnam's platform economy.

Key Findings



FAIR PAY

While desk research and worker interviews indicate that workers for a few platforms may earn at least the local minimum wage after costs, no platform provided evidence to confirm this.

While worker interviews for bTaskee suggested that workers potentially earn the local living wage after costs, we found no evidence that the platform guarantees this. Additionally, Gojek provides a top-up income for both GoRide and GoFood workers who accumulate a determined number of points per day (based on the number of orders and riders a worker completes and the time of day they were undertaken) if their financial earnings remain under a certain threshold, likely bringing these workers' incomes above the local minimum wage after costs. In neither case were we able to ascertain that all workers earned above minimum wage.



FAIR CONDITIONS

Research indicates that platforms do take some limited measures to mitigate risks, such as providing free annual health checks or some accident and injury insurance to workers free of charge (although many workers were unclear about what exactly this insurance is and what it covers).

No platform, however, was able to be awarded this point, largely due to making workers pay for their own equipment, only providing limited and unpaid safety training, and not undertaking adequate measures to mitigate risks.



FAIR CONTRACTS

No platform was awarded points for this principle due to issues of unclear contract terms, platforms being able to make changes to their terms and conditions without prior notice, workers not understanding their contracts, contracts excluding platforms from liability for negligence, unreasonably exempting them from liability for working conditions and/or preventing workers from seeking redress for grievances that arise from the working relationship, and inadequate privacy policies.



FAIR MANAGEMENT

All platforms have multiple channels of communication available to workers, including for deactivated workers.

In addition to communication through the app, these channels include telephone hotlines, social media (especially Facebook and Zalo, a popular messaging app in Vietnam), and a physical office which workers can visit. No platform, however, provided sufficient evidence of the effectiveness of using these channels, of a documented process for appeals, or that workers are not discriminated against for raising concerns. No points were therefore able to be awarded.



FAIR REPRESENTATION

No platform was awarded this point in the year's scoring round due to Vietnam's legal and regulatory complexities (see Theme in Focus, pg. 24).

Baseline Standards in Digital Labour Platforms

Regulation of Vietnam's platform economy is currently in a state of inertia, especially with regard to the employment status of workers. There is a disagreement between and within relevant Ministries, as there is within the state-led Vietnam General Confederation of Labour (VGCL); neither the VGCL nor the Ministry of Labour, Invalids and Social Affairs (MOLISA) has a position on whether digital platform workers are contractors or employees.

The Ministry of Justice did, however, reject the employment status of ride-hailing workers in one official report whereas the courts took a different view in a particular case (see Legal Context, pg. 24).

Despite this, there is an increasing recognition that platform workers often have no, or at best an extremely limited, safety net, and that social protection systems should be adapted and expanded to cover such workers. However, a new bill on Social Insurance, currently under deliberation, remains silent in this regard while leaving open the possibility that platform workers may be covered by compulsory insurance if meeting the employment test.

The inaugural Fairwork Vietnam report is written against this backdrop, assessing baseline labour standards in digital labour platforms. The Fairwork Vietnam team rated nine platforms across six of Vietnam's most dominant digital labour platform companies; Baemin, Be (beBike and beFood), bTaskee, Gojek (GoRide and GoFood), Grab (GrabBike and GrabFood), and ShopeeFood. Of these, five

are food delivery services, three are ride hailing services, and one provides domestic services.

THIS REPORT IS AN IMPORTANT AND TIMELY REMINDER OF THE NEED TO INVOLVE WORKERS IN COLLECTIVE BARGAINING IN ORDER TO ENSURE DECENT, DIGNIFIED AND FAIR WORK.

The research focused on Ho Chi Minh City, the country's biggest city and where the digital platform economy is most developed. Research methods included approaching workers on the street, ordering a service on the platform then inviting workers to participate in an interview, and snowballing from prior interviews. We found workers very open to partaking in the research process and thank all of them for being so candid about their work and lives.

After extensive discussions among the Fairwork Vietnam team and with others in the Fairwork network, we decided that in this year's scoring round we were unable to award Fairwork principle 5 on Fair Representation to any of the platforms. This is because there is currently no freedom of association in Vietnam, with the only legal union body being the state-led VGCL. This is not to say that the VGCL cannot represent workers, but that the requirements for awarding principle 5 are such they cannot be met under the current legal framework for trade unionism. Once Vietnam ratifies ILO convention 87 on Freedom of Association and Protection of the Right to Organise –

the country is expected to do so in 2024 – Fairwork will reconsider this position (see Theme in Focus, pg.24). This report is an important and timely reminder of the need to involve workers in collective bargaining in order to ensure decent, dignified and fair work.

Finally, we are grateful to the platforms which chose to engage with the Fairwork project. While no platform scored any points, some came very close to doing so. We have identified good practices which if expanded would lead to better working conditions and could be a basis on which to build to begin to provide decent work for platform workers.



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Towards Decent Labour Standards in the Platform Economy

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

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 Center. Our growing network of researchers currently rates platforms in 39 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

