



ROADMAP TO JUSTICE: HOW KAZAKHSTAN'S PLATFORM ECONOMY WORKERS CAN STAND FOR THEIR RIGHTS



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TABLE OF CONTENTS

INTRODUCTION	1
METHODOLOGY	2
OVERVIEW	3
1. Analysis of the Digital Ride-Hail Market in Kazakhstan	3
Taxi Markets	3
Impacts	5
2. Platform Drivers' Legal Status	6
Relevant Labor Legislation	6
Why Platform Taxi Drivers Are Misclassified	7
Legal Justification for Misclassification by Platform Companies	8
Drivers Protest Against Platform Company	9
Government Views	9
3. Working Conditions	10
Working Conditions of Platform Drivers	10
<i>General Overview of the Basic Working Conditions in the Republic of Kazakhstan</i>	10
<i>Corporate Analysis</i>	10
<i>Working Time</i>	11
<i>Pay and Wages</i>	12
<i>Tipping</i>	13
<i>Social Protection</i>	13
<i>Labor Inspection</i>	13
Views of Platform Drivers	13
Right to Organize and Conduct Collective Bargaining	15
4. Ensuring Equality and Nondiscrimination	16
Prevention and Prohibition of Discrimination	16
Women's Rights in Gig Platforms	16
Migrants' Rights on Platforms	18
5. Recommendations	19

INTRODUCTION

In recent years, workers have entered into full- or part-time work on digital platforms in increasing numbers—a process that accelerated during the COVID19 pandemic. According to the Global Commission on the Future of Work, this intermediated form of work is expected to continue to grow. Although more common elsewhere, digital platforms are relatively new to Central Asia. Kazakhstan has the most developed digital market in the region, and digital platform companies operate in Kazakhstan's major cities, including Nur-Sultan, Almaty and Shymkent.

With the sector's growth, the vulnerability of workers in this segment has also become more apparent, especially for marginalized groups. This is in part due to the issue of whether workers working for digital platforms are independent contractors or subordinate employees. As in many countries, digital platform companies wield significant political and economic power and have lobbied to characterize the relationship with drivers as one with an independent contractor. Therefore, these firms have shifted the risks and liabilities onto workers while simultaneously reaping the rewards and limiting their responsibility. Today, most people working for a digital platform in Kazakhstan do so outside of the labor law, lacking any rights or basic social protections.

Workers and unions in many countries have fought to pressure legislative bodies and courts to recognize an employment relationship and enforce the corresponding labor laws. In the Central Asian region, politicians and policymakers have not paid enough attention to this issue. Discontent among these workers is starting to grow and already led to a strike in Kazakhstan in 2021. One of the driving forces enabling platform companies to grow rapidly in this and other countries is their market monopolization strategy, in which drivers continue to work despite their grievances because they cannot find alternative opportunities.

This report provides an overview of the employment situation of drivers on digital platforms in Kazakhstan, using the example of one of the market platform leaders: Yandex Go (Yandex).

METHODOLOGY

The present study consisted of three phases, as shown in **Table 1**.

Table 1: Report Structure

Phase 1: Market Analysis	An analysis of the platform economy market in Kazakhstan, including a description of the main actors and policies
Phase 2: Study of the Views of Drivers on Digital Platforms	A study on the views of drivers to better understand their concerns and expectations
Phase 3: Legal Analysis	A legal analysis of the labor legislation as it applies to platform-based employment

Table 2: Sample Distribution

TARGET GROUP	SAMPLE
Gig platform drivers (e.g., for Yandex) with at least one year of experience	CATI: 200
Activist-drivers, members of trade unions or protest participants	IDI: 1
Drivers whose rights were violated while working for a platform	IDI: 3
Vulnerable groups of drivers (e.g., women, internal migrants)	IDI: 2
Representatives of companies in the taxi and platform industries	IDI: 2
Civil liability organizations: specialized NGOs, NPOs, associations	IDI: 1
Experts/opinion leaders in the taxi and platform economy industries	IDI: 1

CATI, computer-assisted telephone interview; IDI, in-depth interview; NGO, nongovernmental organization; NPO, nonprofit organization.

The largest percentage of respondents (51 percent) in the quantitative survey was represented by people ages 22 to 35; 31 percent were people ages 36 to 45, 15 percent were people ages 46 to 65, two percent were people ages 18 to 21 and 1 percent were older than age 65. A total of 94 percent of the respondents were male; 75 percent live in Almaty, and 25 percent live in Nur-Sultan.

OVERVIEW

This is the first study on digital platforms and labor relations in Central Asia, and it examines the situation of workers working for Yandex/Uber in Kazakhstan.

The first section of this report describes the current platform companies in Kazakhstan, identifying market leaders (of which Yandex is one). It also includes information on Yandex's registration and method of operation within the Kazakh market.

The second section describes the employment conditions of Yandex drivers and reviews the contracts into which drivers enter when working with Yandex as well as the company's position.

The third section consists of three subsections: 1) the results of a survey of drivers regarding their working conditions, including pay, working hours, and bonus and penalty systems; 2) a discussion of the drivers' concerns and demands regarding their work with the platform; and 3) an overview of the law and assessment of the methods by which platform drivers can collectively bargain for their rights.

The final section provides legislative and international norms on the prohibition of discrimination and examines the specific concerns of female and internal migrant drivers. At the end of the report, general conclusions and recommendations made by local experts are presented to protect platform drivers' labor rights and improve their working conditions.

