

# **ANALYSIS OF WORKERS' RIGHTS IN THE ON-DEMAND ECONOMY WITH SPECIAL REFERENCE TO VERTICAL INEQUALITY \***

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## **ABSTRACT**

The rapid development of digitalisation has tremendously changed the way business operates. In recent years, the on-demand economy or gig economy model has received positive acceptance worldwide due to its convenience and flexibility, both to business owners and consumers. More importantly, the on-demand economy offers a variety of job prospects to workers *via* digital platforms. These workers are known as 'virtual workers' or 'crowd workers' are classified as 'self-employed' or 'independent contractors'. This new employment model has received much attention from the legal and human rights perspectives. The classical employer-employee relationship that is not transparent in the on-demand economy has resulted in the exclusion of liability and responsibility of platform companies to respect fundamental human rights protections of the workers. Digital platform companies are criticised for taking advantage of the weakened labour standards and

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protections, such as lack of collective bargaining power, inadequate social security protection, unlimited working hours, and inadequate safety and health policies at the workplace. In addition, the workers at these platforms reportedly experienced irregular payment schemes. This led to vertical inequality and discrimination between these two groups of workers. Hence, this paper seeks to explore and examine human rights protection concerning workers in the on-demand economy. Additionally, this paper will present a specific discussion on vertical inequality between the two groups of workers and thereafter recommend the need for determination of employment status for the platform workers and also the need to ensure essential human rights protections for all workers irrespective of their employment status.

**Keywords:** Human rights in business, platform workers, on-demand economy, vertical inequality.

## **ANALISA HAK-HAK PEKERJA DALAM EKONOMI BERASASKAN PERMINTAAN DENGAN PERBINCANGAN KHUSUS TENTANG KETIDAKSAMAAN MENEGAK**

### **ABSTRAK**

Perkembangan pesat pendigitalan telah banyak mengubah cara perniagaan beroperasi. Dalam tahun-tahun kebelakangan ini, model ekonomi atas permintaan atau ekonomi gig mendapat penerimaan positif di seluruh dunia disebabkan ciri fleksibilitinya, baik kepada pemilik perniagaan mahupun pengguna. Lebih penting lagi, ekonomi atas permintaan menawarkan pelbagai prospek pekerjaan kepada pekerja melalui platform digital. Pekerja ini dikenali sebagai 'pekerja maya' atau 'crowd-workers' yang diklasifikasikan sebagai 'bekerja sendiri' atau 'kontraktor bebas'. Model pekerjaan baharu ini telah mendapat banyak perhatian daripada perspektif undang-undang dan hak asasi manusia kerana hubungan klasik majikan-pekerja tidak wujud secara terang dan dengan itu akan mengecualikan syarikat platform dari sebarang liability dari segi perlindungan asas dan hak asasi kepada pekerja platform. Oleh itu, syarikat yang berasaskan platform digital dikritik hebat kerana mengambil kesempatan daripada perlindungan undang-undang buruh yang lemah, seperti kekurangan kuasa tawar-menawar kolektif, perlindungan keselamatan sosial yang tidak mencukupi, waktu kerja tanpa had dan keselamatan dan kesihatan yang tidak mencukupi di tempat kerja. Di samping itu, pekerja platform ini dilaporkan mengalami skim pembayaran yang tidak teratur yang seterusnya membawa kepada

ketidaksamaan menegak dan diskriminasi antara kedua-dua kumpulan pekerja ini. Oleh itu, kertas penyelidikan ini akan meneroka dan mengkaji isu-isu hak asasi manusia berhubung dengan pekerja dalam ekonomi atas permintaan, dengan perbincangan khusus mengenai isu ketidaksamaan menegak antara kedua-dua kumpulan pekerja dan selepas itu mengesyorkan keperluan untuk penentuan status pekerjaan bagi memastikan kesamarataan hak asasi pekerja tanpa mengira status pekerjaan.

**Kata kunci:** Hak asas imanusia dalam perniagaan, pekerja platform-ekonomi berasaskan permintaan, ketaksamaan menegak.

## INTRODUCTION

In recent years, the use of digital platforms such as FoodPanda, Grab, and Lalamove have been on the rise and more prevalent, especially during the global pandemic COVID-19 (2019 onwards). These digital platforms also provide consumers with an alternative way to get food, groceries, or other supplies in a quick, convenient, and low-cost manner. The workers are regarded as frontliners due to their critical role in keeping society together during adversity.

In contrast to traditional brick-and-mortar businesses, the on-demand economy is a platform-based business in which all transactions are completed online. The role of the digital platforms (mobile applications) is to match individuals (business owners) who are registered on the platform who offer goods and/or services to recipients (consumers) who are also registered on the platform, to receive goods or services via the platform.<sup>1</sup> The application then connects users with workers who are physically assigned to perform the service, such as in the transportation and delivery sector. The work arrangements by the platforms involved a large pool of 'virtual workers' whose working activities imply completing a series of tasks through online platforms that act as intermediaries and facilitate the connection between an indefinite number of organisations and individuals as costumers and

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<sup>1</sup> Ruben Agote and Gonçalves Pereira, "On Demand Economy: 10 Keys To Understanding From a Labor Perspective," *IUS Labor*, no. 1(2017): 1–18.

workers.<sup>2</sup> Thus, employment in the on-demand economy is categorised as a non-standard form of employment, temporary work, or part-time work. The arrangements provide workers with a more control over their work schedules without undermining their existing commitments.<sup>3</sup>

Platform workers worldwide had sought reclassification as employees in order to benefit from the basic human rights protection as workers. In Italy for example, six Foodora riders (a German food delivery Platform) had brought their claims against the platform when the latter changed the payment scheme and reduced a substantial amount of the hourly delivery fee. Prior to that, the platform workers organised demonstrations and campaigns, which negatively impacted them when some of the workers were fired by the platform (by refusing to renew their fixed-term contracts after expiration). The claims include; a reclassification of their status to employees which entailed the right to receive significant wage differentials, the right to collective agreements and collective action, the illegitimacy of the wrongful dismissal, and the consequent right for reinstatement.<sup>4</sup> In 2018, the Tribunal of Turin rejected all the claims and ruled that the workers (riders) were not employees. This is because they have the freedom to determine their own working schedules, which is contrary to the notion of subordination. Under this notion, the workers act under the control and direction of the employer and are thus bound to perform their tasks within a spatial or temporal framework determined by the counterpart (the riders have the autonomy to give or not to give their availability on the slots offered and the platform is free to accept such availability and to insert the workers in the slot chosen).

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<sup>2</sup> Valerio De Stefano, “*The Rise of the 'Just-in-time Workforce': On-Demand Work, Crowdswork and Labour Protection in the Gig-Economy*,” (Geneva: International Labour Office, Inclusive Labour Markets, Labour Relations and Working Condition Branch, 2016): 1.