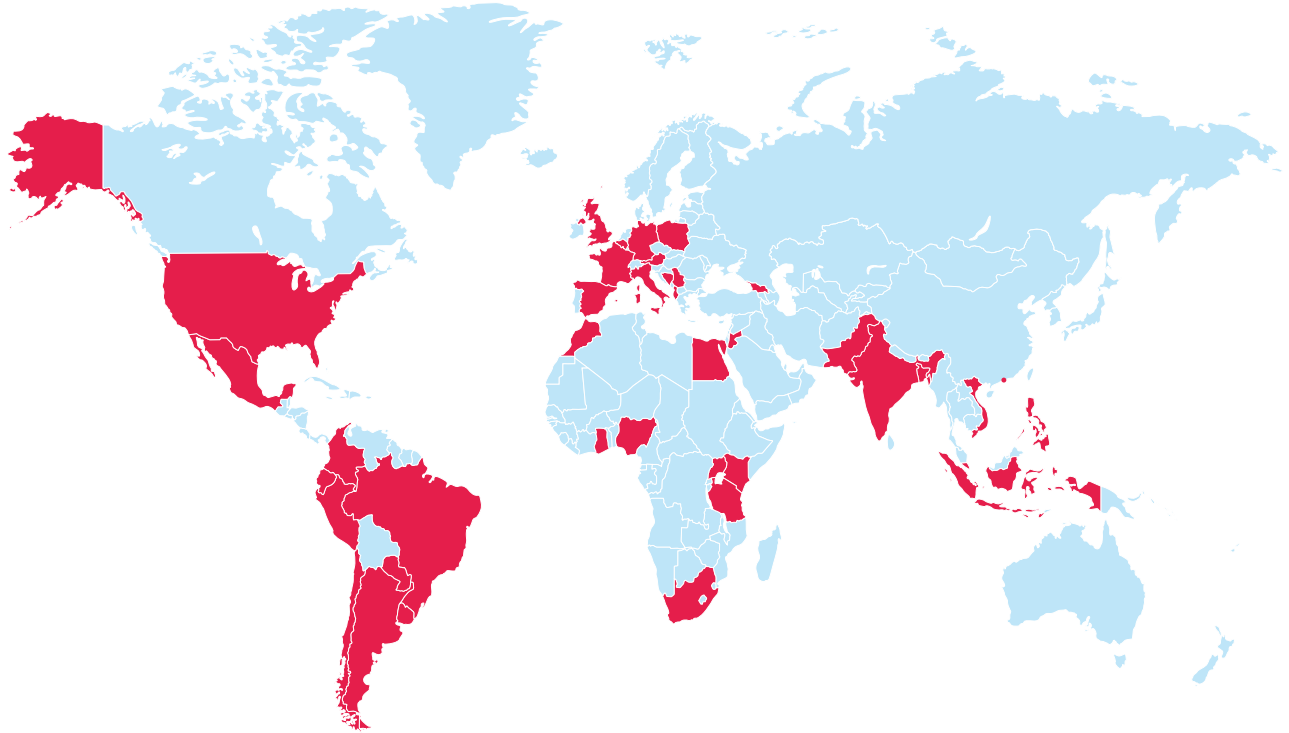


Figure 1. Map of Fairwork countries.

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 and Herzegovina, France, Georgia, Germany, Italy, Poland, Serbia, Spain, UK

SOUTH AMERICA

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

NORTH AMERICA

Mexico, US

The Fairwork Framework

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 Vietnam context, we have subsequently revised and fine-tuned them based on our respective backgrounds in academia, NGOs, and law.

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 Overview

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 access 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 is interviewing platform workers directly. A sample of 6-10 workers are interviewed for each platform. These interviews do not aim to build a representative sample. They 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. For our 2023 ratings, this included, in addition to our tried and tested participant recruitment methods, approaching workers on the street, ordering a service on the platform then inviting workers to participate in an interview, relying on the researchers' existing networks to gather participants, and snowballing from prior interviews. In all these strategies informed consent was established. All interviews were conducted in person.

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. All interviews were conducted in Vietnamese.

Putting it all together

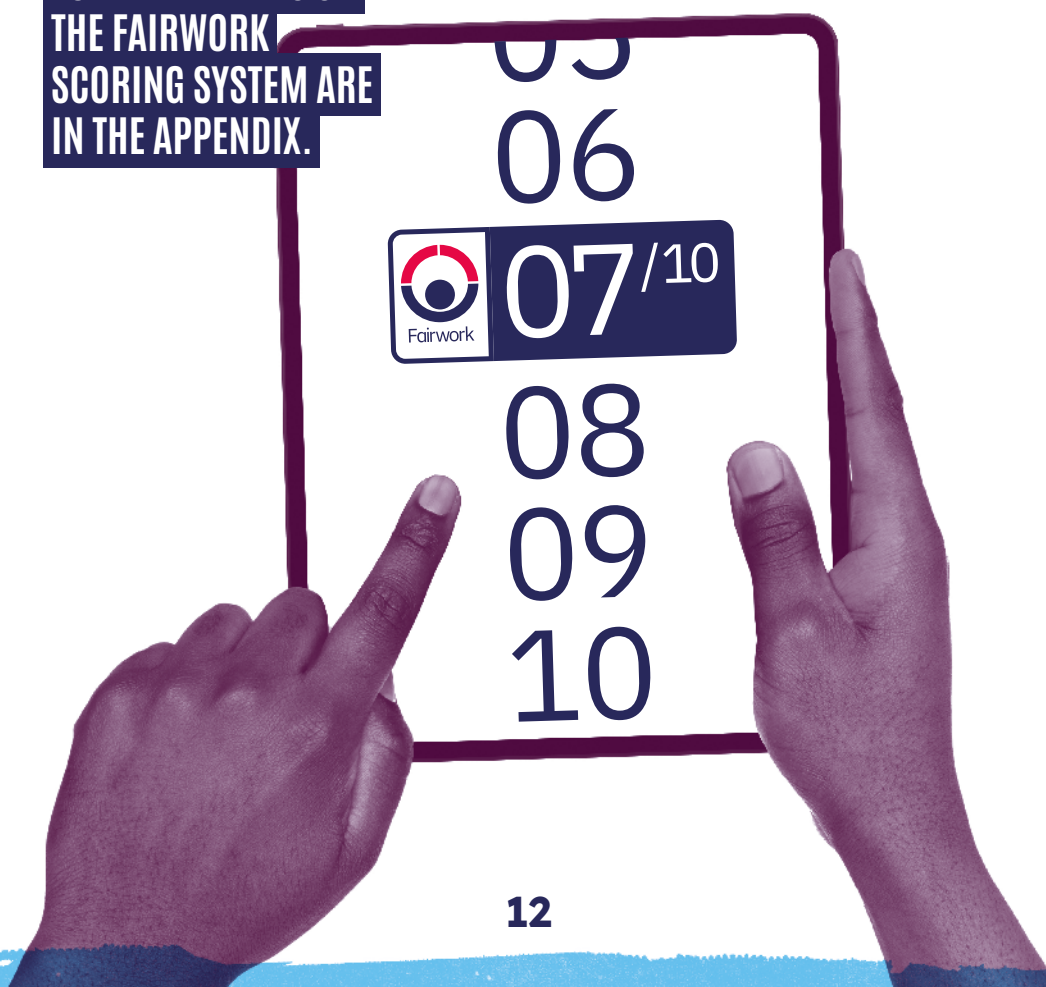
This threefold approach provides a way to cross-check the claims made by platforms, while also providing the opportunity to collect both positive and negative evidence from multiple sources. Final scores are collectively decided by the Fairwork team based on all three forms of evidence. Points are only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

How we score

Each of the five Fairwork principles is broken down into two points: a 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 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 are both 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 FAIRWORK SCORING SYSTEM ARE IN THE APPENDIX.



BACKGROUND

Vietnam's Platform Economy

Vietnam is a long, thin country in Southeast Asia, with a length of 1,650km and a population of around 100 million. Having been one of the world's poorest countries in the 1970s, it is now classed as a lower middle-income country, with a GDP per capita of \$4,163.5 USD in 2022.

The primary, and iconic, mode of transport in Vietnam is the motorbike; despite a gradual increase in car ownership, motorbikes still dominate.

Vietnam has five major municipalities: in addition to Ha Noi, the capital city, these comprise Ho Chi Minh City, the country's biggest city, Hai Phong, Can Tho, and Da Nang. Research for this report focused on Ho Chi Minh City, a megacity in the south of the country with a population of over 10 million, and the economic centre of Vietnam, including the platform economy.

