

Decent Work vis-a-vis Workers' Data Rights and Social Security Concerns in an Algorithmified Workplace

*For the ILO Meeting of Experts on Decent
Work in the Platform Economy*

Policy Input from IT for Change

October 2022

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Introduction

The question of decent work for the platform economy is one of significance, in light of the millions of workers engaged in online web-based or location-based services globally.¹ The ILO meeting of experts has outlined a detailed list of considerations to be addressed in its meeting between 10-14 October, 2022, and IT for Change appreciates and supports this initiative. To that effect, IT for Change, with its experience of research in the field of digital and platform economy, is offering its inputs for the consideration of the expert committee, in order to provide an embedded, as well as analytical lens on the questions at hand.

The issues of data rights of workers, within the context of algorithmic management (captured in Section 6.3 of the reference document),² and social protection of platform workers (Section 6.4 of the reference document),³ in our opinion, require broad-based yet incisive deliberations. IT for Change's submissions will address these considerations in light of the following two proposed points of discussion:

- Point no. 4: What are the working conditions and social protections of platform workers? Are workers' personal data protected? Are there safeguards in place concerning the use of technology for organizing and monitoring platform work?

¹ Estimating the number of platform workers globally is challenging because no official numbers are provided by the platform companies. Some research papers have attempted to do this, see, for instance, Kassi, O, Lehdonvirta, V, & Stephany, F. (2021). *How many online workers are there in the world? A data-driven assessment*. European Commission. <https://open-research-europe.ec.europa.eu/articles/1-53/v4>; Heels, R. (2017). *Decent Work and the Digital Gig Economy: A Developing Country Perspective on Employment Impacts and Standards in Online Outsourcing, Crowdwork, etc.* Digital Development Working Paper Series, University of Manchester. <https://ssrn.com/abstract=3431033>

² ILO. (2022). *Decent work in the platform economy: Reference document for the Meeting of experts on decent work in the platform economy*. Page 33. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_855048.pdf

³ ILO. (2022). *Decent work in the platform economy: Reference document for the Meeting of experts on decent work in the platform economy*. Page 34. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_855048.pdf

- Point No. 6: Which issues should the ILO focus on to help make decent work a reality in the platform economy, notably what guidance could be provided to inform a possible general discussion or standard-setting on decent work in the platform economy, subject to the Governing Body's decision?

This document is divided into two subsections – one each on data protection and data rights vis-a-vis algorithmic management, and social protection, with our responses to ILO's discussion points as well as additional aspects that require examination.

Data Protection and Workers' Rights to Data vis-a-vis Algorithmic Management

The reference document clarifies and confirms the privacy rights of workers and the importance of access to workers' data, including data portability, towards asserting their rights. It is also cognizant of the concerns of algorithmic management. However, there are considerations outside of these that require deliberation, for instance, recognition of the economic value of worker-generated data, data portability for protection of rights and not just as a curriculum vitae, and the necessity of extending the question of algorithmic management beyond the question of transparency alone.

Recommendation 1 – Workers' economic rights to data must be recognized and promoted.

Platform companies monitor and capture vast amounts of data from workers. This is acknowledged by the ILO, as below,

“Platforms capture a vast amount of data on workers, from where they are at a given moment to the web pages that they visit. These data constitute a sizeable source of income for the platforms, which does not go to the workers. Some data are used to monitor work and its use is lawful. But other data can affect workers' private lives and their use can be unlawful. There is a thin line between one area and the other, but crossing it means violating the fundamental right to privacy.”⁴

The emphasis on data being a sizeable source of income for platforms with no share for the workers who generate these data, is significant. In this regard, it is crucial to think of alternatives that give workers more control and rights over such data. Further, there is a need to unpack what constitutes lawful gathering of data in the context of monitoring work. The understanding of “lawful” and “unlawful” usage of worker data is evolving quickly, and this ILO consultation should be able to take positions that can dictate law in the countries, rather than relying on what is already the law in certain

⁴ ILO reference document for meeting of experts on decent work in the platform economy (Section 6.3 Subsection 96, page 33)

countries, as the baseline for data regulation generally. This is also relevant in light of the fact that countries have differential standards of data collection, processing, and use, especially in the Global South, and platforms must not conduct rampant data collection in these countries due to less than stringent regulations.