<sup>3</sup> International Labour Organization, “*Collective Bargaining and Non-Standard Forms of Employment: Practices That Reduce Vulnerability and Ensure Work Is Decent*,” issuebriefno.3, (Geneva: ILO, 2015), 1, [https://doi.org/10.1007/978-1-349-01291-6\\_5](https://doi.org/10.1007/978-1-349-01291-6_5).

<sup>4</sup> Gionata Cavallini, “*The First Italian Decision on the Status of Gig Workers Denies Reclassification*,” (ELW: European Lawyers for Workers Network, 2018), 1, <https://elw-network.eu/first-italian-decision-status-gig-workers-denies-reclassification/>.

In 2021, the Supreme Court in the United Kingdom heard an appeal on the issue of whether drivers whose work is arranged through Uber's smartphones application ("the Uber app") are under workers' contracts to qualify for the national minimum wage, paid annual leave and other workers' rights. The court firmly established that the employment relationship must be determined by an investigation and evaluation of the factual circumstances in which the work is performed.

Whether an individual performs the work as an employee or as an independent contractor is to be regarded as a question of fact.<sup>5</sup> The judgment marked a positive highlight on the employment classification of platform workers in the UK.

Significantly, when the national law fails to specify the status of these workers, these individuals will not be accorded with the employment protection such as the right to safe and healthy working conditions, right to just and favourable remuneration, right to social security, and other employment benefits.<sup>6</sup> Furthermore, non-standard employment may mean that the income is unspecified and may fluctuate, depending on the demand at a particular time. Thus, the disparities in payment between platform workers and traditional employees have resulted in vertical inequality between these two groups of workers.<sup>7</sup>

Henceforth, this paper will explore and examine human rights issues concerning workers in the on-demand economy. Firstly, this paper will discuss the legal standard for determining workers' status under Malaysian law, particularly the status of employment of platform workers and the applicability of existing law for their labour rights protection. Secondly, this paper will analyse the issue of vertical inequality from the human rights perspective. This paper uses a

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<sup>5</sup> *Uber BV and others (Appellants) v Aslam and others* [2021] Hilary Term UKSC 5; 36-37.

<sup>6</sup> Kristofer Erickson and Inge Sørensen, "Regulating the Sharing Economy," *Internet Policy Review* 5, no.2(2016): 1-13, <https://doi.org/10.14763/2016.2.414>; Finn Makela, Derek McKee and Teresa Scassa, "The 'Sharing Economy' Through the Lens of Law," in *Law and the 'Sharing Economy' : Regulating Online Market Platforms*, (Canada:University of Ottawa Press, 2018), 7.

<sup>7</sup> Gillian MacNaughton, "Vertical Inequalities: Are the SDGs and Human Rights Up to the Challenges?," *International Journal of Human Rights* 21, no.8 (2017): 6.

doctrinal legal method and descriptive analysis to highlight the issue of vertical inequality experienced by platform workers in the on-demand economy, the need for redetermination of worker status, and the need to ensure basic human rights protection is provided to all workers regardless of employment status.

## **LEGAL STANDARD FOR DETERMINING WORKERS' STATUS IN MALAYSIA**

In general, human rights are moral rights possessed by all human beings simply by virtue of their humanity, which is interdependent, indivisible, and universal. However, workers' rights fall under the notion of economic and social rights (ESR), which is considered the second generation of human rights.<sup>8</sup> These rights relate to realising basic human needs and economic conditions required for a life of dignity and freedom.<sup>9</sup> While basic human rights such as the right to life, free expression, and a fair trial are regarded as a moral component of human dignity, ESR is rights that are fundamentally necessary to attain complete growth as a human being as well as to live in standard quality of life. ESR generally requires comprehensive activities on the part of the State in ensuring its realisation and effective institutions with obligations to fulfill these rights.<sup>10</sup> Hence to enjoy these rights, it requires correlative obligations on the duty-bearer (the State) to enforce them.<sup>11</sup>

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<sup>8</sup> Karel Vasak, "Human Rights: A Thirty-Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights," *The UNESCO Courier: a Window Open on the World* XXX, no. 11 (1977), 28-29, <https://unesdoc.unesco.org/ark:/48223/pf0000048063>.

<sup>9</sup> Amanda Cahill-Ripley and Diane Hendrick, "*Economic, Social and Cultural Rights and Sustaining Peace: An Introduction*," (Friedrich-Ebert-Stiftung, Quaker United Nations Office and Lancaster University, 2018), 9.

<sup>10</sup> Onora O' Neill, "The Dark Side of Human Rights," *International Affairs (Royal Institute of International Affairs 1944-)* 81, no. 2 (2005): 431-434, <https://www.jstor.org/stable/3568897?seq=1>.

<sup>11</sup> Jack Donnelly, "*Universal Human Rights in Theory and Practice*" third edition (Ithaca and London: Cornell University Press, 2013), 8.

The Federal Constitution of Malaysia does not explicitly recognise ESR, specifically the rights relating to employment as fundamental human rights.<sup>12</sup> The specific rights in employment, such as the right to social security and the rights to safety at work, are provided in their respective legislations, such as in the Employment Act 1955 (Act 265) (EA 1955), the Occupational Safety and Health Act 1994 (OSHA 1994) and the Employees' Social Security Act 1969 (ESSA 1969). However, these laws apply under certain conditions, implying that they do not conform to human rights' universal, indivisible, and independent nature.

For example, the applicability of EA 1955 and ESSA 1969 extends only to persons employed under a 'contract of service'. The EA 1955 defines 'employee' as a person who (a) has signed a contract of service with the employer and (b) earns not more than RM2000 per month. Similarly, in the context of the entitlement to social security, an employee is defined as a person working for pay under a contract of service with an employer.<sup>13</sup>

Section 3 of OSHA 1994, on the other hand, defines 'contract of service' as 'any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee, and that other agrees to serve his employer as an employee and includes an apprenticeship contract'. Furthermore, the Industrial Relations Act 1967 (Act 177) has no provision which defines who is an 'employee', yet Section 2 defines a contract of employment as to mean 'any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as a workman and that other agrees to serve his employer as a workman'. The above provisions emphasise the parties' intention (either express or implied) in determining the nature of the parties' contractual relationship.

Besides the statutory definitions of employee and contract of service, the court would also refer to common law tests for additional and supplementary interpretations. In the case of *Penang Turf Club (Kelab Lumba Kuda Pulau Pinang) v KoayTeong Sun*,<sup>14</sup> the court provides three common law tests for the determination of employment,

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<sup>12</sup> Article 6 provides for prohibition of slavery and force labour; Article 13 provides for the right to property.

<sup>13</sup> Section 2 Employees' Social Security Act 1969.