The first ride-hailing platform in Vietnam was Brazil's EasyTaxi, launching in 2014. It didn't last long, though, and exited the market in 2015, unable to compete with other platforms that had far more funding behind them. The first years of digital labour platforms in Vietnam were characterised by the battle for dominance between Grab and Uber from 2014-2018 – Grab won, and Uber exited Southeast Asia in 2018, in exchange for a stake in Grab. These years were also marked by physical clashes between app-based motorbike taxi drivers and traditional motorbike taxi drivers, and legal, regulatory clashes between platforms and traditional car taxi companies. Eventually, digital platforms came to dominate taxi, courier and food delivery services in the country.

The platform economy has seen regular strikes and protests by workers over a range of issues. The Vietnamese working class is well known for its militancy, but the strikes in the platform economy are perhaps the

first time that significant numbers of strikes have occurred outside of the industrial export production sectors (see Theme in Focus, pg. 24).

When it comes to digital labour platforms in Vietnam, the overwhelming focus of researchers, journalists, policymakers and practitioners has been on platforms providing ride-hailing, food delivery, and courier services, especially on motorbikes. This is perhaps understandable: it was these platforms that began the country's gig economy; there are more digital labour platforms offering app-based driving than any other service; it is these platform workers who are most visible, driving around cities; and most worker activism and strikes occur in the app-based driving subsector of the digital platform economy. This very report is not immune from that bias; all but one of the platforms rated are ride-hailing and food delivery platforms.

A focus on these platforms, however, carries the danger of erasing workers in other parts of the digital platform economy, such as those providing domestic services, private tuition, or remote work (so-called "cloudwork"). This work is largely performed in private homes, either of the worker or of the customer, so such workers are less visible, and are therefore easier to be ignored or forgotten by the public, policymakers, and practitioners. And while the majority of (but not all) app-based drivers are men, workers for these other platforms are often women. This is especially the case for domestic work platforms (see Platform in Focus, pg. 20).

The Legal Context

Whilst the platform economy is rapidly expanding, legal regulation in this area remains nascent and lacks clarity. Initially, ride-hailing companies like Grab and Uber were regulated as software application providers rather than transport companies, under pilot schemes permitted by the Ministry of Transportation.

This prompted strong protests from traditional taxi companies, including a protracted court battle initiated by Vinasun, a major taxi company, against Grab. In a win for traditional taxi companies, the court held that Grab is a transportation service provider. Subsequently, the Government enacted Decree 10/2020/ND-CP to update regulations on automobile road transportation services. Broadening the definition of 'car transport services,' the decree has effectively classified ride-hailing as transportation activities, thus subjecting ride-hailing companies to the legal regulations that cover transportation businesses. However, as the legal instrument merely applies to transportation services by car, app-based motorbike transportation services, including ride hailing and deliveries, continue to be unregulated. Additionally, the impact of Decree 10/2020/ND-CP on car ride-hailing services seems to have been limited because platforms, such as Grab, have restructured their contractual arrangements to continue disguising their nature as transportation businesses, and thus continue to evade transportation business regulations.

Against this background, little has been done to regulate newly emergent work relationships between platforms and workers. The issue was brought to the attention of authorities and policymakers in the 2019 labour law reform, contributing to a less formal and better-defined set of legal criteria to distinguish between employed and self-employed workers in the 2019 Labour Code. Despite this, the employment status of platform workers remains unclear. To evade labour law and social security protections, platforms often sign business cooperation or independent contractor agreements with their workers.

Under such agreements, the worker is characterised as a business partner and/or an independent contractor of the platform, bearing most – if not all – risks, damages and liabilities that arise at work. Some platforms' contracts explicitly deny the existence of an employment relationship between the platform and its worker. There is nothing new about these strategies, whether in Vietnam or elsewhere. Companies have regularly and increasingly used contractual arrangements to evade their responsibilities to workers who are inarguably employees. To tackle such disguised employment, Article 13(1) of the 2019 Labour Code states that if an agreement is not entitled as an 'employment contract,' 'but ... has contents relating to paid work, wages, and the management, direction [and] supervision of one party, it shall be considered an employment contract.' However, it remains to be seen how this newly introduced provision will be implemented, including in the context of platform work.

TO EVADE LABOUR LAW AND SOCIAL SECURITY PROTECTIONS, PLATFORMS OFTEN SIGN BUSINESS COOPERATION OR INDEPENDENT CONTRACTOR AGREEMENTS WITH THEIR WORKERS.

Notwithstanding the importance of the issue, the authorities have failed to deliver a clear answer to the employment status of platform workers. Neither the MOLISA nor the VGCL has a position in this respect. There are differing opinions among officials within these organisations. In an official report, the Ministry of Justice



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explicitly rejected the employment status of platform drivers, citing Grab as an example. However, the courts in *Vinasun vs Grab* took a different view, ruling that GrabCar workers are employees, not independent contractors. Since Vietnam does not recognise the doctrine of *stare decisis* (that is, to follow a principle or rule established in a previous legal case), this ruling has no binding effect as yet. The silence of major authorities and organisations and the existence of divergent opinions have created something of a state of inertia, making the question of platform workers' legal status not currently a particularly lively or active public policy debate in Vietnam.

The ongoing reform of social protection systems has witnessed calls to adapt and expand these systems to cover platform workers. However, as noted above, the new bill on Social Insurance remains silent in this regard, while leaving open the possibility that platform workers may be covered by compulsory insurance if they meet the legal criteria to be considered employees.

THE AUTHORITIES HAVE FAILED TO DELIVER A CLEAR ANSWER TO THE EMPLOYMENT STATUS OF PLATFORM WORKERS. NEITHER THE MOLISA NOR THE VGCL HAS A POSITION IN THIS RESPECT.

Fairwork Vietnam Scores 2023

Minimum standards
of fair work

Baemin	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
BeBike (Be)	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
BeFood (Be)	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
bTaskee	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
GoFood (Gojek)	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
GoRide (Gojek)	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
GrabBike (Grab)	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
GrabFood (Grab)	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
ShopeeFood	-	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>

THE BREAKDOWN OF SCORES
FOR INDIVIDUAL PLATFORMS IS
AVAILABLE AT:

