



Task Force 05

INCLUSIVE DIGITAL TRANSFORMATION



Freedom of Association of Workers from a Global South Perspective: in Search of a Collective Approach in the Digitized Work Environment

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Abstract

This policy brief proposes to analyze the consequences of digitization to the right of association, focusing on the ability of different groups to organize for the protection of their own interests. The ability to associate in various ways is a key factor in gaining more bargaining power in situations of structural inequality. This also happens in the online world. In this sense, we will analyze the changes that occurred in the past years regarding work and the spread of digitization in the most varied forms of work. The brief will adopt two different perspectives: first regarding the digitization of traditional trade unions, and second also with the association of new forms of labor. From tech sector workers subject to precarious conditions, to re-placement of human work with machines, and the individualization of delivery platforms workers, the right to associate and bargain collectively is a cross-cutting theme, which can allow advances in direct negotiation with companies and governments, in addition to being a catalyst for legislative changes with the aim of making progress in overcoming various inequalities. To this end, our brief presents human rights standards, the ILO work on freedom of association and collective bargaining and establish connections between the SDG and the role of States in preserving the right of association, as a necessary requirement to assure labor rights in face of digitization. This policy brief underlines freedom of association as a human right crucial for achieving SDGs. As our contribution, we present five main recommendations to the G20 aimed at promoting freedom of association in the digital era.

Keywords: Freedom of association; Labor rights; Sustainable Development Goals.

Diagnosis of the issue

Labor relations have changed in face of the digital era. While new forms of informal work emerged, policy has not been able to provide social security mechanisms for gig workers in many parts of the world. Traditional workers are also affected by platforms' intermediation and a set of the problems caused by long online work hours, which are just some aspects of a digital economy that seems to vanish labor law, decent employment, freedom of association and effective union representation.

Although platform employment is not as significant in the total employment in Latin America as it is in other regions (CAF 2021, IBGE, 2023), it is relevant in the insertion of young people in the labor market. Thus, necessary and urgent debates emerge: How are new generations of workers representing themselves? What new rights are needed in a progressive labor re-form? How to think about a digital labor market, with all the challenges that it implies?

This reality is not exempt from the global context where social inequality, unemployment and precariousness seem to plague many countries. Labor insertion is increasingly complex, and the hopelessness of young people seems to take over their lives in a labor market that offers few opportunities for improvement, including access to housing and accessible higher education.

While some platform workers do not feel represented by the work structures established within the capitalism of the first and second industrial revolution, the relative sovereignty of time facilitated by technological intermediation is not fully taken up by trade union institutions as a demand to fight for.

There are multiple problems arising from both the digitization of work and the growth of digital platforms, such as: (i) labor insertion and access to the technologies of new skills required (Issa 2022); (ii) abrupt technological changes that do not give enough time

to the workforce adjustment to evolving employment demands; (iii) the right to disconnect and what this entails for mental health and social inequality (Perdomo Ospina and Ottaviano 2021); (iv) data protection, without minimum legal frameworks to ensure that workers' data are protected and aware of how such data are used (Organización de Estados Americanos, n.d.); (v) the right to algorithmic explicability, an essential right in types of work increasingly mediated by automation (Scasserra and Ottaviano 2009), and (vi) the interoperability and portability in digital platforms, a right that can create effective competitive labor market when the worker is searching for better working conditions.

Platform employment and digitization add new complexities to a working society already facing unemployment, inequality and low wages. The right to association and collective bargaining are new challenges that platform employment seems to bring. Facing various forms of precarization, many non-unionized, atomized workers must self-organize to pursue their rights. Literature questions the subject and wonders how to achieve effective representation of platform workers (Lopez Mourello 2020). Is this an imperative of reality or is it the result of a political decision?