1. ANALYSIS OF THE DIGITAL RIDE-HAIL MARKET IN KAZAKHSTAN

In 2017, the government launched the Digital Kazakhstan program, the main goal of which was to progressively develop the digital ecosystem in order to achieve sustainable economic growth. Kazakhstan's digital infrastructure is indeed growing fast. According to a study conducted by the Economic and Social Commission for Asia and the Pacific (ESCAP), the telecommunications sector in Kazakhstan is one of the most developed in the North and Central Asian regions.¹ Telecommunication services are generally affordable; consequently, a relatively high percentage of the population have access to broadband services. According to datareportal.com, the total number of internet users in the country as of January 2021 was 15.47 million, with an internet penetration rate of approximately 81.9 percent.² Unfortunately, Digital Kazakhstan³ did not contemplate legal or policy changes to protect workers in this sector of the economy.

Taxi Markets

Table 3 shows the size of the taxi market in Kazakhstan, with 70 percent of the taxi market in cities with more than 1 million residents, namely Almaty, Nur-Sultan and Shymkent. In Almaty, for example, there were about 200,000 taxis, all of which were registered with the Urban Mobility Department. Following the emergence of platforms in the taxi service market, the number of traditional taxi fleets having their

own cars, garages and staff decreased. According to the marketing research agency BusinesStat, the number of taxi fleets in Kazakhstan has decreased by 18 percent during the past three years.⁴

...classic taxi fleets cannot withstand the competition, and many have to either innovate somehow, or close their business. More than fifty companies have simply closed down and sold their cars. (Head of the Republican Taxi Services Association)

Instead of traditional taxi fleets, other companies have emerged. In mid-2016, major players such as Yandex and Uber emerged within the Kazakhstan market, subsequently merging under the aegis of Yandex.

The top three platform companies-by market share are as follows in Kazakhstan:

1. Yandex
2. inDriver
3. Region

Table 3: Data on Taxi Market Volume

Market Volume Indicators in Kazakhstan⁵	
Kazakhstan taxi market volume (number of trips per year)	195 million
Kazakhstan taxi market volume (in Kazakhstani tenge [KZT])	120 billion
Distribution of Taxi Market Volume	
Cities of Nur-Sultan, Shymkent of Almaty (as a percentage and in KZT)	70%, 84 billion
Regions (as a percentage and in KZT)	30%, 36 billion
Platforms' Share on the Taxi Market (by City)	
Nur-Sultan (percentage)	50%
Almaty (percentage)	80%
Shymkent (percentage)	80%

Experts estimate that Yandex occupies a share of more than 50 percent (50 percent to 80 percent) in cities with a population of more than 1 million. Other companies operate either as partners of Yandex or in the business-to-business sector.

Speaking about Almaty, today [August 2021] there are no self-promoting transportation companies providing taxi services. All of them now work via the platform, via Yandex. (Head of the Republican Taxi Services Association)

The publicly available legal documents of Yandex describe its activities as follows: "The service offers the user a free opportunity to create a taxi service driver card for the purpose of providing taxi

services with access to the said card.” In these documents, a taxi service is a partner of Yandex, which has a contract with Yandex to provide access to its services.⁶

As seen above, digital platforms in the ride-hail business are often registered as information and dispatch services or companies carrying out activities in the field of information technology and information systems. The legislation of the Republic of Kazakhstan has certain drawbacks and contradictions in terms of regulating the activity of information and dispatch services. Firstly, there are different definitions of the term *dispatch service*. According to Article 1(9-1) of the Republic of Kazakhstan’s law regarding road transport, a taxi information and control service is one established by a carrier or another person to process customer orders and transfer them to a taxi driver, including via a hardware/software system. It is argued that a mobile application by its very nature cannot be a dispatch service operator, one able to fulfill the functions assigned to the operator. Many experts believe that the owners of online taxi mobile services can only enter into contracts with people included in the Register of Taxi Carriers, which is maintained by local executive authorities. In support of their argument, these experts cite paragraph 401 of the Transportation Rules, according to which a dispatch service established by a third party is to form a contract only with taxi carriers included in the Register of Taxi Carriers and provide its services in accordance with the Taxi Carrier Regulations 340–343 and subparagraphs 1, 3 and 5 of paragraph 214. It is clearly necessary to amend the Transportation Rules and the National Standard in order to define the liability of taxi dispatchers more clearly as well as of owners of mobile apps that provide similar services.

Impacts

The experts who participated in the in-depth interviews under this project, while noting the growth of the platform economy in general and the taxi services market in particular, highlighted the following negative aspects of this trend:

- The pace of the growth of this sector of the economy has significantly outstripped the development of administrative oversight capacity. In particular, one needs to clearly define the legal status of the participants and determine their areas of responsibility:

...the speed of administration is not comparable to the speed of innovation, and to the speed of the globalization of business. Therefore, now it is necessary to understand how it will be administered in terms of legislation. (Founder of Faithful Partner taxi service)

- There is a lack of financial transparency. Information on the platforms’ income is secret, and often participants (e.g., drivers, partner companies) do not officially declare their income.
- Transportation safety has decreased. Further, in the event of an accident, the passenger or driver may not be able to obtain necessary compensation.
- The terms and conditions of employment are unilaterally determined by platform companies, including the commission rate and whether to suspend or disconnect a driver from the service:

They can skim as much as they want off the driver’s fare, and yet he has no choice in the matter, as he cannot go somewhere else. (Head of the Republican Taxi Services Association)

2. PLATFORM DRIVERS' LEGAL STATUS

Relevant Labor Legislation

Labor rights in the Republic of Kazakhstan are governed by constitutional labor guarantees (Article 24) and the labor code, which was adopted in 2015 as a replacement to the previous labor code. The code covers:

- Labor relations
- Relations linked to labor rights
- Social partnership
- Health and safety in labor relations

The code applies to employees, workers employed through intermediate companies, employers and intermediate companies operating in the territory of the Republic of Kazakhstan, including branches and/or representative offices of foreign legal entities, which are officially registered in the country unless otherwise provided by the laws of the Republic of Kazakhstan.⁷