WWW.FAIR.WORK/VIETNAM

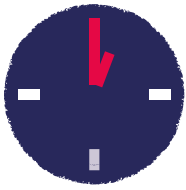
Explaining the scores



Fair Pay

- Platforms that ensure workers are paid at least the local minimum wage after work-related expenses are subtracted from workers' earnings can meet this threshold. Vietnam has a regional minimum wage. Apart from one outer rural district, in Ho Chi Minh City for 2022-2023 the minimum wage is 22,500 VND (approx. \$1 USD) per hour.
- While worker interviews indicated that workers for a few platforms could potentially earn the local minimum wage after costs, no platform provided evidence to confirm that all their workers earned the minimum wage or above.
- Gojek provides a top-up income for both GoRide and GoFood workers who accumulate a determined number of points per day (based on the number of orders of rides a worker completes, and the time of day they were undertaken) if their financial earnings remain below a certain threshold. Workers who do not attain these points, however, are unable to benefit from this scheme.
- When assessing minimum wage, the scores considered the amount paid to the worker for hours worked and the cost of providing task-specific equipment and paying work-related costs out of pocket. Other costs included but were not limited to vehicle maintenance, petrol, mobile phone and internet data, and any insurance costs. Fairwork considers the time that workers are logged into the platform waiting to be assigned jobs to be working time, and not just the time workers spend undertaking these jobs.
- Platforms which also ensure that workers earn the local living wage after costs can earn an additional point for this principle. Vietnam does not have a formally established living wage rate. To estimate a living wage, Fairwork Vietnam took the Global Living Wage Coalition's 2020 calculation for a monthly living wage in Ho Chi Minh City, and adjusted this for the city's inflation since then. This produced a living wage estimate of 7,830,108 VND (\$330 USD) per month. Based on Vietnam's standard working week of 48 hours, that equates to an hourly living wage of 37,645 VND (\$1.60 USD).





Fair Conditions

- Platforms that show that they are aware of workers' risks and provide steps to mitigate them can meet this point.
- Worker interviews provided mixed evidence. Workers for all platforms indicated that they had to pay for their own equipment. Where platforms provided safety training, this was unpaid. Baemin and Be (both beBike and beFood) provide free annual health checks for workers. bTaskee

also seems to take some steps to mitigate risks (see Platform in Focus, pg. 20). Baemin, Be, bTaskee, Grab, and ShopeeFood provide some accident and injury insurance to workers free of charge. No platform, however, was able to be awarded this point, largely because they make workers pay for their own equipment, only provide limited and unpaid safety training, and don't undertake enough adequate measures to mitigate risks.



Fair Contracts

- For platforms to meet this point, they must demonstrate that the contract or terms and conditions are clear and accessible to all workers, and that they have legal recourse if the other party breaches those conditions. No platform was able to be awarded this point.
- Many key contract terms are not specific enough, and most platforms also retain the right to revise several important terms during the course of the contract/agreement, making the terms and conditions more uncertain to the worker. For example, some platforms' contracts do not explain how bonuses and entitlements are calculated and paid, while others do not explain how incentive pay is calculated. One platform's contract mentions that the worker may be entitled to an 'application development fee' (*phí phát triển ứng dụng*) but does not explain how this fee is calculated and paid. Many of the platform's contracts also allow for entitlements to be revised, suspended, denied or terminated at any time by the platform.
- Some platforms' contracts also do not specify the percentage of revenue sharing between the parties and/or allow for this percentage to be revised at any time by the platform. While another contract mentions an 'App Use Fee' (i.e., the percentage-based commission taken by the platform), this fee can be revised at any time by the platform.
- Contracts often require workers to observe a code of conduct or platform-specific policies which are enacted and can be revised at any time by the platform. In one platform's case, workers are required to comply with several rules as well as 'common social norms' (*chuẩn mực chung của xã hội*), none of which are explained.
- Worker interviews indicate that many do not fully understand their contracts. Several reported that their contracts were too long to read or remember. Furthermore, some contracts make frequent use of formal and complex legal language, arguably making the documents difficult for workers to understand. Indeed, several workers complained that some terms of their contracts were unclear, confusing or hard to understand.
- The majority of workers for all platforms confirmed they had signed a contract/agreement with the platform. A further group of workers said they had signed something but did not remember its title or substance. A small number said they had only signed brief commitment forms, not contracts. A few workers insisted they had not signed any contract or agreement.
- Worker evidence is mixed about whether workers can easily access their contracts or terms and conditions. Some say they can access these through the platform application, others said they were given hard copies, while some did not know how to access their contracts.

- Most contracts explicitly protect the platform from liability for negligence and/or unreasonably exempt it from liability for working conditions. Although one platform’s contract does not explicitly exclude the platform from liability for working conditions, such exclusion can be deemed to be implied in the classification of the worker as a “partner” of the platform and his/her responsibility for compensating all losses and damages caused to customers and other third parties during the worker’s performance of work. With the exception of one platform, contracts often require the worker to waive some or all claims against the platform. Further, some contracts provide that disputes between

the two parties shall be finally resolved by commercial arbitration, effectively preventing workers from taking legal action owing to their lack of financial capability and legal consultancy.

- All platforms have published privacy/data protection policies on their websites, but these are not comprehensive and specific in respect of how the platform guarantees and upholds data subject rights. Many data subject rights established in local laws and/or international practice are not (fully) recognised. And in case they are, several platforms do not offer a concrete process and timeline to facilitate the exercise of that right.



Fair Management

- To meet this point, platforms must demonstrate that they have effective communication channels and a documented process for appealing disciplinary actions such as deactivation.
- All platforms had multiple channels of communication available to workers, including for deactivated workers. In addition to communication through the app, these channels included telephone hotlines, social media (especially Facebook and Zalo, a popular messaging app in Vietnam), and a physical office which workers can visit.

- No platform provided sufficient evidence of the effectiveness of using these channels, of a documented process for appeals, or that workers are not discriminated against for raising concerns. Common complaints across the assessed platforms were that workers’ concerns are rarely resolved, unfair deactivations cannot be effectively appealed, and that calls to telephone hotlines sometimes go unanswered.



Fair Representation

- To be awarded these points, platforms should assure freedom of association and the expression of collective worker voice.
- Vietnam has not yet ratified ILO Convention 87 on Freedom of Association and Protection of the Right to Organise, one of two core conventions guaranteeing freedom of association.

Given this context, in this year’s scoring round, the Fairwork Vietnam team did not award principle 5 to any platform (see Theme in Focus, pg. 24). Once Vietnam ratifies Convention 87, which it is expected to do in 2024, Fairwork will reconsider this decision.



PLATFORM IN FOCUS

bTaskee

bTaskee launched in Vietnam in April 2016, and has since expanded to Thailand. The platform plans further expansion to other Southeast Asian markets, including Indonesia, Malaysia and the Philippines. It currently operates in 10 major cities and provinces in Vietnam, claiming 350,000 customers and 7,000 “taskers” (workers) performing a variety of domestic services such as cleaning, cooking, and childcare. In 2021, the platform had over 400,000 customers and 2.5 million tasks performed.

While most app-based drivers (both motorbike and car drivers) are men, significant numbers of bTaskee workers are women. Interviews with female bTaskee workers indicate that one major reason they choose to work for the platform is due to the flexibility such work allows. While the intense and long hours of industrial work means that workers often leave such jobs when they enter middle age or have children, bTaskee allows older women and those with childcare or other responsibilities to find work.

