A Rights-Based Approach to Governing Online Freelance Labour: Towards Decent Work in Digital Labour Platforms

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The emergence of cross-border, web-based digital labour platforms has been among the major transformations in the world of work over the past decade. Through these platforms, tasks are performed online and remotely by freelance workers. Digital labour platforms facilitate the real-time hiring of freelance workers for a plethora of tasks, such as IT programming, language teaching, virtual assistance, marketing, graphic designing, project management, and even research and development. The global trend is that jobs are outsourced on these platforms by businesses located in the global North and performed by freelance workers residing in the global South. This NTS Insight offers a preliminary study on the emergence of web-based, cross-border digital labour and its impact on labour rights and social protection, with a special focus on online freelance workers from Southeast Asia. It reviews the efforts of ASEAN and national governments in the region to promote social protection of these workers and address challenges to rights-based governance for digital labour platforms. This Insight offers possible areas for action by Southeast Asian countries to promote rights and social protection for their workers who are engaged in web-based digital freelance labour.
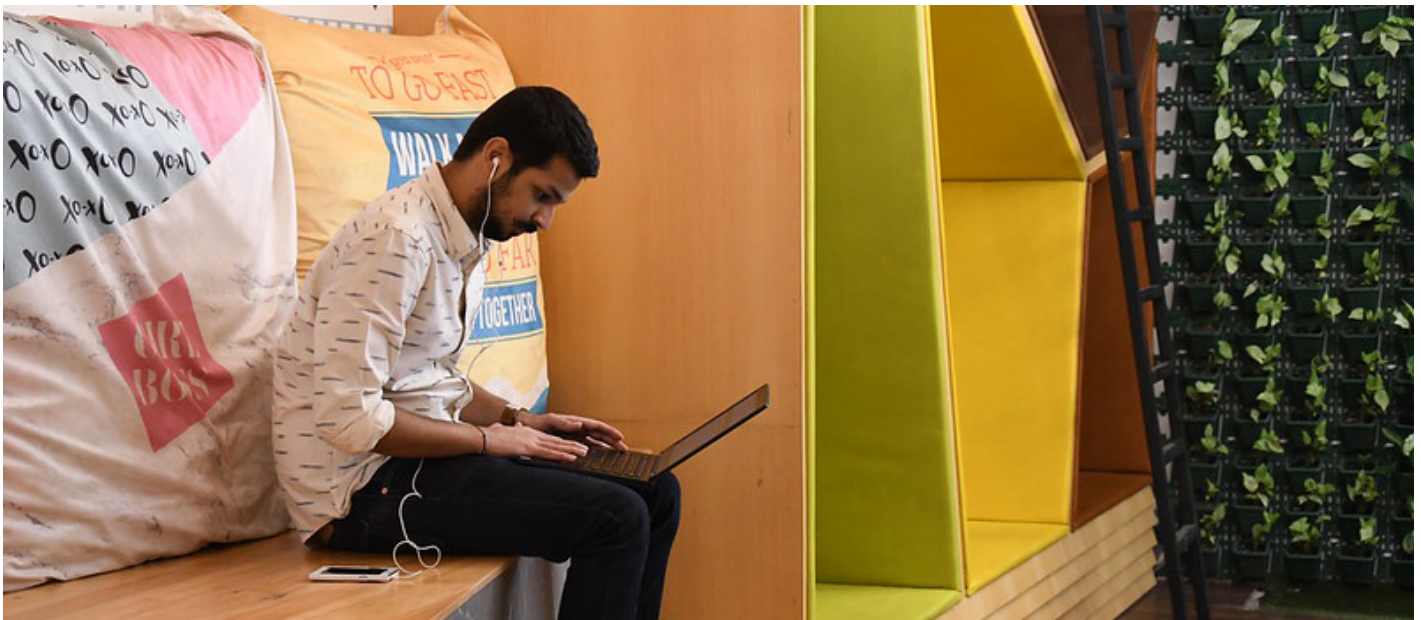

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Introduction

The COVID-19 pandemic has compelled businesses, organisations and even governments to offer remote working, or telecommuting, for their employees with the use of digital technologies and innovations. For many workers, working remotely allows them to safely work at home without the need to travel. But even before the pandemic, a new form of work that involves remote working by online freelancers from all over the world has already emerged. With the rise of online-based jobs, it is assumed that online workers will get more flexibility over when, where and how they conduct their work while employers will be less concerned over the location of their employees or even their time zones.[1] The Oxford Internet Institute's Online Labour Index recorded that activities on the five largest English-language web-based labour platforms rose by 30 per cent between July 2016 and March 2019.[2] The global pandemic is expanding and accelerating cross-border, web-based digital labour, or online freelance labour, with the rapid use of digital technology. It will likely lead to an increase in demand for hiring remote freelancers. Upwork, an online labour platform, reported that there has been a significant rise in the demand for hiring remote freelancers on its platform, since the pandemic.[3]