In this regard, we propose the following:

- a. Clear regulation from states must be developed to prevent instances of companies pursuing excessive data collection from apps on workers' phones, or monitoring their activities across personal messaging apps, often used for economic gain by platforms. This must include considerations of what is "lawful" and "unlawful" gathering of data, with guardrails of purpose limitation, data minimisation, and storage limitation.
- b. Such regulation must not rely on individual consent of workers alone, but also recognise that due to the existing informational asymmetry, workers will not always be in a position to take an informed decision.
- c. Collective data rights of workers must be recognised, and proposals like algorithmic use agreements in collective bargaining agreements that include "the right to know what tools are being used, the knowledge of what data is being collected, and the right to access data that is being collected" can be considered.⁵
- d. Pooling or aggregating individual data to build an alternative base for worker controlled digital intelligence must be given specific regulatory guidance and space.

Recommendation 2 – Data portability for platform work should be a right not only for performance metrics, but also platform accountability.

Data portability, i.e., the ability to have access to a machine-readable format of data that can be used by another data controller, enables workers to have visibility into the kinds of data collected by the platform on them, but also have ready documentation of their performance. The ILO reference document recognises this, and states,

"In platform work it is especially important to have portability of data from one platform to another, so as to provide a curriculum vitae that can facilitate mobility between platforms and transfer a worker's ranking from one platform to another. This portability is now one of the most commonly made recommendations on platform work and is already recognized as a right of

⁵ IT for Change. (2022). *Workers' Data Rights in a Platformized Workplace: A new frontier for the labour agenda*. Page 11. https://itforchange.net/sites/default/files/2159/ITfC-Workers%E2%80%99-Data-Rights-Platformized-Workplace_1.pdf

individuals by the General Data Protection Regulation (Article 20) and by the [Standards for Personal Data Protection for Ibero-American States](#) (Article 30).⁶

It is important to caution that the portability of platform workers' rankings on the app, is not a default acceptance that such 'rankings' are a realistic representation of the skill level of the platform workers. Customer ratings are arbitrarily based on one-time evaluation of the workers' service and on a limited five-point grade. Additionally, app ratings have been contested often as being unfair and opaque. So, while such portability grants the worker visibility and access to their data, this should not become the end-all from an overall skill evaluation perspective.

We propose the following:

- a. Data portability must be enabled for workers to allow movement from one platform to another, and avoid being tied to one platform.
- b. It must be recognised that data portability is in the interest of promoting workers' rights and independence, rather than for the limited reason of allowing visibility into their rankings. The goal of making available this data for each worker associated with a platform should be accountability of the platform company.

Recommendation 3 – Algorithmic management must be recognised as a new form of managerial control, and associated harms of automated decision-making must be acknowledged.

The ILO reference document is explicit in its recognition of the impact of algorithmic management and the opaqueness with which it functions. The document notes,

“...if one thing characterises platform work, it is algorithmic management. It is an algorithm that offers and grants services or tasks to workers, defines their time slots, calculates the rankings on which their activities and income depend, and decides whether they will continue to provide services for the platform or remain deselected from it. However, little or nothing is known about the algorithm by the workers who are subject to its dictates because it is opaque and at times incomprehensible to them.”⁷

The harms associated with such automated processing include, but are not limited to, bias in decision making (which the ILO reference document acknowledges), continuous dataveillance that blurs lines between work and life, opaque rules about performance and quality of work, no rights to appeal in cases of automated deplatforming, and, in general, the absence of human intervention for the platform

⁶ ILO reference document for meeting of experts on decent work in the platform economy (Section 6.3 Subsection 98, page 33)

⁷ ILO reference document on Decent Work in the platform economy (Section 6.3, sub-section 98, Page 33)

worker to raise a concern. Article 22 of the EU General Data Protection Regulation requires data controllers (in this case, platform companies) to not only incorporate safeguards for data being processed for contractual agreements, but also provide human intervention.⁸

In order to address the concerns of algorithmic management, we propose the following:

- a. Algorithmic management must be recognized as a new form of managerial control, including the potential harms beyond discrimination and bias.
- b. Platforms must be held accountable for algorithmic actions and required to comply with transparency obligations including revealing the algorithm itself.
 - i. In this regard, India's new Motor Vehicle Aggregator Guidelines 2020 are worth a mention. These guidelines recognise algorithmic decision making and also make the case for revealing of algorithms if so requested by government authorities.
- c. The right to explanation, which refers to the workers' right to be explained and to question the rationale and details of decisions taken by the algorithm, including the sourcing of data from within as well as outside the company, must be provided to workers as an important foundation for regulating such algorithmic management.
 - i. The proposed Directive of the European Parliament and of the Council on improving working conditions in platform work (December 2021) provides for a robust right to explanation for persons performing platform work from the concerned digital platform “for a decision, the lack of a decision, or a set of decisions taken or supported by automated systems that significantly affect their working conditions.”⁹ While welcoming this piece of legislation, digital labour researchers in the EU have highlighted that there is a need to better define what constitutes significant impact on working conditions, to ensure that workers’ “access to work assignments, their earnings, occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account” is covered.¹⁰
- d. The scope of algorithmic management in the platform economy expands beyond the location-based service platforms and crowd-work online platforms that are commonly spoken about. Small-scale farmers selling to large e-commerce platforms are also subject to algorithmic control. It would be a missed opportunity to not recognise this.