From one side, some States have not given a regulatory response guaranteeing rights without being detrimental to the interests of workers with respect to the relative sovereignty of the time obtained through this type of employment (Etchemendi, Ottaviano, and Scasserra 2022). In the case of web-based work, we find examples of tactics deployed by multinational companies that prefer to hire workers from the Global South, given the low wages and even the possibility of union-busting through legal claims (McIntyre 2022). Although different conflicts between trade unions/workers against companies have been resolved mostly in labor courts, with different rulings in each country, this type of conflict resolution has been the sounding board for conflicts arising from the lack of an effective legal framework.

On the other side, some union structures refuse to represent these workers because they consider them precarious and representatives of an idea of self-entrepreneurs that has nothing to do with the class consciousness of the unionized worker (Reuters 2019). This platform worker is sometimes persecuted by the organized union, by the State and even by the companies (Levy 2022). In this sense, this platform worker, who several times have intersecting identities (Crenshaw, 1989) and are subjected to multiple inequalities, end up being a kind of "outside the law", almost like a criminal who is far from wanting to fight for more and better rights but quite the opposite.

Recommendations

The protection of workers right to association in the digital economy are of utmost importance for the G20 and Member States must play an enabling role not only so it is properly respected, but also take concrete steps so it can be developed for all workers. This includes building mechanisms to ensure that the private sector, regardless of the field, recognize the labor implications of their operations and respect workers' rights.

Freedom of association and collective bargaining are essential human rights to protect and defend workers' rights and can enable other human rights, such as freedom of expression, privacy, decent work conditions. Within international human rights law, several instruments recognize the freedom of association as a human right and, particularly, highlight its importance to "improve standards of living for workers" (IACourtHR 2021)¹.

¹ Like the Universal Declaration of Human Rights (Article 23.4), the International Covenant on Civil and Political Rights - ICCPR – (Article 22.1) and the ILO Declaration of Fundamental Principles and Rights at Work form the bases for the recognition of the right to freedom of association. At the regional level, the OAS Charter (Article 45, subparagraphs "c" and "g"), the American Declaration of Human Rights (Article 22), and the Protocol of San Salvador (Article 8).

For instance, litigation on courts and advocacy for regulatory change can be fostered in the case of effective right to association for platform workers (Hadwiger 2022). The right to association is also a key enabler for the Sustainable Development Goals (SDGs), notably the **Decent Work and Economic Growth** (8.8), **Reduced Inequalities, Peace, Justice, and Strong Institutions**(16.3 16.6, and 16.10), and **Gender Equality**, (5.5).

When it comes to States obligations with regards to workers right to association, the Inter-American Court of Human Rights (IACourtHR) emphasizes both their negative obligation "not to pressure or interfere in such manner as to alter or corrupt" its purpose and the positive obligations to prevent "attacks against this freedom, protecting those who exercise it, and investigating violations of it", obligations that "should be adopted even in the sphere of relations between individuals, should the case merit it", and extend to the platform economy as well (IACourtHR 2021). .

States should both provide and promote efficient legal frameworks that allow collective representation of platform workers, and work towards an agenda of rights that can be taken up by the unions as the new demands of the digitized labor society. In this sense, there are already experiences in the region where "traditional" unions have been able to incorporate platform employment and achieve a representation that led to a path of effective collective bargaining: the FUECYS in Uruguay (AEBU 2024), the UltraTICs in Colombia (McIntyre 2022) and the case of the trade union employees of Mar del Plata and Atlantic area in Argentina (La Capital 2019), to mention a few. In these cases, trade unions addressed the demands of platform workers and sought ways to incorporate them into the union, calling for the election of delegates and giving them legal protection. While the platform workers law waits in the parliaments, the unions have sought ways to solve the urgent demand to workers who need union answers.