In this year’s Fairwork Vietnam scoring round, desk research and worker interviews indicated that bTaskee had several good practices that other platforms can learn from, which are worth highlighting here.

In terms of pay, worker interviews indicated that earnings were substantially higher than for other platform workers. While workers for some, but not all, of the other assessed platforms also indicated that they earned the minimum wage or higher after costs, bTaskee was one of the few platforms which had workers who indicated that they earned above the living wage. However, we were unable to ascertain that all workers were able to earn the living wage, or that there were mechanisms in place to prevent them from earning below the minimum wage.

While the risks of lone working for ride-hailing and food delivery workers – including extreme weather, dangerous roads, or pollution – are often associated with working outside, for bTaskee workers, the risks are different, and

often arise from working alone inside customers’ houses. Workers identified a number of risks, including fatigue; accidents; the effects on the body of using toxic chemicals for cleaning (such as on eyes, hands, and skin); pain, including neck and wrist pain; heat stress; aggression, unpleasantness and sexual harassment from customers; and the loss or theft of workers’ vehicles due to limited safe places to park by customers’ houses.

There is some evidence that bTaskee is taking steps to mitigate these risks through, for example, recommending (but not providing) goggles when using chemical cleaning agents. One worker commented that the platform has a support policy for when workers have accidents. Another worker mentioned that, on an unpaid training course provided by bTaskee the platform had said that if workers face issues regarding such risks as sexual harassment, no parking spaces near customers’ houses, or customers causing difficulties, they should call the platform’s hotline and the platform will handle it. One worker said that they would appreciate training on how to deal with sexual harassment, describing it as “necessary for this job”, or how to mitigate the risks of the job. bTaskee also provides free accident and injury insurance for workers.

While workers appreciate the flexibility of platform work, the lack of policies around loss of standing on the platform means that they are affected by periods away. This can lead to workers losing promotion benefits and star points if they do not work for a prolonged period.

According to bTaskee's contract with workers, the platform has no obligation to notify the worker of any proposed change in advance, except where there is a change to the revenue-sharing percentage or the 'application development fee'. There is nothing in the contract which prevents the platform from implementing a change that reverses workers' accrued benefits and reasonable expectations. The contract also says that bTaskee bears no responsibility or liability for any act of negligence relating to the service provided by the worker to clients. This provision can be broadly construed as excluding the platform from liability for negligence and working conditions.

WORKERS IDENTIFIED A NUMBER OF RISKS, INCLUDING FATIGUE; ACCIDENTS; THE EFFECTS ON THE BODY OF USING TOXIC CHEMICALS FOR CLEANING (SUCH AS ON EYES, HANDS, AND SKIN); PAIN, INCLUDING NECK AND WRIST PAIN; HEAT STRESS; AGGRESSION, UNPLEASANTNESS AND SEXUAL HARASSMENT FROM CUSTOMERS; AND THE LOSS OR THEFT OF WORKERS' VEHICLES.

The platform's privacy policy does not specify bTaskee's responsibility concerning data protection and measures to be implemented for this purpose.

There is no specified procedure or timeline for the resolution of personal data complaints. Workers have no right to be informed of changes to the privacy policy and may be charged for accessing their own personal data. A worker's data access or correction request can be refused if bTaskee deems the expense incurred to be 'disproportionate to the privacy' of that worker or another party. Contact details for requests to access, correct and restrict the processing of personal data are not provided. bTaskee does not recognise workers' right to object to the processing of their personal data.

The platform applies a dynamic pricing strategy but provides no information on its website (nor in contracts with workers) as to when and how dynamic pricing is used, and how much extra income the worker will receive in that case.

bTaskee provides multiple channels of communication for workers to contact the platform. These include two phone hotlines (one for complaints and one for support), social media channels such as Facebook and the Zalo messaging app, direct contact through the bTaskee app, and in person through different offices across Ho Chi Minh City. There is mixed evidence of the effectiveness of these channels. One worker said they have called the hotline many times but rarely had anyone answered. On the other hand, another worker said they know somebody whose app was locked but reopened after they called the switchboard. Another said they called the hotline to complain about their supervisor continuously following them. The situation was subsequently resolved, and the supervisor did not follow them again.



Workers' Stories

Khang* is a 35-year-old food delivery driver, who has worked for his platform since it launched in Ho Chi Minh City. He says that the platform's policies and regulations are causing drivers to leave and work for other platforms instead.

"Drivers are dissatisfied with the policies and leaving in droves. Lots of drivers are moving to other platforms because of their favourable policies for drivers." Khang is not planning to drive for the platform for long, and is only doing so to earn an income. If his income becomes unstable he will shift to driving for a different platform.

Khang's frustrations are many. He says that one of the issues is that drivers often get locked out of the platform for three to five days due to receiving low ratings from customers or not completing enough assigned orders. This has led lots of drivers to quit the platform.

In addition, since 2022 workers are now expected to register the hours they will be working with the platform a week in advance; they can no longer just turn on the app and work whenever they feel like it. The amount workers receive per order is also decreasing. Furthermore, Khang says the platform often miscalculates the number of orders which he has completed. He once had to spend nearly an entire day at the platform's office trying to resolve this issue, but it keeps happening. The platform also frequently unilaterally changes its policies compared to the contract he signed.



Ryan Dinh / Shutterstock



Nelson Antoine / Shutterstock

Ngoc* is a woman in her 30s from a rural area of Vietnam who moved to Ho Chi Minh City to look for work aged 18.

She previously worked in a factory but found that the work was intense, the hours were long, and her income was too low to cover her living expenses. She left that job after one year.

She began working for bTaskee just over a year ago. Most often, she performs house cleaning tasks, but also sometimes elderly care and cooking. Ngoc works for the platform five days per week, eight hours per day, which is shorter than Vietnam’s standard working week of 48 hours. Her monthly income after work-related costs is 8 to 9 million dong, higher than the city’s estimated living wage (see Explaining the Scores, above). The job also gives her enough time to take care of her children.

Another reason why Ngoc likes bTaskee is because she feels the platform takes workers’ voices and perspectives into account, such as after customers give them low ratings. Earlier this year, the platform added a feature for workers to be able to rate customers.

Ngoc told us: “Thanks to my work with bTaskee, I have a fairly stable income which is better than my previous jobs and better than other jobs. I can share the responsibility for family finances with my husband, am not dependent on him, and have a bigger voice regarding decisions about household spending. My husband is a [driver for another digital labour platform], so things would be extremely tight if we only had his income.”