Digital platform companies have consistently argued that drivers are not employees and therefore not covered by the labor code. However, in 2021, the Kazakh Supreme Court decided a case finding the existence of an employment relationship.⁸ The plaintiff was a courier for Glovo Kazakhstan. According to the court's decision, he was obliged to pay back the loan to Glovo. His only source of income was the income from Glovo Kazakhstan via Kaspi Bank. To ensure execution of the court's decision, the bank froze the plaintiff's bank account in which money from Glovo Kazakhstan for his work performed as a delivery service courier was deposited. The court determined that there was an employment relationship despite the absence of an employment contract. As a result, it rejected the freeze of the plaintiff's bank account on the basis that wages from an employment relationship cannot be frozen. However, the Court of Appeals reversed the judgment and decided to allow the freezing of the plaintiff's account on the basis that there was no employment relationship with Glovo but rather a civil contract. The Supreme Court reversed the Appellate Court's decision and declared the existence of the employment relationship between the applicant and Glovo Kazakhstan.

Specifically, the Supreme Court applied Article 7 of the court's June 10, 2017, regulatory decree regarding "certain issues of the application of legislation by courts in the resolution of labor disputes," which states that the characteristic features of labor relations are those in which an employee personally performs work (i.e., labor function) for a certain work and obeys the labor regulations, and the employer pays the employee wages for labor. Further, the court referred to the International Labour Organization (ILO) Recommendation 198. Applying these principles to the case, the court proved the existence of a labor relationship, which, according to the legislation of Kazakhstan, should serve as the basis for entering into a labor contract instead of the service contract.

Of course, the decision applies to the parties involved in the case, but it has not resolved the general matter of employment status of workers on platforms. It is, however, a persuasive authority that might be used as a reference for other independent contractors hired via digital platforms. As such, most workers remain misclassified as independent contractors.

Why Platform Taxi Drivers Are Misclassified

Misclassifying employees as independent contractors is a common practice and used by the vast majority of companies in the digital platform economy. The procedure by which drivers are engaged by platforms is, in our view, employment, including a contract spelling out detailed rules for using the app. Drivers must download the app and agree with all the terms proposed by the platform company to be able to start driving for that firm. The drivers either use their own car, purchase one on a loan or rent one from a taxi fleet. The drivers choose the length of their working day; however, there is an incentive system on the app that encourages drivers to complete as many orders per day as possible. Further, lengthy shifts are necessary to earn sufficient income. The company manages the workload and assesses the work performance of drivers, which clearly implies an employment relationship.

And so, when you download the application, you put a check mark to confirm that you have familiarized yourself with everything, agree with everything, you have no complaints. So, now we have contracts that no one can even complain about. (Representative of Region, a taxi service)

In the above mentioned case, the Supreme Court reviewed the contract and the factual circumstances to determine classification.⁹ According to the mentioned judgment:

1. The remuneration was essentially determined by the company unilaterally. As the agreement indicates:
[R]ates of courier's remuneration are available for viewing and familiarization in the Courier's Personal Account in the Application. ...The Courier is aware and agrees that their remuneration rates may be changed by GLOVO unilaterally by changing the relevant data in the Application.
2. There was a failure to propose, initiate or make any changes in the contract by the couriers (i.e., a lack of freedom of contract). The agreement establishes that:
The Conditions can be changed at Glovo's sole discretion unilaterally. According to the contract's Terms of Service Glovo will notify the courier of all changes by sending a newsletter to the email address. If the Courier has not rejected the changed text of the terms of service within 72 hours from the date of publication of the changes, the Courier shall be deemed to have read the updated terms of service and accepted them. If the Courier does not accept the terms, they are unable to use the Application and perform the work.
3. The court found a high level of integration of personal participation of couriers in the logistics chain of the organization, indicating the impossibility of its functioning without this element. Glovo Kazakhstan acts as an intermediary for the immediate delivery of ordered products. This function is implemented by couriers under the section of the agreement titled "Services provided by the courier."
4. Glovo established certain standards of business conduct for couriers who work with them. According to the agreement section titled "Obligations in relation to the use of the platform," the

couriers have the right to independently organize their time but are obliged to deliver the order within 60 minutes from the moment of appointment. Execution of the order without going beyond the maximum delivery time is a prerequisite for the courier. Failure to comply with this condition entails termination of agreement. Moreover, a series of refusals from the courier to fulfill their orders limits their access to the application.

5. Couriers perform work for which a payment is charged from customers.
6. Couriers do not know the destination and how much they will earn until they accept the information from the company and fulfill their work. The company also monitors the quality and speed of couriers' work through an appropriate warning-and-reward system.

Thus, the court concluded that the work is formed on the basis of information obtained from the company's app, with indication of a specific time and place, volume, and continuity of work.

Legal Justification for Misclassification by Platform Companies

Platforms argue that drivers are not officially considered in an employment relationship—they merely agree to the terms of the service contract, which describes the procedure for calculating payment and accruing bonuses. Yandex argues that it is covered not by the labor legislation but rather Chapter 33 of the civil code and, in particular, Article 683 (titled "Contract for the provision of services against payment"). This article provides the mechanism of paid services, in which the performer undertakes to offer services (to perform certain actions or accomplish certain goals) as assigned by the customer, and the customer undertakes to pay for these services.

Registration in the system of Yandex by partner companies is carried out as followed:

- Via online registration by filling out the connection form on the website
- Registration by phone; drivers must call the indicated phone number or write via WhatsApp
- Via office registration with the help of company employees

The text of the offer posted on the website of Yandex's partner company Yapartner, LLP, states:

The driver is referred to as the "Customer," Yapartner LLP is referred to as the "Contractor." An "Offer Agreement" is concluded between them, meaning an agreement between the Contractor and the Customer for the provision of information services, which is concluded by means of Acceptance of the Offer. The Contractor's function is specified in the Offer as "placement of information on passenger transportation on its electronic resources, and provision of consumer access to information on passenger transportation.