<sup>14</sup> [2006] 4 ILR 2459.

namely (a) the control test, (b) the organisation test, and (c) the composite test.

The first one is the *control test*, which examines the degree of control exercised by the employer towards the worker. There are further criteria for the determination, namely (a) the power of selection of the employer, (b) power in determining salary or other remuneration, (c) power or right of the employer to control the method in which the work was done, (d) power and right of the employer to terminate the employee's services.<sup>15</sup> Judge Gopal Sri Ram mentioned;

In all cases where it becomes necessary to determine whether a contract is one of service or for services, the degree of control which an employer exercises over a claimant is an important factor, although it may not be the sole criterion. The terms of the contract between the parties must, therefore, first be ascertained. Where this is in writing, the task is to interpret its terms in order to determine the nature of the latter's duties and functions. Where it is not then its terms must be established and construed. But in the vast majority of cases there are facts which go to show the nature, degree and extend of control. These include, but are not confined, to the conduct of the parties at all relevant times. Their determination is a question of fact. When all the features of the engagement have been identified, it becomes necessary to determine whether the contract falls into one category or the other, that is to say, whether it is a contract of service or a contract for services.<sup>16</sup>

Thus, a contract of service exists if the following conditions are fulfilled:

- a) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.
- b) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.

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<sup>15</sup> *Short v J & W Henderson Ltd* [1946] UKHL J0329-4.

<sup>16</sup> *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia* [1995] 3 MLJ 369, 391.

- c) The other provisions of the contract are consistent with its being a contract of service.<sup>17</sup>

In the case of *Yusoff bin Din lwn HL Ooi Brothers Trading Sdn Bhd*, a lorry driver who worked for a daily wage claimed that he was constructively terminated when the respondent company informed the former that they had no work for him while the other drivers received job from the respondent company. The respondent company argued that the claimant was a casual worker and that there was an agreement between them that the claimant would only be called to report duty when there is work and payment will be made after he completed each work. In this case, the court determined that the respondent company had sufficient control over the claimant because the former is responsible for organising and controlling all transportation work, including supervising all drivers and giving instructions on when and how the transportation work is to be done.<sup>18</sup>

The second test is the *organisational test*. Lord Denning in the case of *Stevenson, Johnson & Harrison Ltd v Macdonald* mentioned that;

“It is often easy to recognise a contract service when you see it, but difficult to say wherein the distinction lies. A ship's master, a chauffeur and a reporter or a staff of a newspaper are all employed under a contract of service; but a ship's pilot, a taxi man and a newspaper contributor are employed under a contract for services. One feature which seems to run through the instances is that under a contract of services, a man is employed as part of the business, and his work is done as an integral part of the business, whereas under a contract for services, his works although done for the business, is not integrated into it but is only accessory to it”.<sup>19</sup>

In determining the status of the worker, this test assesses whether the person employed is an integral part of the business or merely accessory to it. This is consistent with Justice Devlin's judgement in *Bank Voor Handel EnScheepvaart NV v Slatford*,<sup>20</sup> where his Lordship noted:

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<sup>17</sup> *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 1 All LR 433, 439.

<sup>18</sup> *Yusoff bin Din lwn HL Ooi Brothers Trading SdnBhd* [2014] 2 ILJ 251.

<sup>19</sup> *Stevenson, Johnson & Harrison Ltd v Macdonald*[1952] 1 TLR 101.

<sup>20</sup> [1953] 1 QB 248, 295.

The test of being a servant does not rest nowadays on submission to orders. It depends on whether the person is part and parcel of the organisation.

In *Employees Provident Fund Board v Ms Ally & Co Ltd*<sup>21</sup> a group of persons were employed as working assistants to conduct and manage the company's business in return for a share of profit. In addition, the working assistants were provided with food and lodging, hairdressing, and laundry services free of charge and cash to buy their daily breakfast. To determine whether the working assistants were 'employees' within the meaning of EPF Ordinance 1951, the Federal Court ruled that they were 'part and parcel' of the organisation; that they were employed as part of the business and their work was done as an integral part of the business rather than as an assessor to the business. As such, the working assistants were employed under a contract of service and not a contract for service.

The third test is the *composite test*, which Lord Wright propounded in a Canadian case of *Montreal v Montreal Locomotive Works Ltd*.<sup>22</sup> He laid down four compositions of the test, namely the elements of (a) control (b) ownership of tools, (c) chance of profits, and (d) risk of loss. Salleh Abbas FJ opined that the composite test is broad enough to cover the amount of investment and risk and that a person who owns the assets and bears the risk is unlikely to be acting as an agent or a servant. Such a person could be described as carrying on his own business.<sup>23</sup> Therefore, when the assets are owned and maintained by the company, the profit, and risk of the business are borne by the company, and the workers are only paid for the work performed under the contract, these facts indicate that the workers are not independent contractors, but as employees under a contract of service.<sup>24</sup>

## PLATFORM WORKERS IN THE ON-DEMAND ECONOMY

Generally, there are two types of platform work: (a) crowd work, which refers to working activities that entail completing a series of tasks

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<sup>21</sup> [1975] 2 MLJ 89.

<sup>22</sup> [1947] 1 DLR 161.

<sup>23</sup> *Mat Jusoh Bin Daud v Syarikat Jaya Seberang TakirSdnBhd* [1982] 2 MLJ 71.

<sup>24</sup> *Yusoff bin Din lwn HL Ooi Brothers Trading SdnBhd* [2014] 2 ILJ 251.

through online platforms, and (b) work on-demand via apps, which is a type of work in which traditional working activities are channelled through apps managed by firms.<sup>25</sup> The term platform worker implies a broader meaning as compared to a gig worker, where the former refers to all platform mediated work comprising of high skilled to low skilled work, while the latter represents mostly low-skilled work such as delivery rider or transportation.

Platform work is a form of employment that uses an online platform to enable organisations or individuals to access other organisations or individuals to solve problems or to provide services in exchange for payment.<sup>26</sup> The working arrangement has clear benefits in terms of flexibility since workers can choose when and where they work without jeopardising their existing commitments or other constraints.<sup>27</sup> The flexibility of the work also provides workers with task autonomy and control over the tasks they choose to complete.<sup>28</sup> As such, platform work is perceived as part-time work and does not entail real work because it allows workers to retain the full-time job and at the same time be able to secure some extra income.<sup>29</sup>

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<sup>25</sup> Valerio De Stefano, “*The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowdswork and Labour Protection in the Gig-Economy*,” (Geneva: International Labour Office, 2016), 21, [www.ilo.org/publns%0Ahttp://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/travail/documents/publication/wcms\\_443267.pdf](http://www.ilo.org/publns%0Ahttp://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/travail/documents/publication/wcms_443267.pdf).