Ngoc’s main concerns are regarding occupational health and safety, and social protection. She frequently uses chemical cleaning agents, which often make her feel dizzy, tired, and uncomfortable. The platform’s response is simply to advise workers to refuse jobs which they feel are dangerous or tiring. Ngoc wishes the platform would provide medical insurance and annual health checks for workers. In addition, as workers are classified as self-employed contractors rather than employees, bTaskee does not contribute to the national social insurance scheme; Ngoc wishes she was an employee so that the platform would pay social insurance contributions.

***Names changed to protect worker’s identity**

THEME IN FOCUS

Freedom of Association and Worker Activism

There is currently no freedom of association in Vietnam. The country has a single state-led union, the VGCL. All unions are affiliated to this confederation, and independent unions are illegal.

Some limited freedom of association reform was introduced in chapter 13 of the 2019 Labour Code, allowing enterprise-level worker organisations (tổ chức của người lao động tại doanh nghiệp), but not unions, independent of the VGCL. In practice, however, worker organisations cannot yet exist as an implementing decree is required to establish, for example, how such organisations can be formed and legally registered. Such a decree has not yet been introduced.

In addition to freedom from the state or government, another core aspect of freedom of association is freedom from employers. A major problem in Vietnam is that workplace-level union representatives have often been company managers. In July 2019, Vietnam ratified the ILO's core convention 98 on the Right to Organise and Collective Bargaining (it formally came into force a year later in July 2020), which is supposed to prevent workers' and employers' organisations from interfering in each other's activities. This should have stopped the issue of union reps being managers. In 2021, the Prime Minister enacted a plan to implement convention 98, the impact of which remains to be seen.

Despite unions being subordinate to the state at the national level and often subordinate to employers at the workplace level, this does not mean that the VGCL is useless. The Confederation generally takes a more pro-

labour stance compared to MOLISA when it comes to, for example, legal and policy debates or minimum wage negotiations. The VGCL has also undertaken projects around issues such as collective bargaining (including sectoral and multi-employer bargaining), bottom-up organising, and the development of provincial union legal consultancy centres, which provide legal advice and representation to sue employers who commit unlawful behaviour, sometimes winning very substantial amounts of money for workers. Enterprise-level unions are often considered the weakest part of the trade union structure in terms of being willing and able to represent workers, largely due to the issue of managers often acting as union reps. Even here, however, there are cases, albeit rare, of effective workplace union reps, and union busting and discrimination by employers in an attempt to stop them.

In terms of digital labour platforms, the VGCL has been forming platform worker associations (nghịệp đoàn) – as such workers are not classified as employees, they cannot be in unions – and has announced an effort to increase the number of associations, the number of workers in them, and their effectiveness. The VGCL has also been pushing for changes in social protection policies and systems to allow platform workers to be covered. And whilst the VGCL does not have a formal position on whether platform workers should be formal employees, some prominent figures within

the Confederation have publicly said they should be. For instance, when the UK Supreme Court ruled in 2021 that Uber drivers were workers and not contractors, one of the VGCL's Vice Presidents publicly said the ruling was correct and that Vietnam's courts should make a similar ruling regarding app-based drivers.

Worker activism

Either despite or because of Vietnam's lack of formal freedom of association – depending on one's perspective – the country has also seen huge numbers of wildcat strikes, self-organised by workers without the union (the VGCL has never organised a strike). These have been very successful in terms of winning immediate demands at the workplace. Union officials, while not helping to organise strikes, will often step in once a dispute has begun to negotiate an agreement which often consists of many workers' demands being met. Strikes have also been the catalyst for much broader changes: legal reforms, VGCL attempts to become more representative, the establishment of a system for annual minimum wage rises, and more. Strike numbers have substantially declined in recent years, from around 1000 in 2011 to just over 100 in 2021 – although this rose again to over 150 in 2022 – but remain a significant force in labour politics.

At the same time as the overall decline in strikes, there has been another trend – while strikes have traditionally been confined to industrial production, over the past five years or so there has been a rise in strikes by workers for digital labour platforms, especially by app-based drivers. The biggest strike in this sector to date was in December 2020, when Grab drivers successfully struck to demand a change in tax policy be reversed. Strikes often consist of drivers turning off the app then driving around the city in protest, and/or gathering outside the platforms' offices. At times, the platform will ask the drivers to send some representatives inside to negotiate. There is also evidence that platforms sometimes discriminate against the people they have judged to be the organisers of strikes and protests.

Non-award of Fairwork Principle 5

Fairwork's principle 5, on fair representation, focuses

on freedom of association, in line with the ILO's core convention 87 on Freedom of Association and Protection of the Right to Organise, as this is integral to securing fair working conditions. Vietnam, however, has not ratified convention 87, although has announced plans to do so. While this is being resolved, Fairwork is not awarding platforms a point for principle 5 for Vietnam.

BECAUSE THERE IS ONLY ONE UNION CONFEDERATION IN VIETNAM, WHICH IS NOT INDEPENDENT OF THE STATE, THIS REQUIREMENT CANNOT EFFECTIVELY BE MET.

While it is possible, although somewhat rare, for a union (or association, in the case of workers classified as informal) to be independent of employers, the Fairwork principle clearly indicates that workers must have the choice to form or join an independent organisation of their choosing. Because there is only one union confederation in Vietnam, which is not independent of the state, this requirement cannot effectively be met.

Workers also self-organise, and platforms sometimes engage with (and then potentially sometimes discriminate against) these workers, asking representatives to come to the office to negotiate during a dispute. Given, however, that legally this form of worker organisation is entirely informal and does not exist in any legal sense, platforms would not be able to demonstrate a documented process for engaging with such groups. In this regulatory environment, the assessed platforms cannot evidence principle 5 until Vietnam ratifies ILO core convention 87.

Policies in Focus

Despite Fairwork not finding adequate evidence for any platform to receive points in this year's scoring round, platforms did demonstrate some good practices. While none were yet sufficient to receive any points, these policies could be expanded, enhanced, or built upon to begin to ensure fair work in the Vietnamese platform economy.

Fair Pay

bTaskee: Worker interviews indicate that bTaskee workers may earn not only the local minimum wage after costs, but also the local living wage after costs. If bTaskee can ensure that this is the case for all workers, it would provide them with substantial income security.

Gojek: Gojek provides a top-up income for both GoRide and GoFood workers who accumulate a determined number of points per day if their financial earnings remain under a certain threshold. Points are determined by how many orders or rides a worker completes. If Gojek can expand this policy to apply to all workers, it would provide them with some basic but important income security.

Fair Conditions

Baemin: Baemin provides free annual health checks for workers, and some accident insurance free of charge.

Be: Be provides free health checks and free accident insurance for both beFood and beBike workers, and free health insurance for workers who reach certain performance-related criteria.

bTaskee: bTaskee provides accident and injury insurance for workers, and there is evidence that the platform takes some steps to mitigate risks. One worker commented that the platform has said that if workers face issues regarding such risks as sexual harassment, no parking spaces near customers' houses, or customers causing difficulties, they should call the platform's hotline and the platform will handle it.