By accepting the terms of the public offer, the driver agrees to comply with the legislation of the Republic of Kazakhstan, including the rules of passenger transportation.

Drivers Protest Against Platform Company

In 2021, Yandex drivers held a strike in order to protest the following actions taken by the company¹⁰:

- The company provides discounts or promotions for clients at the drivers' expense
- The commission rate increased from 12 percent to 15 percent
- There have been unjustified downgrades of drivers' ratings

Drivers also demanded an increase of the minimum fare (which is about \$1 [400 KZT]), the cost of 1.5 kilometers for a ride and 3 minutes of waiting time. (This is the minimum distance for which a customer can call Yandex.)

The strike was covered by the media, and according to the Yandex's press service, none of the drivers came to them with demands prior to the strike. The company did not respond to any of the workers' demands, and there was no agreement reached on this issue; however, the fact that drivers managed to organize and tried to defend their rights highlights the importance of developing social dialogue and implementing the process of collective bargaining.

Government Views

Public figures have voiced proposals to regulate digital platforms, including for the purpose of creating a public supervisory institution mandated to protect workers' rights on digital platforms.

On May 6, 2021, Taxi Services Association Chairman Medet Kurmanov made a proposal to the Open Space platform to limit the maximum amount of commission charged by taxi platforms operating in the Kazakh market. He believes that taxi platform fares should be monitored and regulated. Altai Ali, deputy chairman of the Transportation Committee of the Ministry of Industry and Infrastructure Development, did not exclude the possibility of the amount of commission charged by taxi platforms being made visible to both clients and drivers and proposed to discuss the issue with the business sector.¹¹

Former Minister of Social Protection Baikarim Tutenov also voiced his concern about the vulnerability of couriers and taxi drivers. In his opinion, all the laws are formally observed, because drivers themselves sign an independent contract agreement (ICA), under which the employer can unilaterally reduce wages or change working conditions. Tutenov believes that foreign companies have found a loophole in the civil law and use it as a legalized form of slavery. He stated his belief that the state should start paying attention to the problem of couriers and drivers and settle the issue. Tutenov also suggested that platform workers appeal to the Committee on Labor and Employment under the local administration because issues of wages, royalties and taxation should concern the local authorities, who should offer some initiative, including legislative ones. According to Tutenov, if the platform workers demand not only an increase in wages but also a review of their working conditions by the Commission on Social and Labor Disputes, then the issue will become a political rather than a private matter. Through these demands, drivers could attract the attention of the authorities.¹²

3. WORKING CONDITIONS

Working Conditions of Platform Drivers

Yandex is one of the main platform corporations in Central Asia to monopolize Kazakhstan's taxi market and is the key player that determines working conditions for the other platform taxi services. This section describes Yandex drivers' conditions, including working hours (the number of working and rest hours and the general schedule), pay, physical conditions and psychological requirements of the workplace. Section 3.2 details the drivers' main requests that were identified by the survey. Section 3.3 reveals the opportunities and challenges that come with the right to organize and bargain collectively.

General Overview of the Basic Working Conditions in the Republic of Kazakhstan

Article 24.4 of the constitution of the Republic of Kazakhstan guarantees working hours, rest days, holidays and paid annual leave to those working under an employment contract. In addition, according to Article 24.3, everyone has the right to working conditions that meet safety and health requirements, remuneration for work without discrimination and social protection in the case of unemployment. Furthermore, Article 28.1 guarantees a minimum wage and pension and social security coverage for elderly people, those with illnesses or an incapacity to work and those with a disability; it also provides for the loss of a breadwinner as well as other legal grounds for the citizens of Kazakhstan. Constitutional provisions are duplicated and considerably expanded throughout the labor code. It should also be noted that a number of state guarantees for the remuneration of workers in formal employment relationships with employers include minimum monthly and hourly wages, overtime pay, pay for work on holidays and weekends, pay for night work, limits on deductions from workers' wages, and procedures and time limits for the payment of wages.¹³

Corporate Analysis

All drivers working with a digital platform are evaluated by both the app system and customers. Ratings are used to assess drivers' activities and directly affect the number of incoming orders; in extreme cases, negative ratings can lead to the administrative liability of drivers being blocked from using the system. For example, if a driver cancels an order, the system automatically lowers the driver's rating, which affects their income. According to market experts, there is no response by the company if the driver challenges this decision. In other words, the company imposes administrative penalties and has the right to terminate the labor relationship with no possibility of protest by the driver.

You don't need a reason there. If you want to, you can kick this or that driver out.... The driver is not going to protect it. If a customer complains, doubts about the service, or there's a rumor that the driver was drunk at the wheel or something...it's over. The driver is not going to appeal. He understands that he has no relationship with the platform....
(Head of the Republican Taxi Services Association)

In such cases, the workers have no opportunity to challenge decisions by the company to disconnect them from the app. Customer feedback has a strong influence on workers' ratings and determines the income they earn; thus, the ratings play an important role, especially for those

drivers whose main source of income is platform work. A decreased rating can cause negative consequences for drivers, including a drop in orders (72 percent) and suspension from the app (37 percent of responses). These outcomes were confirmed by 35 percent of the drivers who responded to the survey and in-depth interview participants. The fines and penalties imposed on drivers lower their ratings (noted by 73 percent of the respondents) and cause temporary suspension of their work (noted by 46 percent of the survey participants), which are the often applied administrative liabilities. Additionally, respondents listed other violations that could be followed by even more sanctions, such as customers' complaints on noncompliance with sanitary norms.

According to 95 percent of responses to the quantitative survey, drivers are not assigned any routes, but there is a penalty imposed in the form of a rating downgrade if they cancel an order. This again confirms the fact that the company applies administrative liability to the drivers for canceling their orders.