<sup>26</sup> Pieter de Groen, Willem Zachary Kilhoffer, Karolien Lenaerts and Irene Mandl, “*Employment and Working Conditions of Selected Types of Platform Work*,” (Luxembourg: Publications Office of the European Union, 2018).

<sup>27</sup> Josep Mestres Domenech, “The Sharing Economy and the Labour Market,” *CaixaBank Research* (2018), 37, [http://www.caixabankresearch.com/sites/default/files/documents/im\\_1807\\_34-35\\_dossier\\_2\\_en.pdf](http://www.caixabankresearch.com/sites/default/files/documents/im_1807_34-35_dossier_2_en.pdf).

<sup>28</sup> Wu Qingjun and Zhen Li, “Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers’ Work,” *Journal of Chinese Sociology* 6, no. 1 (2019): 3.

<sup>29</sup> Janine Berg, “*Income Security in the On-Demand Economy: Findings and Policy Lessons From a Survey of Crowdworkers*,” (Geneva: International Labour Office, 2016), 2; Valerio De Stefano, “*The Rise of the ‘Just-in-time Workforce’: On-Demand Work, Crowdswork and Labour Protection in the Gig-Economy*,” (Geneva: ILO, 2016), 2-3 ; Jonathan V.

The relationship between digital platforms and their workers is rather complex. The main reason is that the classical employer and employee relationship between the parties are not transparent and that the platforms insist that they are not employing the workers but are merely providing network or intermediaries that match the supply (business owners); offering goods or services, and the demand (consumers) and that the workers who undertake to perform the task specified by the platform, the time and place of the service and the payment that they will receive.<sup>30</sup> From a management standpoint, digital platforms are seen as market intermediaries where they facilitate exchanges between different platforms users, perfect the algorithms to meet the expectation, and guarantee the smooth running of transactions.<sup>31</sup> The digital platforms are classified as 'digital matching firms', with distinguishing characteristics such as the ability to provide contractors with a high level of flexibility, the use of information technology and user-ratings to provide workers with flexible schedules, and the creation of micro-entrepreneurs who can run their businesses, similar to a part-time job.<sup>32</sup> However, Niels van Doorn opines that the

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Hall, and Alan B. Krueger, “*An Analysis of the Labour Market for Uber’s Driver-Partners in the United States*,” NBER Working Paper Series 22843 (2016), 4-5, <https://journals.sagepub.com/doi/abs/10.1177/0019793917717222%0Ahttp://www.nber.org/papers/w22843>.

<sup>30</sup> Bin Chen , Tao Liu and Yingqi Wang, “Volatile Fragility: New Employment Forms and Disrupted Employment Protection in the New Economy,” *International Journal of Environmental Research and Public Health* 17, no. 5 (2020): 2, <https://doi.org/10.3390/ijerph17051531> ; RiitaJuntunen, “*Does the Worker Have a Say in the Platform Economy*,” (Central Organisation of Finnish Trade Unions, 2017), 6, [https://www.ituc-csi.org/IMG/pdf/sak\\_finland\\_report\\_does-the-worker-have-a-say-in-the-platform-economy.pdf](https://www.ituc-csi.org/IMG/pdf/sak_finland_report_does-the-worker-have-a-say-in-the-platform-economy.pdf).

<sup>31</sup> Patrick Dieuaide and Azaïs Christian, “Platforms of Work, Labour, and Employment Relationship: The Grey Zones of a Digital Governance,” *Frontiers in Sociology* 5 (February 2020): 2, <https://doi.org/10.3390/ijerph17051531>.

<sup>32</sup> Alexandra J.Ravenelle, “Sharing Economy Workers: Selling, NotSharing,” *Cambridge Journal of Regions, Economy and Society* 10, no.2 (2017): 282, <https://doi.org/10.1093/cjres/rsw043> ; Rudy Telles Jr., “*Digital Matching Firms : A New Definition in the ‘ Sharing Economy’ Space*,” (US Department of Commerce, Economics and Statistics Administration, 2016), 3.

platforms are manipulating the business model and leveraging software to optimise labor's flexibility, scalability, tractability, and fragmentation in the multi-sided market. He argues that the platform companies do not only provide their software as a service to participants, but they also use it to manage and conceal a contingent workforce that is articulated as a 'workforce-as-a-service' model.<sup>33</sup>

Because of the non-fixed employment terms and the role of market intermediary they allegedly possessed, platform companies classify the platform workers as 'independent contractors' or 'micro-entrepreneurs'. However, unlike ordinary self-employed individuals or independent contractors who operate on their own without the support of other staff, the emphasis is on entrepreneurial freedom, a desire for business success, and a lack of interest in salaried employment,<sup>34</sup> the platform workers are heavily reliant on the platform for job prospects, salary system, work performance and other terms and conditions associated with the work. For instance, the rating system is often used to evaluate the workers' performance in terms of payment that they would receive and the number of orders (task) that would 'popup' on their mobile notifications.<sup>35</sup> This evaluation mechanism is seen as an effective way in which the platform control the workers. Platforms can constantly supervise and evaluate their workers through customer reviews and ratings.<sup>36</sup> As a result, there is an element of control over how workers to complete work, evaluation of work performance, and supervision in the platform work arrangement, which does conform to the concept of true self-employment.

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<sup>33</sup> Niels van Doorn, "Platform Labor: On the Gendered and Racialized Exploitation of Low-Income Service Work in the 'On-Demand' Economy," *Information Communication and Society* 20, no.6 (2017): 898–914, <https://doi.org/10.1080/1369118X.2017.1294194>.

<sup>34</sup> Victoria Daskalova, "Regulating the New Self-Employed in the Uber Economy : What Role for EU Competition Law?," *German Law Journal* 19, no.3 (2017): 467.

<sup>35</sup> WuQingjun and Zhen Li, "Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers' Work," *Journal of Chinese Sociology* 6, no.1 (2019): 7, <https://doi.org/10.1186/s40711-019-0098-9>.

<sup>36</sup> Wu Qingjun and Zhen Li, "Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers' Work," *Journal of Chinese Sociology* 6, no.1 (2019): 8, <https://doi.org/10.1186/s40711-019-0098-9>.

Nevertheless, the nature of platform work is often located at the boundary between self-employment and dependent employment. The determinant factor to decide between the two forms of employment lies on two factors, namely (a) the degree of economic dependence, such as the amount of business that depends on the economic situation of the firm the worker contracts with, and where the worker carries some or all the entrepreneurial risk associated with the job, degree of subordination, and (b) dependence in terms of time, place and content of work.<sup>37</sup>

Because platform workers share similar characteristics of both dependent employment and self-employment, many jurisdictions have considered a third category of worker, that is the 'dependent self-employment'. This refers to workers who perform services for a business under a contract which is different from a contract of employment but depend on one or a small number of clients for their income and receive direct guidelines regarding how the work is done.<sup>38</sup> Thus, employment in the on-demand economy shares substantial similarities with 'dependent self-employment' where workers do not own a business or the freelancing activity but are dependent on the job provided by the platform.<sup>39</sup> Hence, the 'disguised employment relationship' was believed to be deliberated by the platform company

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<sup>37</sup> René Böheim and Ulrike Mühlberger, "Dependent Forms of Self-Employment in the UK: Identifying Workers on the Border between Employment and Self-Employment," Discussion Paper no.1963 (2006), 3, <https://doi.org/10.1007/s12651-009-0014-x>.