Some recommendations are set out below:

1. Respect and ensure mechanisms for platform workers to be represented collectively.

The State must promote mechanisms for platform workers to be represented, respect their forms of association and protect them from different attacks. Whether by creating new collectivization structures or by or incorporating through joint work with trade unions -and becoming part of the trade union organization structure-, it is important that States promote mechanisms of collectivization for the meaningful and effective representation of workers interests. When establishing new collective structures, it's vital to prevent worker atomization, which can weaken union influence. From the other side, even when becoming part of existing union structures, gig workers would bottom up the new demands of the working class in the 4.0 Revolution. Indeed, young people who understand the logics of communication, digital union action, cyberactivism and the new rights to be claimed are needed to "modernize" the claims of unions in the face of a new generation that needs to feel part of the working class.

2. Carry out progressive labor reforms that protect workers in face of the digital economy, including by recognizing labor relations involved in platform work and offering such workers correspondent rights.

Progressive labor reform does not imply the flexibilization of the labor contract, on the contrary. It should extend labor law into currently precarious work relationships and be able to reclaim a relative sovereignty of the working class' time as a product of technological intermediation.

3. Respecting the national context and legal tradition while modernizing the freedom of association and collective bargaining for platform workers.

These recommendations are general statements that must find their place in the legal frameworks, tradition, and culture of each country. It is undeniable that the realities are diverse from country to country, but if the state does not promote social dialogue and the effective transformation towards a working society with decent employment for all, it will be difficult for it to emerge naturally from the controversies and conflicts that are seen every day in the street.

4. States must promote mixed income schemes to unions of platform workers.

It is necessary that the unions in the region are not financed with 100% discretionary income from the state, nor that they are financed with 100% affiliation fees, since in this way, self-employment, and lack of interest in the union will be direct threats that could lead to their disappearance. It is necessary to look for mixed income schemes, together with a strong representation strategy that seeks to generate interest and new affiliates that empower unions in this new world of work.

5. Involving the business chambers is key, because of the different nature of the relationships.

Platform workers are not entrepreneurs, they are workers, but also, in many cases, they are workers who are also employers. Like the figure of the neighborhood grocer, who was perceived as a worker, but who owned a business, in many cases platform workers, such as content generators, or those who work in e-commerce sites, also can be employers, and need their demands to be articulated also from the business perspective. A worker who

generates content on YouTube, for example, needs tools to be able to hire staff but also to express his or her claims against the injustices that may be committed by the platform where he or she operates. Indeed, these jobs have a double profile: that of the worker and that of an MSME with specific needs. Given this fact, it is relevant that business chambers also attend to the demands of many of these platform workers, seeking to assist and represent them in joint work with organized labor (TN 2009).

Scenario of outcomes

Inclusion of platform workers in the traditional labor agenda is not free of conflict. From one side, it is to be expected that incorporating platform workers into traditional union structures will generate conflict, friction and resistance within the structure itself. From the other side, with new union structures atomization can diminish the workers' collective power.

The new platform workers put in question the union structures and rights conquered with the work of the second industrial revolution, highlighting that the 8-hour workday is questioned by the new generations, among other issues. Is the trade union movement prepared to claim the relative sovereignty of time? The need to establish rules in the algorithmic management of work? Or to protect data as accumulated capital owned by the workers themselves? Putting these issues on the agenda is urgent and necessary if we want to make collective representation of platform workers into one that really represents the new generations and new forms of work.

There is a need to address the issue of income for trade union institutions, to provide them with permanent income to enable their empowerment and action. Self-employed

workers can be seen as a threat to this income since they do not join the unions and do not contribute to their financial structure.

The new forms of work organization will inevitably be subject to the conflicts mentioned in these paragraphs. It is necessary for the State to address this agenda, accompanying and encouraging the transformation process to lower the level of conflict and generate empowered trade union organizations for the future. What is at risk is too much: we cannot allow union organizations to weaken or disappear in the hands of technological intermediation and precarious work in an increasingly unequal world.

In this sense, we can ignore the problem, allowing the weakening of union organizations and the atomization of workers, or we can face the problem knowing that it will not be easy, but with the firm conviction that an empowered union movement is the solution to the problem of precarious work and inequality. We believe that the latter should be the path to be adopted.

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