Study revealed that Yandex drivers who drive in cars branded with the company's logo are automatically offered more orders by the system, which encourages them to use branded equipment during their work:

With Yandex, if you cover your car in company stickers, you get priority—more orders, allegedly at least. (Representative of Region taxi service)

The Yandex contract also prohibits the transfer of rights and access to information to third parties, which means that the driver is not entitled to allow third parties to use the app and cannot replace their services with another person.

Working Time

According to the platform companies, drivers have the right to determine their hours of work (although there is a maximum limit set by the companies of 14 hours per day). However, the app links the working hours to the bonus system, which incentivizes drivers to complete more orders. In practice, the drivers' work schedule is directly linked with the system of bonuses, which affects their income and leads to the conclusion that they do not in reality enjoy a so-called flexible work schedule. In fact, they may even lose income if they do not work at least eight hours a day, and as a result, sometimes they must work up to 12 hours per day.

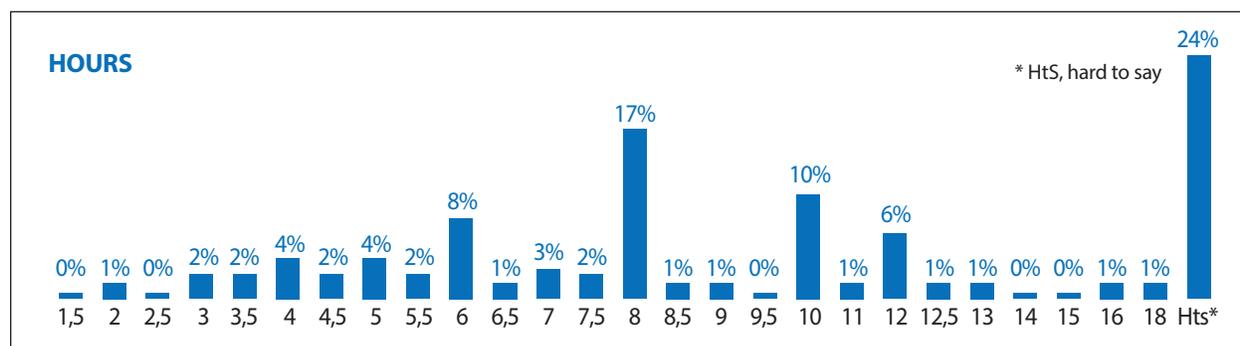
No one sets the schedule; the driver chooses it for himself. But the platform, in order not to let the driver off the hook and to make him work the whole day, creates various forms of incentives. If you complete 15 orders a day or 450 orders a month, you get an extra 5,000 or 10,000 KZT....These incentives work. (Head of the Republican Taxi Services Association)

Although Yandex does not formally arrange specific working hours, the survey found that the payment system for Yandex employees forces the drivers to work lengthy hours to be able to earn a sufficient income for living. The study also identified the duration of work performed by drivers per shift, as seen in **Table 4** and **Figure 1** below.

Table 4: Minimum, Maximum, and Average Number of Hours Worked per Shift

Minimum	Average	Maximum
5	8	12

Figure 1: Average Number of Hours Worked per Shift

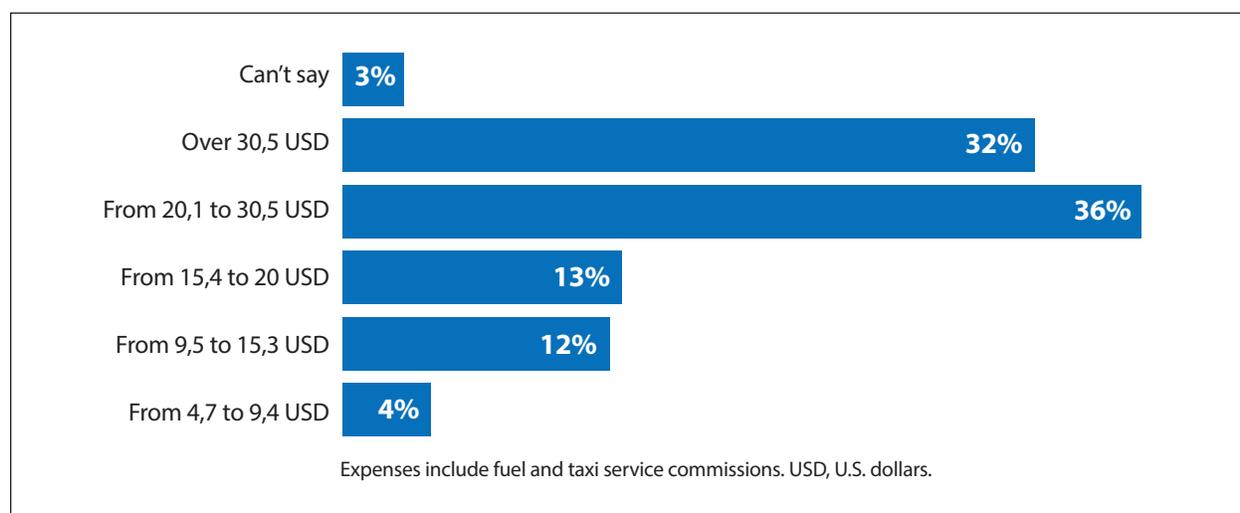


According to the survey, overall 51 percent of the respondents’ work for eight hours (inclusive) or less. However, a significant number of the respondents (10 percent) work for an average of 10 hours. It should also be emphasized that a high percentage of respondents (24 percent) do not even have a clear sense of the number of hours per day they work for the platform. Thus, in general, 50 percent of the respondents’ work shifts are for up to 12 hours (inclusive) per day, and a third of them (35 percent) replied that the maximum time they worked per shift exceeded 12 hours per day.

Pay and Wages

According to the drivers interviewed, for the most part, Yandex does not provide a minimum fixed payment to drivers. More than 60 percent of the respondents confirmed that driving a taxi is their main source of income, and more than a third of the respondents earn \$30.50 (U.S. dollars) or more per shift (13,000 KZT).