<sup>38</sup> ILO, "Non-Standard Employment Around The World: Understanding Challenges, Shaping Prospects," (Geneva:International Labour Office, 2016), 98; Note: Spain, Canada and Italy adopted the third category and refer it as 'quasi-subordination'. See discussion in Miriam A. Cherry and Antonio Aloisi, "Dependent Contractors' in the Gig Economy: A Comparative Approach," *American University Law Review* 66, no.3 (2017): 674-676, <https://doi.org/10.2139/ssrn.2847869>.

<sup>39</sup> Andrew Henley, "Forms of Self-Employment: What Do We Know about the Gig Economy," *State of the Art Review* 43 (2020): 1-8, <https://www.enterpriseresearch.ac.uk/wp-content/uploads/2020/07/No43-Forms-of-self-employment-What-do-we-know-about-the-gig-economy-A.-Henley.pdf>.

as a means to circumvent employment protection responsibilities.<sup>40</sup> Friedman labeled the platform companies as 'shadow corporations' where they 'retain and reserve' the workers and protect themselves from workers' shortage during times of high employment and 'dispose of' workers without unnecessary attachment and expenses at times of low employment.<sup>41</sup>

In Malaysia, platform workers are regarded as self-employed persons or independent contractors, who are mostly excluded from labour rights protection. In a general sense, self-employed persons or independent contractors stand on their own and would receive no benefits or protections other than their pay.<sup>42</sup> Due to the blurred employer-employee relationship, the platform companies would generally be precluded from liability and responsibility in terms of providing fundamental protections to workers and that the business risks are often shifted to the workers.<sup>43</sup> These include workers' need to pay for social security, no assurance of safe and healthy working conditions, and a lack of salary bargaining.

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<sup>40</sup> Christina Behrendt and Anh Nguyen Quynh, "Innovative Approaches for Ensuring Universal Social Protection the Future of World," ILO Future of Work Research Paper Series (2019), 7, <https://doi.org/10.33058/seismo.30818>. ; Antonio Aloisi, "Commoditized Workers the Rising of On-Demand Work, A Case Study Research on a Set of Online Platforms and Apps.," *Comparative Labor Law & Policy Journal* 37 (2016): 653, <https://doi.org/10.2139/ssrn.2637485>.

<sup>41</sup> Gerald Friedman, "Workers Without Employers: Shadow Corporations and The Rise of the Gig Economy," *Review of Keynesian Economics* 2, no.2 (2014): 171-188, <https://doi.org/10.4337/roke.2014.02.03>.

<sup>42</sup> Richard Heeks, "Decent Work and the Digital Gig Economy: A Developing Country Perspective on Employment Impacts and Standards in Online Outsourcing, Crowdsourcing, Etc.," (Manchester: Centre for Development Informatics Global Development Institute, SEED, University of Manchester, 2017), 13-14, [https://doi.org/10.1016/0736-5853\(84\)90003-0](https://doi.org/10.1016/0736-5853(84)90003-0).

<sup>43</sup> Bin Chen, Liu Tao and Wang Yingqi, "Volatile Fragility: New Employment Forms and Disrupted Employment Protection in the New Economy," *International Journal of Environmental Research and Public Health* 17, no.5 (2020): 6, <https://doi.org/10.3390/ijerph17051531>.

## EXISTING LEGISLATIVE FRAMEWORK IN MALAYSIA

As discussed earlier, the existing regulations on labour rights as enumerated in the Employment Act 1955, Employees' Social Security Act 1969, Occupational Safety and Health Act 1994, and Industrial Relations Act 1967 apply only to employees or persons who are employed under a contract of service. As platform workers are not considered employees or persons under a service contract, there are not regarded as employees under the purview of the aforementioned laws.<sup>44</sup>

Nonetheless, the Malaysian government in 2017 has decided to enact a new Self-Employment Social Security Act 2017 (Act 789) in view to extend social security protection to all self-employed persons, including workers in the on-demand economy. Section 11 of the Act requires every self-employed person to register and pay the contribution to the Social Security Organisation (SOCSO) under the Self-Employment Social Security Scheme, in which covers several benefits such as occupational disease, temporary disablement benefit, permanent disablement benefit, dependant benefit, funeral benefit, constant attendance allowance, medical benefit, and facilities for physical or vocational rehabilitation or dialysis and education benefit.<sup>45</sup> This however requires sole contribution from the self-employed person and the failure to make a contribution is an offence under the Act.<sup>46</sup>

In respect to collective bargaining right, Article 10 (1)(c), in conjunction with article 10(3) of the Federal Constitution limits the ability of workers to form and join the association. The Industrial Relations Act 1967 only extends the right to form and join a trade union to 'workmen' employed under a contract of employment.<sup>47</sup> In essence,

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<sup>44</sup> Bernama, "Gig Economy Workers Do Not Meet Definition of 'Worker' under Malaysian Labour Laws, Parliament Told," *TheStar*, November 8, 2021, <https://www.thestar.com.my/news/nation/2021/11/08/gig-economy-workers-do-not-meet-definition-of-039worker039-under-malaysian-labour-laws-parliament-told>.

<sup>45</sup> Section 16, 17, 18, 19, 20, 24 and 25 respectively.

<sup>46</sup> Section 11 (4). Section 12 of SESSA allows SOCSO to appoint self-employment social security agents to collect and receive payments of contribution on behalf of the Organization. All contribution made by the self-employed person is to be put in the Self-Employment Social Security Fund which is established and administered and controlled by SOCSO.

<sup>47</sup> Section 2 of the Industrial Relations Act 1967 (Act 177).

the collective bargaining power is essential for workers as it allows, through their trade union, to raise issues and concerns relating to their working conditions and terms of employment and to regulate relations between employers and workers.<sup>48</sup> The exclusion of the right to platform workers has argued on the basis that collective representation and collective action lies in the subordination of employment contracts or relationships, making the dependent employees exclusively the proper subjects of collective labour law.<sup>49</sup> Platform workers who fall in the grey area between the definitions of employee and self-employed are not granted this right, even though they may share similar vulnerabilities with salaried employees and so have an unbalanced power relationship with the platform companies.<sup>50</sup> Furthermore, the lack of collective bargaining power substantially impacts wage inequality because earnings distribution is not reflected to minimise wage differentials within occupations, particularly gender and age wage disparities.<sup>51</sup>

Additionally, platform workers also lack the right to fair remuneration which is a fundamental protection for workers in ensuring existence worthy of human dignity. Getting fair remuneration means that workers can exercise and have access to their other basic human rights such as the right to food, clothing, accommodation, health care, and education. From an economic perspective, the essence of fair remuneration emphasises the concept of capital, in which remuneration for the work done should at least balance the natural dispersion of human capital.<sup>52</sup> According to the theory of human capital, the determination of fair remuneration (or minimum remuneration)

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<sup>48</sup> OECD, “*Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*,” (Paris: OECD Publishing, 2019), 13, <https://doi.org/10.1787/1fd2da34-en>.