⁸ GDPR, Article 22(3). <https://gdpr-info.eu/art-22-gdpr/>

⁹ European Commission. (2021). *Proposal for a Directive of the European parliament and of the Council on Improving Working Conditions in Platform Work*. <https://ec.europa.eu/social/BlobServlet?docId=24992&langId=en>

¹⁰ Abraha, H., Prassl, J., & Kelly-Lyth, A. (2022, May). Finetuning the EU's Platform Work Directive. Retrieved from <https://www.law.ox.ac.uk/business-law-blog/blog/2022/05/finetuning-eus-platform-work-directive?s=09>

Social Protection of Workers in Platform Work

Recommendation 4 – Social protection schemes should recognise platform companies’ accountability towards platform workers, and this accountability should be based on facts relating to the actual performance of work rather than contractual classification of the employment relationship.

The ILO reference document, on the issue of social security, states,

“The first feature to emphasize is the different level of social protection for those who obtain platform work as their main source of income, compared with those who obtain additional income from platform work. Studies estimate that social protection for the former is less than that for the latter since these enjoy the social protection inherent in their main activity away from platforms.”¹¹

The ILO reference document is thorough in discussing the challenges of providing social protection for platform workers. This includes a detailed discussion in Section 5.2 on the classification of platform workers. Any regulation on social security also implicates questions of the existence of an employer-employee relationship, and can vary if the worker is considered dependent or self-employed. However, it must be said that any regulation should not privilege classification of employment relationships in a platform work contract for the determination of employment relationship. Primacy must be given to facts relating to the actual performance of work. This is recognised in the proposed Directive of the European Parliament and of the Council on improving working conditions in platform work, which acknowledges, “The determination of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, taking into account the use of algorithms in the organizing of platform work, irrespective of how the relationship is classified in any contractual arrangement that may have been agreed between the parties involved.” If the emphasis is on actual work, then the social security model must also follow the same.

This is not to say that the ILO document is not cognizant of the issues of providing social protection. It cites the ILO Centenary Declaration for the Future of Work (2019)¹², of providing “universal access to comprehensive and sustainable social protection” (Part III(A)(iii)) in line with international labour standards, in particular the 2012 Social Protection Floors Recommendation¹³ as well as the 102nd

¹¹ ILO reference document on Decent Work in the platform economy (Section 6.4, sub-section 102, Page 34)

¹² ILO. (2019). *ILO Centenary Declaration for the Future of Work*. Page 6.

https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf

¹³ ILO. (2012). *R202 - Social Protection Floors Recommendation (No. 202)*.

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524

Convention¹⁴. It is then necessary to incorporate these principles as a right that platform workers must be entitled to, without falling prey to the employment-employee relationship requirements that platform companies often do not align with.

In this regard, we propose the following:

- a. Social security must be tied to actual performance of work rather than a categorization of employer-employee relationship to prevent circumvention by platform companies.
- b. Workers' data, including information about work hours, earnings, specifics of employment arrangements, must be provided by platform companies, especially in case of non-standard work arrangements to enable designing of appropriate contributory and tax financed social security systems.¹⁵ This has often been done through incentivising platform companies through tax benefits, as in Belgium, or through mandatory disclosures of income of platform workers, like in France.
- c. Platform companies must be held accountable for creating sustainable funds for social security. This is to ensure that there isn't further exploitation of platform workers through contributory formats of social security in contexts like Global South countries, where they barely make minimum wage. It is also to prevent a heavy burden on the state exchequer through a fully state-sponsored social security scheme.

¹⁴ ILO. (1952). *C102 - Social Security (Minimum Standards) Convention (No. 102)*.
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102

¹⁵ IT for Change. (2022). *Workers' Data Rights in a Platformized Workplace: A new frontier for the labour agenda*. Page 9.
https://itforchange.net/sites/default/files/2159/ITfC-Workers%E2%80%99-Data-Rights-Platformized-Workplace_1.pdf