Figure 2: Average Amount Earned per Shift Minus Expenses



The drivers' earnings depend on their region and work schedule. Drivers earn bonuses for various targeted actions, which either increase their pay or give them certain advantages, such as a higher priority in the distribution of orders (at Yandex). Companies manage drivers' income based on bonuses and client reviews, a practice that was confirmed by the Supreme Court of Kazakhstan in its decision against Glovo.¹⁴ Although the court confirmed the existence of the employment relationship between the company and platform workers, it also concluded that remuneration is actually determined by the organization, without any possibility from the drivers' side to influence its amount. Furthermore, remuneration rates could be changed by the company unilaterally by amending the relevant data in the app.

Tipping

Cash and tips cannot be controlled by the app. However, Yandex has a tip function added to the app, and in the payment settings, customers can select "Tip" and choose "no tip," "five percent," "10 percent" or "15 percent." The specified gratuity amount is deducted from the client's card after the trip is completed, a practice that was confirmed by 74 percent of the respondents.

Social Protection

Working with digital platforms does not guarantee workers the social protection equal to that offered by traditional employment. Indeed, the avoidance of social benefits is one of the primary "benefits" to platform companies in maintaining the fiction of a commercial relationship.

Labor Inspection

The State Labor Inspection, which monitors efficient implementation of the labor legislation in the country, is an important institution. However, the clause defined in the law on the moratorium on business inspections makes it ineffective. Moreover, the labor code applies to neither informal labor relations nor any other forms of contractual relations under civil law contracts. Therefore, misclassified drivers working for platform companies do not have the labor law's protection and are not subject to the jurisdiction of labor inspection. In other words, workers in the platform economy without an employment contract face the risks of working in a hazardous working environment and are forced to bear responsibility for workplace accidents. Moreover, as service contractors operating under the civil law contract, a number of social guarantees are inaccessible to them.

Views of Platform Drivers

Drivers were asked to offer details on aspects of the Yandex experience that they would like to see changed. For example, it is important for drivers to be provided with health insurance (62 percent of the respondents indicated this was either "rather important" or "very important"). Overtime pay is also a priority. More information on the importance ranking of the platform drivers' needs is shown in **Table 5**.

Table 5: Platform Drivers' Needs

NEED	LEVEL OF IMPORTANCE	TOTAL
Yandex/Uber should cover drivers' transportation costs (gasoline, repairs)	Not important at all/Rather unimportant	40%
	Rather important/Very important	60%
Yandex/Uber should provide health insurance to drivers	Not important at all/Rather unimportant	38%
	Rather important/Very important	62%
Yandex/Uber should have an office in our country	Not important at all/Rather unimportant	43%
	Rather important/Very important	57%
Yandex/Uber should formally employ drivers using their apps	Not important at all/Rather unimportant	51%
	Rather important/Very important	49%
Yandex/Uber should provide a minimum wage (salary) for drivers	Not important at all/Rather unimportant	52%
	Rather important/Very important	48%
Yandex/Uber should bear their share of responsibility in case of an accident	Not important at all/Rather unimportant	46%
	Rather important/Very important	54%
Yandex/Uber should pay for extra hours at a higher rate (overtime)	Not important at all/Rather unimportant	38%
	Rather important/Very important	62%
Yandex/Uber should not block drivers in the case of prolonged absence	Not important at all/Rather unimportant	39%
	Rather important/Very important	61%

Among other problems with the app work, drivers listed the risk of being left without payment despite the fact that order is actually been completed:

Sometimes, you accept a delivery. You take it to the other end of town. It's all paid through bank transfer. So, when you get to that address....They don't pick up the phone. The rules say you have to take the delivery back. You go back happy, you think you'll get double fare. While you're driving, she sees you're on your way back but hasn't returned the order yet. So, the client switches the payment method to cash and then I arrive. They refuse to pay, saying, "Money? What money? I'm not giving it to you, you didn't do anything." (Driver interviewee 1)

In addition, according to the survey, drivers must deal with rude and/or aggressive passengers (14 percent) and order cancellations (14 percent). Other significant problems include the absence of official employment (11 percent) and of the possibility to refuse orders (nine percent).

Right to Organize and Conduct Collective Bargaining

The state has ratified all eight key ILO conventions. Kazakhstan is a monist state, in which ratification of international treaties automatically makes them part of the national legislation. Obligations under international treaties take precedence over national law, but the Supreme Court has clarified that, in the case of a conflict between obligations under international treaties and the constitution, constitutional provisions take precedence. In practice, courts' use of international treaty provisions is very rare.

Paragraph 1 of Article 23 of the constitution of the Republic of Kazakhstan provides citizens with the right to freedom of association. Trade unions' rights in the Republic of Kazakhstan are regulated by the legislation regarding trade unions,¹⁵ which are dated from June 27, 2014. While it could be argued that platform drivers can form a union, several inconsistencies in the law and in practice prevent platform drivers from exercising their constitutional right to do so. It is nearly impossible to register the unions in general, a fact about which the ILO has commented repeatedly for years.¹⁶ However, workers in this sector have attempted to establish a union. In May 2021, workers from several platform-based food delivery companies went on a series of strikes that comprised the largest industrial action of nonunionized workers outside the extractives industry in the past decade.¹⁷ The initiation of these actions was an adjustment to algorithms that amounted to a significant loss in pay, which workers discovered only already having completed the work. The issue escalated when some workers were removed from the platform (in essence, fired) for participating in the demonstrations. In July 2021 workers have also submitted papers to register a trade union.¹⁸ However, as noted by the International Trade Union Confederation (ITUC) during a hearing before the ILO's Committee on the Application of Standards—the fifth time in the past six years in which the committee has considered Kazakhstan's nonadherence to fundamental international labor rights standards—registration procedures in Kazakhstan are frequently used to “hinder the establishment or operation of free and independent trade union organizations.”¹⁹ During the same hearing, the ITUC noted that the leader of the nascent platform workers' union was detained in October 2021 on the day the union was planning another strike action.