<sup>49</sup> Mark Freedland and Nicola Kountouris, “Some Reflections on the ‘Personal Scope’ of Collective Labour Law,” *Industrial Law Journal* 46, no.1 (2017): 52–71, <https://doi.org/10.1093/indlaw/dww041>.

<sup>50</sup> OECD, “*Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*,” (Paris: OECD Publishing, 2019), 13.

<sup>51</sup> Ernesto Villanueva, “Employment and Wage Effects of Extending Collective Bargaining Agreements,” *IZA World of Labor* (March 2015): 3, <https://doi.org/10.15185/izawol.136>.

<sup>52</sup> Olaf Hynes and Bik Marcin, “Determining Fair Remuneration Based On Human Capital Theory,” *International Journal of Accounting and Economics Studies* 8, no.1: 1, <https://doi.org/10.14419/ijaes.v8i1.30441>

depends on the average standard of living in a particular country.<sup>53</sup> Thus, the determination for fair remuneration is discussed in the context of fair minimum wage and a living wage.<sup>54</sup>

The term 'wages' in the EA 1955 is defined as "basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service". There is no other provision in the EA 1955 that stipulates that workers' wages must be fair and equal to the labour they have performed, as specified by international law instruments.<sup>55</sup> Thus, it is reasonable to conclude that the determination of salaries before implementing minimum wage policies was based on the terms and conditions of the service contract as agreed upon by the workers and the employer, which is mainly determined by market forces.

There are two primary legislation on minimum wages in Malaysia, the Wages Council Act 1974 (Act 195) and the National Wages Consultative Council Act 2011 (Act 732). The first Minimum Wages Order 2012<sup>56</sup> stipulates that the monthly minimum wages are RM900 for West Malaysia and RM800 for East Malaysia and is applicable to all employees under a contract of service. Subsequently, in 2016, the minimum wages was increased to RM1000 and RM920 in

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<sup>53</sup> Olaf Hynek and Bik Marcin, "Determining Fair Remuneration Based On Human Capital Theory," *International Journal of Accounting and Economics Studies* 8, no.1: 2, <https://doi.org/10.14419/ijaes.v8i1.30441>.

<sup>54</sup> Peter Utting, "Fair Remuneration: Tackling Both the Top and Bottom of the Income Pyramid," (Geneva: United Nations Research Institute for Social Development, 2020) , 2, [https://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/7D0593E39D1519418025860F00537B7E?OpenDocument](https://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/7D0593E39D1519418025860F00537B7E?OpenDocument). Note: Living wages is defined by the Global Living Wage Coalition as the remuneration received for a standard workweek by a worker in a particular pace sufficient to afford a decent standard of living for the worker and her/his family; See Global Living Wage Coalition, "What Is a Living Wage?," accessed July 23, 2021, <https://www.globallivingwage.org/about/>; ILO Constitution 1919.

<sup>55</sup> See generally, ILO Constitution 1919, ILO Declaration on Social Justice for a Fair Globalization 2008 and ILO Declaration on Principles Concerning Multinational Enterprises and Social Policy 2006. Notes: The ILO Minimum Wages Conventions in 1928 and 1970 removed the term 'living wages' and replaced with 'minimum wages'.

<sup>56</sup> [P.U. (A) 214/2012].

West and East Malaysia respectively.<sup>57</sup> Later in 2018, the minimum wages was further increased by RM100.<sup>58</sup> In 2020, the minimum wages was again increased to RM1200, and applicable to workers in the City Council or Municipal Council areas, and RM1100, for workers in other areas.<sup>59</sup> Further, the 2020 Order states that workers who are not paid basic wages but are instead paid based on piece rate, tonnage, task, trip, or commission must be paid at least the same minimum wage as workers who are given basic wages.

## **ECONOMIC SECURITY AND VERTICAL INEQUALITY**

The Malaysian government's minimum wage policy is a commendable endeavour to ensure that workers receive fair salaries that allow them to live a basic and decent lifestyle that society considers acceptable at its current level of economic growth. According to the Consultative Council's criteria, minimum wages will be determined by considering workers' and families' entitlement to basic needs and socio-economic needs. As a result, the minimum wage policy can provide workers with economic security, motivating them to advance the economic ladder and break free from seeking monetary aid and unemployment.<sup>60</sup>

Conversely, the minimum wage policy can also be disadvantageous to specific groups of people, such as those in the informal sector, for whom the regulation has no application. Workers, particularly in low-skilled sectors, experienced economic inequity because wage determination is more favourable to employers who have the power and discretion to

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<sup>57</sup> Minimum Wages Order 2016 [P.U. (A) 116/2016].

<sup>58</sup> Minimum Wages Order 2018 [P.U. A. 265/2018] was gazetted and provided an increase to RM1050 of monthly wages payable for all employees, however, a Minimum Wages Order (Amendment) 2018 (P.U. (A) 305/2018) was later gazetted and amended the minimum wages rate of RM1050 to RM1100.

<sup>59</sup> Minimum Wages Order 2020 [P.U. (A) 5/2020].

<sup>60</sup> VallySenasi, "History and Effects of Minimum Wages in Malaysia," (paper presented at the UUM International Conference on Governance, Pulau Pinang, 2014), <https://repo.uum.edu.my/id/eprint/12934>.

determine and decide how much each employee should earn after completing a task or job.<sup>61</sup> Workers' lack of bargaining power is one of the reasons for economic inequality as salaries are determined without sufficient justification and consideration of workers' living expenses or the ability to have access to other basic human rights, including the right to education and health care.<sup>62</sup>

## VERTICAL INEQUALITY OF PLATFORM WORKERS

Traditional human rights discourse has long concentrated on discrimination based on race, nationality, religion, disability, and sexuality; however, human rights researchers have recently focused on concerns of discrimination and equality based on wealth and income. Inequality refers to discrepancies between individuals or groups, whereas equality entails seeing everyone as equal in some way.<sup>63</sup> Equality is classified into two types: vertical inequality, which is inequality among individuals or families, and horizontal inequality, which is inequality among groups that are often culturally defined, such as ethnicity, gender, religion, or race.<sup>64</sup>

The discussion of vertical inequality is frequently associated with economic inequality and social inequality, which are inextricably linked. Economic inequality refers to disparities

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<sup>61</sup> Siti MarshitaMahyut, "Minimum Wage in Malaysia: The Challenge on the Implementation of the Law," *International Journal of Business, Economics and Law* 3, no.3 : 30-37.