Grab (GrabFood and GrabBike): Grab provides free accident insurance for workers.

ShopeeFood: ShopeeFood provides free accident insurance to workers who meet some conditions, such as having undertaken a minimum of 200 orders over the previous 30 days, including undertaking orders on at least 24 of those days.

Fair Management

All platforms have multiple communication channels which workers, including deactivated workers, can use. To improve further, platforms could record response rates, introduce a documented appeals process, and ensure that workers are not disadvantaged for raising concerns.

bTaskee: bTaskee has five offices in different areas of Ho Chi Minh City, all open from 08:30am to 6pm six days per week. This makes it easy for workers to contact the platform in person when needed.

When workers receive a bad rating from a customer, bTaskee will call the worker to ask for their side of the story. Fairwork's research in other country contexts has found that this practice is important for reducing cases of sexual harassment and gender discrimination. bTaskee workers, however, report mixed results after being called by the platform, but it is a practice on which bTaskee can build to further improve.

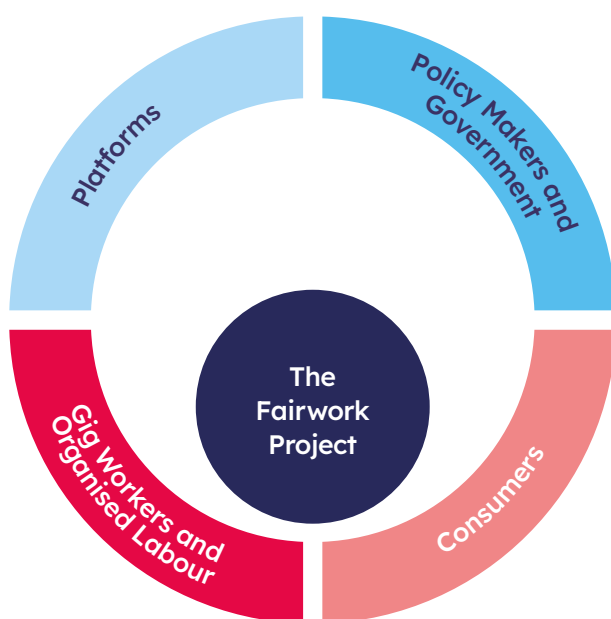
Pathways to Change

Fairwork’s theory of change relies on a humanist belief in the power of empathy and knowledge. If they have the economic means to choose, many consumers will be discerning about the platform services they use.

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 leverage consumer solidarity with workers’ allies in the fight for fairer working conditions. 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.

This is the inaugural round of Fairwork ratings for Vietnam, and we can see a number of pathways to change (Figure 2).

Figure 2: Fairwork’s Pathways to Change

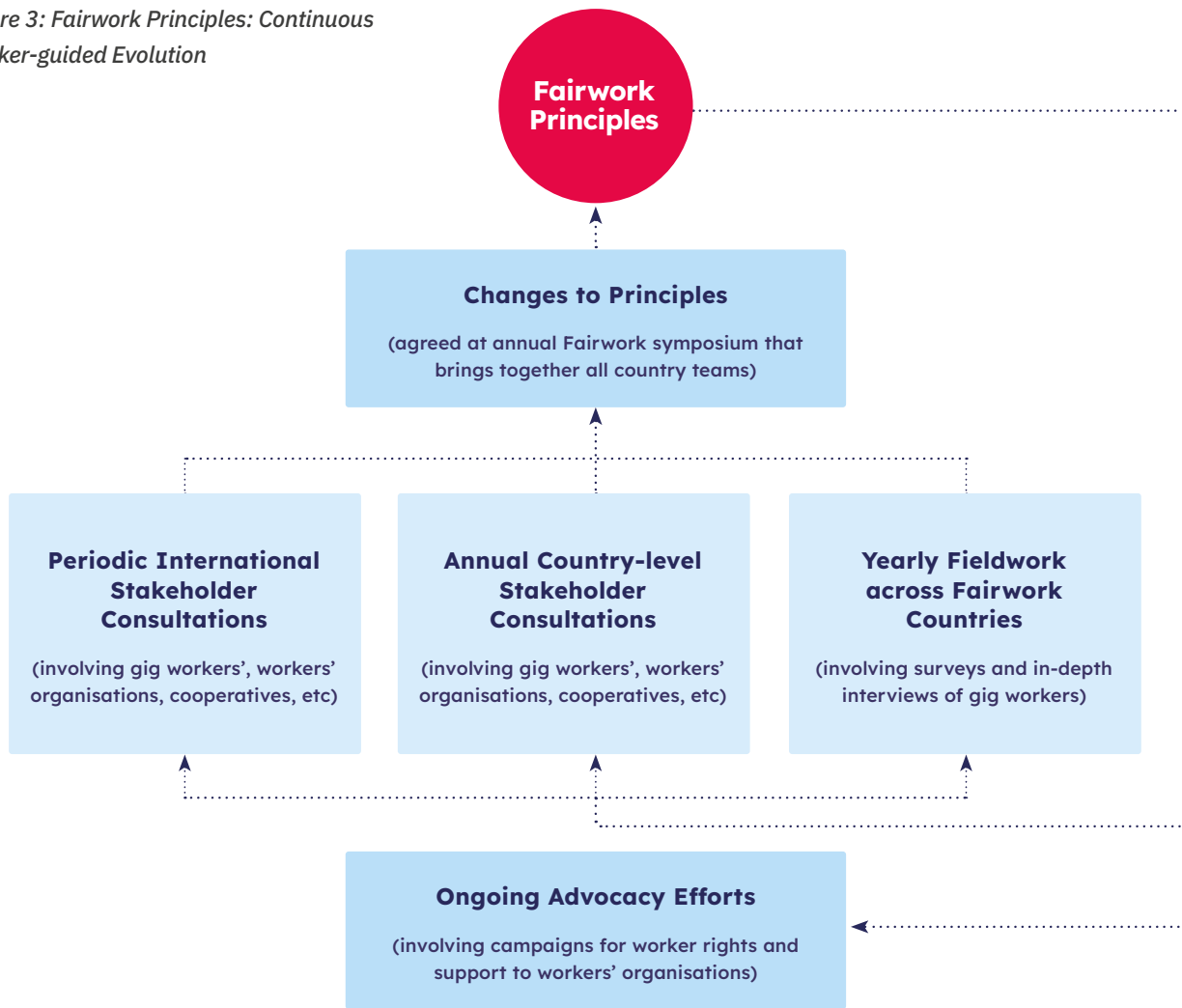


Our first and most direct pathway to improving working conditions in digital labour platforms is by engaging directly with platforms operating in Vietnam. Many platforms are aware of our research, and willing to engage with the project. For example, three platforms engaged with us by providing detailed information about their policies and evidence of their positive effects for workers. While no platform scored any points, some came very close to doing so and we have identified good practices which if expanded would lead to better working conditions.