Drivers, however, believe that unions could solve a number of problems, but clear lines of communication with government agencies are needed.

There's a union called Taxi King. It's on Aiteke B Street. Their office was demolished recently. Completely useless. They don't make decisions. Unions are needed to make collective decisions. I myself tried to negotiate with the platform, to no avail. (Driver interviewee 3)

It is worth noting that, despite this fact, fewer than 40 percent of the respondents are aware of trade unions. In addition, more than 60 percent of respondents have never tried to resolve their issues by forming a trade union. Respondents (25 percent) noted that Yandex/Uber categorically opposes the organization of a trade union, nor does not support it by showing indifference (25 percent of respondents). Those surveyed did not necessarily try to form a trade union themselves, but they were aware of the ongoing situation. Additionally, 38 percent of the respondents showed indifference to the situation and said they were unaware of these events' developments. Drivers often attempt to resolve their issues on their own (58 percent); in 22 percent of cases, they turn to Yandex, and in 15 percent, they turn to the Yandex partner company. Drivers' challenges were resolved in only 65 percent of the cases.

4. ENSURING EQUALITY AND NONDISCRIMINATION

Prevention and Prohibition of Discrimination

According to Article 6 of the labor code on the prohibition of discrimination at work:

Each person has equal opportunities to exercise their rights and freedoms in the labor field. Nobody can be limited in their rights in the labor field, except in cases and according to the procedures foreseen in this Code and other laws of the Republic of Kazakhstan.

No one should be victim to discrimination when exercising their labor rights on the grounds of origin, social, official or property status, gender, race, nationality, language, attitude to religion, beliefs, place of residence, age, or physical disabilities or because of their belonging to a public association. However, differentiation, exclusion, preference or restrictions put in place for particular types of activities or in accordance with the special care of the state for people needing enhanced social and legal protection are not considered discrimination.

Discrimination in platform work is not specifically addressed in the legislation. Although platform workers have the same constitutional guarantees to ensure equality and nondiscrimination in employment, they are excluded from the protection of their labor rights due to the civil law contract, instead of the labor one, which makes them even more vulnerable to discriminatory behavior from the platform companies' side.

Women's Rights in Gig Platforms

Although Kazakhstani law contains several constitutional, civil and criminal provisions aimed at ensuring gender equality and prohibiting discrimination against women, women do not apply to the courts or any other state institutions in the country in order to claim discrimination. There are a number of related factors that wrongly contribute to this, such as limited resources and the high cost of litigation, women's lack of legal knowledge and awareness about their rights, and societal norms and gender roles. These practical barriers are coupled with a number of normative and procedural obstacles, which include the lack of legal protection of women against discrimination and the nonexistence of an effective and accessible mechanisms to restore their rights.

Notwithstanding the need to address the practical barriers faced by women, the first step is to put in place appropriate legislative frameworks and redress mechanisms. This approach is consistent with the position of international bodies with regard to the actions to be taken by Kazakhstan in light of its international obligations.²⁰ Accordingly, it is necessary for the government to adopt measures aimed at increasing awareness among women and creating effective legal norms and law enforcement mechanisms for the prohibition and elimination of discrimination. Women in Kazakhstan should be granted equal protection and rights in labor relations, which include the right to social security, health protection and safe working conditions.

There are no formal prohibitions against women being employed as taxi drivers; however, the proportion of female drivers remains extremely low. A total of 94 percent of the drivers surveyed in the course of this research were men, and only six percent were women. Despite this, the platforms have not taken any steps to adopt a gender-sensitive approach that would open up possibilities for female drivers to enter the market.

During this research, a female Yandex driver in Kazakhstan was interviewed in order to gain insights on the problems faced by female drivers within the platform economy. The respondent stated she had not encountered any discriminatory factors in the hiring process, as her registration took place on WhatsApp. The app does not differentiate between interest rates and payment for male and female drivers. However, the respondent noted that some customers cancel their ride when they see that their driver is a woman. This indicates certain costs to the driver, who has wasted her time and money and missed opportunities to take other orders. In some cases, it can lead to conflict situations. Stereotypical attitudes by colleagues toward female drivers also occur in the form of jokes or direct insults.

According to the respondent, gender-based violence and harassment of drivers occur frequently. To address this problem as well as safety issues, the only tool a female driver can use at Yandex is the help desk. Unfortunately, this service is slow; additionally, the company's policy most often takes the side of the client. This continues to build the case that decisions are unilateral on the side of the company, and it undermines the ability of workers to challenge decisions and protect their rights. In addition, inaction by the platform company poses a threat to drivers' safety.

Not violence, but harassment does happen. It's not uncommon for people to save my number and then start texting me on WhatsApp. I just changed my phone number. By the way, I now remember the incident—my friend used to work for Yandex, and once a drunk passenger took her into the middle of nowhere, into some mountains by giving her a wrong address on purpose, and she could not find her way out of there for an hour and a half. After that, she stopped working for Yandex because there is no protection for the driver. Somehow she got away from there....that was quite bad. (Female driver interviewee)

The legislation of Kazakhstan does not refer to such concepts as sexual harassment at work, bullying, stalking and other equivalent concepts. In 2020, the government of Kazakhstan did not support the provisions of the draft law of April 24, 2020, regarding "the introduction of amendments and additions to certain legislative acts of the Republic of Kazakhstan regarding issues of family and gender policies," which planned to introduce administrative liability of the employer for admitting discrimination at work as well as the concept of sexual harassment against people in subordinate or dependent positions. The government justified its decision by relying on the fact that liability for the abovementioned violations was already established by the Republic of Kazakhstan's criminal code. The position of the Republic of Kazakhstan government is disputable.