<sup>62</sup> VallySenasi, "History and Effects of Minimum Wages in Malaysia," (paper presented at the UUM International Conference on Governance, Pulau Pinang, 2014), <https://repo.uum.edu.my/id/eprint/12934>.

<sup>63</sup> Frances Stewart, "*Approaches Towards Inequality and Inequity: Concepts, Measures and Policies*," (Florence:Unicef Office of Research, 2013), 6; Anne-SophieRobilliard and Andrew Lawson, "*Addressing Inequality Through EU Development Cooperation – Response to the 2030 Agenda: Conceptual & Measurement Framework for Addressing Inequality*," (France and UK: FISCUS Public Finance Consultantsand IRD-DIAL, 2017), 5.

<sup>64</sup> Frances Stewart, Graham Brown and Alex Cobham, "*The Implications of Horizontal and Vertical Inequalities for Tax and Expenditure Policies*," CRISE Working Paper, no.65(2009): 3.

in economic outcomes such as income, consumption, or asset ownership (wealth) which can lead to unequal access to other rights such as education, healthcare, access to basic utilities, and access to social and legal protection. Whereas social inequality refers to disparities in social outcomes or social status or position, which can be influenced by economic inequalities.<sup>65</sup> Vertical inequality, which is most prevalent in income inequality, i.e. differences in worker wages and a lack of basic protection, has resulted in a slew of negative consequences worldwide, including poverty, discrimination, an increase in crime, and deteriorating mental health.<sup>66</sup>

Vertical inequality in the on-demand economy is frequently discussed in terms of platform workers' pay and working conditions.<sup>67</sup> Platform workers are divided into three groups: (a) those who rely on the platform as their primary source of income, (b) those who rely on the platform only partially, and (c) those who view platform income as supplemental.<sup>68</sup> More recently, many workers rely heavily on the platform as their primary source of income, due to the loss of permanent and full-time employment.<sup>69</sup> Though non-standard

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<sup>65</sup> Anne-Sophie Robilliard and Andrew Lawson, “*Addressing Inequality Through EU Development Cooperation – Response to the 2030 Agenda: Conceptual & Measurement Framework for Addressing Inequality*,” (France and UK: FISCUS Public Finance Consultants and IRD-DIAL, 2017), 5; Human Rights Council, “*Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston*,” (United Nations General Assembly, 2015), 4.

<sup>66</sup> Gillian MacNaughton, “Vertical Inequalities: Are the SDGs and Human Rights Up to the Challenges?,” *International Journal of Human Rights* 21, no.8 (2017): 5; Katy Cook, “Economic Inequality & Employment,” in *The Psychology of Silicon Valley*, (London: Palgrave Macmillan, 2020), 179, [https://doi.org/10.1007/978-3-030-27364-4\\_7](https://doi.org/10.1007/978-3-030-27364-4_7).

<sup>67</sup> Juliet B. Schor and William Attwood-Charles, “The “Sharing” Economy: Labor, Inequality, and Social Connection on For-Profit Platforms,” *Sociology Compass* 11, no.8 (2017):9-10.

<sup>68</sup> Juliet B. Schor and William Attwood-Charles, “The “Sharing” Economy: Labor, Inequality, and Social Connection on For-Profit Platforms,” *Sociology Compass* 11, no.8 (2017): 6-8.

<sup>69</sup> Gobinda Roy and Avinash K. Shrivastava, “Future of Gig Economy: Opportunities and Challenges,” *IMI Konnect* 9, no.1 (2020): 14-25.

employment in the on-demand economy offers the potential to make extra income, platform work, in general, pays less per hour and gives no fundamental working security in the long run.

Furthermore, while reduced employment protection for temporary contracts has improved job prospects, it has also been associated with rising income disparity.<sup>70</sup> The inadequate payment scheme and unfavorable working conditions of platform work have resulted in strikes and protests, particularly among those who rely heavily on the job for a living.<sup>71</sup> Some authors believed that platform owners and their investors take large sums of money from users on both sides of the market, while platform workers face economic inequity as a result of using the same platforms.<sup>72</sup>

There are a few reasons why platform workers and full-time employees earn different wages. One, platform workers who are perceived to be part-time are paid on an hourly (or per task) basis, which is lower than regular employees due to lower supplementary compensation payments such as bonuses and other perks.<sup>73</sup> For example, in ride-hailing services, income inequality may continue when there is a shift in supply and demand in specific origins or for

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<sup>70</sup> Gerald Friedman, "Workers Without Employers: Shadow Corporations and The Rise of the Gig Economy," *Review of Keynesian Economics* 2, no.2 (2014): 171-188, <https://doi.org/10.4337/roke.2014.02.03>.

<sup>71</sup> Azzman Abdul Jamal and NisaAzaman, "More than 200 Foodpanda Riders Protest Over New Payment Scheme," *News Straits Times*, September 30, 2019, (2019), <https://www.nst.com.my/news/nation/2019/09/525882/more-200-foodpanda-riders-protest-over-new-payment-scheme>; Annie Nova, "Uber drivers Block Traffic in Manhattan, Protesting Low Pay and Poor Working Conditions," *CNBC*, September 17, 2019, <https://www.cnbc.com/2019/09/17/uber-drivers-are-protesting-again-heres-what-the-job-is-really-like.html>.

<sup>72</sup> Juliet B. Schor, "Does the Sharing Economy Increase Inequality Within the Eighty Percent?: Findings from a Qualitative Study of Platform Providers," *Cambridge Journal of Regions, Economy and Society* 10, no.2 (2017): 3-4.

<sup>73</sup> Danielle Venn, "Earnings Volatility and its Consequences for Households," OECD Social, Employment and Migration Working Papers, no. 125, (OECD Publishing, 2011), 19, <http://dx.doi.org/10.1787/5kg3v00zgs1w-en>.

certain destinations.<sup>74</sup> Moreover, income inequality persists due to additional expenses that workers must pay such as contributions to their pension and health insurance, vehicle maintenance, healthcare expenses, and so on.<sup>75</sup> Second, platform workers and traditional employees may be compensated differently owing to unobservable traits and lesser ability and productivity that they can provide to their employers. The difference in workers' heterogeneous skills, worker differences in preferred hours, and employer preferences create an equilibrium wage gap between part- and full-time workers.<sup>76</sup>

Vertical income and wealth inequalities have a negative effect on a wide range of economic, social, cultural, civil, and political rights, and thus are detrimental to human rights realisation.<sup>77</sup> The platform workers' low-wage earnings contribute to low-income households, restricting their access to essential rights such as the right to health and education, which may lead to poverty.<sup>78</sup> To address vertical inequalities, reducing income inequality alone is not sufficient as social

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<sup>74</sup> EszterBokányi and HannákAnikó, "Understanding Inequalities in Ride-Hailing Services Through Simulations," *Scientific Reports* 10, no. 1 (2020): 1–11, <https://doi.org/10.1038/s41598-020-63171-9>.