While regulations regarding the employment status of digital platform workers are not currently on the horizon in Vietnam, there is an increasing recognition that platform workers often have no, or at best an extremely limited, safety net, and that social protection schemes could be adapted to cover such workers. Fairwork Vietnam supports this and encourages the development of social insurance schemes for platform workers. Such schemes would provide workers with some much-needed security.

Most importantly, workers and their organisations are at the core of Fairwork’s model. With both the VGCL keen to become more representative of platform workers, and with Vietnam’s ratification of ILO Convention 87 expected in 2024, the platform economy is on the verge of change. This report is an important and timely reminder of the need to involve workers in collective bargaining in order to ensure decent, dignified and fair work.

Figure 3: Fairwork Principles: Continuous Worker-guided Evolution



There is nothing inevitable about poor working conditions in the platform economy. Despite 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 the 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 better labour practices, guided by our five principles of fair work. Organisations 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 ABOUT THE PLEDGE, AND HOW TO SIGN UP, IS AVAILABLE AT

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”. 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”. 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 obviously excluded from the definition. The ILO’s definition of “digital labour platform” is widely accepted and includes many different business models.

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 on a temporary basis).

Fairwork distinguishes between two types of these platforms. The first, is ‘location-based’ 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, whereas cloudwork platforms cannot because (by their nature) the work can 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, 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.

A platform can therefore receive a maximum Fairwork score of ten points. Fairwork scores are updated on a yearly basis; the scores presented in this report were derived from data pertaining to the months between February 2023 and May 2023, and are valid until October 2024.

Table 1 Fairwork: Scoring System

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	 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, or fuel, insurance, and maintenance on a vehicle. 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, such as mandatory training, which are also considered active hours. To achieve this point platforms must ensure that work-related costs do not push workers below local minimum wage.

The platform takes appropriate steps to ensure both of the following:

- Payment must be on time and in-full.
- 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.

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 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.

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 basic steps to mitigate them.

The platform must satisfy the following:

- Adequate equipment and training is provided to protect workers' health and safety from task-specific risks.

These should be implemented at no additional cost to the worker.

- The platform mitigates the risks of lone working by providing adequate support and designing processes with occupational safety and health in mind.

2.2 - Ensures safe working conditions and 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 should ensure that workers are compensated for loss of income due to inability to work. In addition, platforms must minimise the risk of sickness and injury even when all the basic steps have been taken.

The platform must satisfy ALL of the following:

- Platforms take meaningful steps to ensure that workers do not suffer significant costs as a result of accident, injury or disease resulting from work.
- Workers should be 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.
- The platform implements policies or practices that protect workers' safety from task-specific risks. In particular, the platform should ensure that pay is not structured in a way that incentivizes workers to take excessive levels of risk.

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 workers. 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 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/terms & conditions are presented in full in clear and comprehensible language that all workers could be expected to understand.
- Workers have to sign a contract and/or give informed consent to terms of conditions upon signing up for the platform.
- The contracts/terms and conditions are easily accessible to workers in paper form, or via the app/platform interface at all times.
- Contracts/terms & conditions do not include clauses that revert prevailing legal frameworks in the respective countries.
- Platforms take adequate, responsible and ethical data protection and management measures, laid out in a documented policy.

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 contractual status of the worker is classified, the platform must satisfy ALL of the following:

- Every worker is notified of proposed changes in clear and understandable language within 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.
- The contract/terms and conditions neither include clauses which exclude liability for negligence nor unreasonably exempt the platform from liability for working conditions. The platform 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.

- In case platform labour is mediated by subcontractors: The platform implements a reliable mechanism to monitor and ensure that the subcontractor is living up to the standards expected from the platform itself regarding working conditions.
- In cases where there is dynamic pricing used for services, the data collected and calculations used to allocate payment must be transparent and documented in a form available to workers.

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 an easily accessible channel for workers to communicate with a human representative of the platform and to effectively solve problems. 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 and effectively 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 interface.
- 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:

- The platform has an effective anti-discrimination policy laying out a clear process for reporting, correcting and penalising discrimination of workers on the platform 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.
- The platform has measures in place to promote diversity, equality and inclusion on the platform. It takes practical measures to promote equality of opportunity for workers from disadvantaged groups, including reasonable accommodation for pregnancy, disability, and religion or belief.
- 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.
- 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.

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.

Platforms must satisfy ALL of the following:

- There is a documented mechanism for the expression of collective worker voice that allows ALL workers, regardless of employment status, to participate without risks.
- There is a formal, written statement of willingness to recognise, and bargain with, a collective, independent body of workers or trade union, that is clearly communicated to all workers, and available on the platform interface.
- Freedom of association is not inhibited, and workers are not disadvantaged in any way for communicating their concerns, wishes and demands to the platform, or expressing willingness to form independent collective bodies of representation.

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. In a written document available at all times on the platform interface, the platform publicly and formally recognises an independent collective body of workers, an elected works council, or trade union. This recognition is not exclusive and, when the legal framework allows, the platform should recognise any significant collective body seeking representation.

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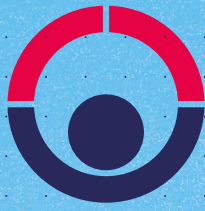


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39. Work-related costs include direct costs the worker may incur in performing the job. This may include, for instance, transport in between jobs, supplies, vehicle repair and maintenance, fuel, road tolls and vehicle insurance. However, it does not include transport to and from the job (unless in-between tasks) nor taxes, social security contributions or health insurance.
40. 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 per cent of the ILO member states.
41. 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 and undertaking mandatory training (i.e., training activities that must be completed for workers to continue accessing work on the platform). 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.
42. 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.
43. Where a living wage does not exist, Fairwork will use the Global Living Wage Coalition's Anker Methodology to estimate one.
44. 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.
45. The ILO recognises health and safety at work as a fundamental right. 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 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."
46. The ILO recognises health and safety at work as a fundamental right. 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 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."
47. 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.
48. 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.
49. In accordance with the ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation and applicable national law.

50. A mechanism for the expression of collective worker voice will allow workers to participate in the setting of agendas so as to be able to table issues that most concern them. This mechanism can be in physical or virtual form (e.g. online meetings) and should involve meaningful interaction (e.g. not surveys). It should also allow for ALL workers to participate in regular meetings with the management.
51. 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.”
52. 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.
53. If workers choose to seek representation from an independent collective body of workers or union that is not readily recognized by the platform, the platform should then be open to adopt multiple channels of representation, when the legal framework allows, or seek ways to implement workers’ queries to its communication with the existing representative body.



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