This, however, does not take into account the fact that criminal prosecution is foreseen by law only for particularly cruel forms of violence, whereas other forms of violence, such as actions of sexual

connotations by an aggressor and those undesired by the victim (allusions, touching, showing pictures or gestures, etc.), which can occur at work in the framework of manager-subordinate relationships and often lead to the victim's resignation, fall outside of the legal framework. This is why trade unions have actively lobbied since 2021 for the ratification of the ILO's Convention 190, regarding the elimination of violence and harassment in the world of work.²¹ As a result, it is essential to introduce amendments to the labor legislation of the Republic of Kazakhstan, with relevant changes aimed at developing protection mechanisms and supervision by state agencies over compliance with norms on the prohibition of violence and harassment at work.

Migrants' Rights on Platforms

According to the survey conducted within the research, a vast majority (78 percent) of Yandex and Uber taxi drivers are residents of the city in which they work. However, there are also drivers who came from other cities—which is the case for 20 percent of the respondents. Another two percent of the respondents came from other countries.

Internal migrants who work as drivers were interviewed in order to better understand the problems they face. It is worth noting that the researchers attempted to find complex cases of external migrants working as platform drivers; however, these efforts were unsuccessful. The internal migrant workers noted as one issue biases by clients due to the workers' lack of knowledge of the Russian language.

You've probably noticed that I don't speak the Russian language correctly. Right? When I drive, I drive a Camry 50, it is a business class car, comfort plus, and customers sometimes ask a question that I can't answer because I don't fully understand what they are saying. And they immediately realize that I'm not local. That's how it goes.
(Migrant driver interviewee)

To reduce the risks of discrimination, the interviewed driver took steps to change his license plate number to one of his city. Among the dangers, the interviewee mentioned security risks linked to clients due to their inappropriate behavior. However, this is a common problem—not only for migrant drivers, but also for platform drivers. Drivers' security constitutes a significant challenge in the platform taxi industry.

5. RECOMMENDATIONS

CONCLUSIONS	RECOMMENDATIONS
<p>Digital platforms are registered as information and dispatch services or as companies carrying out information technology and information systems activities.</p>	<p>Amend the national legislation in a way that defines the legal status of digital labor platform companies to ensure labor rights protection, equality and occupational safety of platform workers while at work.</p>
<p>The current legal status of drivers involved in platform employment is uncertain. Neither aggregators nor intermediary companies take responsibility for protecting drivers' labor rights despite the fact that drivers perform routine work and the relationship between them has the attributes of an employment relationship.</p>	<p>There is a need to introduce legal certainty into defining the status of app workers. Therefore, we recommend ensuring compliance with the national legislation and practice of the Supreme Court's decision of Kazakhstan and acknowledge the existence of employment relationships between platform companies and app workers, as this type of work has the characteristics of an employment relationship. Drivers of gig platforms should be classified as employees to guarantee protection of their rights under the labor code and related legislation.</p>
<p>Drivers have a poor understanding of their employment status and rights under their signed contract.</p>	<p>Raise awareness among drivers about their rights and obligations. The government of Kazakhstan, together with trade union and civil society representatives, are advised to conduct a massive information campaign for drivers to ensure equality, safety and labor rights protection.</p>
<p>Drivers identified official employment, social protection (e.g., health insurance, expense coverage) and a fixed rate remuneration as a need to ensure their protection through efficient social dialogue with stakeholders.</p>	<p>To mitigate the difficulties encountered by drivers in the course of their work, it is recommended that companies enter into an official employment relationship, conduct labor contracts, provide social protection of drivers and ensure a fixed rate of remuneration. In order to achieve these goals, it is recommended to initiate, develop and enhance efficient social dialogue among social partners and make decisions on employment and labor rights-related issues based on the negotiations and consensus. The government is advised to encourage social partners to engage in the social dialogue and take steps to mediate the reconciliation process.</p>

CONCLUSIONS	RECOMMENDATIONS
<p>According to the existing Republic of Kazakhstan law on trade unions, platform workers are nearly unable to create trade unions due to their legal status. However, 40 percent of workers surveyed believe that organizing and forming unions could help solve their problems.</p>	<p>Amend the legislation in a way that clearly and precisely allows gig workers to organize and create trade unions in order to initiate and conduct collective bargaining and achieve a collective agreement.</p> <p>Secondly, provide an extensive awareness-raising campaign on trade unions' rights and the importance of the collective bargaining process in defense of workers' rights.</p>
<p>There is no definition of direct or indirect discrimination and harassment within the national legislation. Furthermore, the labor code lacks gender-sensitive provisions. Additionally, the research revealed that in practice, discrimination against female drivers occurs frequently and is related to safety issues, stereotyping and harassment by customers. Despite this, the company does not provide any incentives to engage women in platform work, and there are no efficient guarantees in place to avoid workplace incidents and violations of the safety of female drivers.</p>	<ol style="list-style-type: none"> 1. Introduce and develop a gender-sensitive strategy and incentives for women to ensure their engagement and interest in platform work. 2. Amend the labor code in such a way that defines discrimination and harassment and includes gender-sensitive provisions. 3. Ratify ILO Convention 190. 4. Launch an extensive awareness-raising campaign aimed at female workers.
<p>Driver safety is a significant issue in gig work. The Occupational Safety and Health standards and regulations do not apply to informal labor relations or any other forms of contractual relations under civil law contracts; therefore, drivers working for platform companies do not fall under the protection of the labor law and consequently are not subjected to the jurisdiction of labor inspection.</p>	<p>Ensure state control over the proper implementation of the labor legislation, including occupational hazards and workers' safety.</p> <p>The platform companies are advised to introduce efficient internal mechanisms to ensure workers' safety during their work.</p>

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