<sup>75</sup> Luka Bulian, "The Gig Is Up: Who Does Gig Economy Actually Benefit?," *Interdisciplinary Description of Complex Systems* 19, no.1 (2021): 106–19, <https://doi.org/10.7906/indecs.19.1.9>.

<sup>76</sup> Barry T.Hirsch, "Why Do Part-Time Workers Earn Less? The Role of Worker and Job Skills," IZA Discussion Paper, no. 1261(2004): 2-3, <https://doi.org/10.1177/001979390505800401>.

<sup>77</sup> Radhika Balakrishnan and James Heintz, "How Inequality Threatens All Human Rights," *Open Global Rights*, October 29, 2015, <https://www.openglobalrights.org/how-inequality-threatens-all-humans-rights/>; Todd Landman and Marco Larizza, "Inequality and Human Rights: Who Controls What, When, and How," *International Studies Quarterly* 53, no.3 (2009): 715-736.

<sup>78</sup> OECD, "In It Together: Why Less Inequality Benefits All," (Paris: OECD Publishing, 2015), <https://doi.org/10.1787/9789264235120-en>; Sakik Fukuda-Parr, "It's About Values: Human Rights Norms and Tolerance for Inequality," *Open Democracy*, December 22, 2015, <https://www.opendemocracy.net/en/openglobalrights-openpage/it-s-about-values-human-rights-norms-and-tolerance-for-inequalit/>.

inequalities that are related to economic inequality must also be addressed.<sup>79</sup>

## CONCLUSION

The on-demand economy was introduced into the market without official engagement with stakeholders and the governments. Consequently, the limited access to data and the rapid rise of the economic model has triggered ad-hoc government responses without much evidence.<sup>80</sup> As a 'platform-regulated' market, no specific laws govern the new economic model, which creates an opportunity for platform owners to exploit regulatory loopholes that the government has yet to address completely.<sup>81</sup> In terms of platform workers' rights, courts and regulators must address whether they are 'employees', 'independent contractors' or 'dependent self-employed' and understand the dynamic relationship between the workers and the digital platforms.<sup>82</sup>

To determine the status of employment, the degree of dependency that workers have on the platform, and the degree of control that the platform has over workers, such as the supervision through a rating system, payment scheme, the penalty for a declining

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<sup>79</sup> Gillian MacNaughton, "Vertical Inequalities: Are the SDGs and Human Rights Up to the Challenges?," *International Journal of Human Rights* 13 (2017), <https://doi.org/10.1080/13642987.2017.1348697>.

<sup>80</sup> Koen Frenken and Juliet B. Schor, "Putting the Sharing Economy into Perspective," *Environmental Innovation and Societal Transitions* 23 (2017): 4-5, <https://doi.org/10.1016/j.eist.2017.01.003>.

<sup>81</sup> Janine Berg, "Income Security in the On-Demand Economy: Findings and Policy Lessons From a Survey of Crowdworkers," (Geneva: International Labour Office, 2016), 25.

<sup>82</sup> Sarah E. Light, "The Role of the Federal Government in Regulating the Sharing Economy," in *Cambridge Handbook of the Law of the Sharing Economy*, ed. Nestor Davidson, Michele Finck and John Infranca (Cambridge: Cambridge University Press, 2018), 220-230; Kristofer Erickson and Inge Sørensen, "Regulating the Sharing Economy," *Internet Policy Review* 5, no.2 (2016): 1-13, <https://doi.org/10.14763/2016.2.414>.

job, and power to terminate, may be taken into account.<sup>83</sup> Following this affirmative classification, workers would be entitled to various benefits and rights, particularly in terms of social protection and wage payment. Furthermore, despite the unconventional manner in which people perform work, it must be acknowledged that workers' needs and rights, such as access to health care and retirement security, have not changed, and thus labour protection should be widely applied.<sup>84</sup> The goal is not to undermine the flexible nature of the on-demand economy, but to assert the universal, interdependent, and indivisible nature of human rights protection for workers, regardless of their misclassification.

The platform companies must adhere to human rights principles and labour standards in order to address the issue of vertical inequality experienced by different groups of workers and thus avoid issues of illegal labour markets and unlawful practices such as slavery, human trafficking, child labour, harassment, and discrimination.<sup>85</sup> Many have suggested that the government should intervene in labour market transformation by implementing policies that address vertical inequality through the implementation of statutory bases for all workers in all sectors and workplaces, the establishment of an institutional framework through the country's Department of Labour, the establishment of minimum wage rates, and regulatory reform of companies to include mandatory pay ratio reporting.<sup>86</sup> Proactive duties on states are highlighted in addressing economic inequality through the human rights instruments focusing on equal redistribution, allocation, and resource mobilisation, with an emphasis on the right to fair pay and

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<sup>83</sup> Janine Berg, “*Income Security in the On-Demand Economy: Findings and Policy Lessons From a Survey of Crowdworkers*,” (Geneva: International Labour Office, 2016), 25.

<sup>84</sup> Faris Natour, “Respecting Human Rights in the On-Demand Economy: Closing the New Governance Gap,” *Business and Human Rights Journal* 1, no. 2 (2016): 315-20, <https://doi.org/10.1017/bhj.2016.7>.

<sup>85</sup> Conceicao Soares, “Corporate Legal Responsibility: A Levinasian Perspective,” *Journal of Business Ethics* 8 (2008): 545–53, <https://doi.org/10.1007/s10551-007-9523-0>.

<sup>86</sup> Helen Kersley and Faiza Shaheen, “*Addressing Economic Inequality at Root*,” (United Kingdom: New Economics Foundation and Friedrich-Ebert-Stiftung, 2014), 31-32.

a decent livelihood.<sup>87</sup> Furthermore, the United Nations' Guiding Principle on Business and Human Right has highlighted corporate responsibility to respect human rights by requiring corporations to adopt effective mechanisms to ensure that stakeholders' human rights are respected. Thus, further consideration and consultation with platform companies may be necessary to determine an appropriate process for managing inequality of wages among platform workers.

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<sup>87</sup> Diane F. Frey and Gillian MacNaughton, "Fair Wages and Decent Living: Paths to a Greater Vertical Equality," in *Human Rights and Economic Inequalities*, ed. Gillian MacNaughton, Diane F. Frey and Catherine Porter, (Cambridge: Cambridge University Press, 2021), 271-283.