The emergence of cross-border, web-based digital labour platforms has been among the major transformations in the world of work over the past decade. This new form of work has not only disrupted traditional business models but also the employment model that has been linked to these business models.[4] One of the key advantages to working on web-based, digital labour platforms is the flexibility that it can provide to workers. The convenience, flexibility and low cost of outsourcing work to freelancers across the globe via web-based digital labour platforms have resulted in the immense popularity of this hiring model.[5] However, there are also inherent disadvantages for online workers concerning their status of employment, as there is no guarantee if they receive adequate income, social protection and other benefits. Meanwhile, states that want to protect or enhance the rights and social protection of freelance workers on web-based, cross-border digital labour platforms may face compliance issues outside their jurisdictions, or may put online workers at a competitive disadvantage resulting in reduction of their rights and protections.

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[1] Callus Williams, "A bright future for the world of work," *The Economist*, 8 April 2021.

[2] ILO, "Policy responses to new forms of work: International governance of digital labour Platforms," Paper prepared for the 2nd Meeting of the G20 Employment Working Group, April 2019, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_713378.pdf.

[3] Azam Ozimek, "Economist Report: Future Workforce," Upwork, December 2020, https://www.upwork.com/press/releases/economist-report-future-workforce.

[4] Janine Berg, et al., *Digital labour platforms and the future of work: Towards decent work in the online world* (Geneva: ILO, 2018).

[5] ILO, "Policy responses".

In Southeast Asia, labour officials from ASEAN member states have collectively recognised that the recent wave of technological change is bound to have profound effects on the relationships between employers and workers.[6] Focusing on web-based, cross-border digital freelance workers in Southeast Asia, this NTS Insight explores the current opportunities and risks for online freelance workers in terms of their rights and protections. It reviews the efforts of ASEAN and national governments in the region to promote social protection of these workers and address challenges to rights-based governance for digital labour platforms. This Insight offers possible areas for action by Southeast Asian countries to promote rights and social protection for their workers who are engaged in web-based digital freelance labour.

What is Cross-Border, Web-Based Digital Labour?

For this NTS Insight, I focus on one type of digital labour platforms, i.e., cross-border, web-based platforms, where tasks are performed online and remotely by workers and are allocated to a group of workers or "crowd" (on microtask and competitive programming platforms) or to individuals (on freelance and contest-based platforms).[7] Web-based digital labour platforms facilitate the real-time hiring of freelance workers for a plethora of tasks.[8] Occupations on web-based digital labour platforms can be roughly divided into 'microtasks' and 'macrotasks.' Microtasks are short and often of a clerical nature, such as copywriting, content access, product categorisation, verifying and validating data, content moderation in social media, text or audio transcription, and filling out surveys. Macrotasks are longer-term projects that typically require specialised skills, such as language teaching, project management, marketing, finance, IT programming, graphic designing, and even research and development.[9]

'Digital/online platform workers', 'crowd workers', 'online freelance workers', 'online freelancers', 'gig workers', and 'web-based workers' are used interchangeably, in most of the reports on this new type of digital work, to refer to those who work in web-based digital labour platforms.[10] Online platform workers are part of a triangular relationship. They seek 'gigs' that suit their skills and talents. Clients, whether persons or companies, post task/job openings. Digital labour platforms connect the two actors and serve as intermediaries between businesses (clients) and workers. With rapid automation, digital transformation, and demographic change, a virtual ecosystem, which is made up of more than 300 talent platforms, has provided companies on-demand access to highly talented online workers around the globe. The largest web-based, cross-border digital labour platforms are Catalant, InnoCentive, Kaggle, Toptal, and Upwork.[11]

The global trend is that jobs are outsourced on these platforms by companies located in the global North, and performed by freelance workers residing in the global South. In Asia, majority of platform tasks are completed by workers based in South Asia and East Asia.[12] A large share of platform-facilitated work is performed by workers in developing countries,

[6] ASEAN Secretariat, "ASEAN responds to changing employment relations in digital economy," 30 July 2019, https://asean.org/asean-responds-changing-employment-relations-digital-economy/.

[7] ILO, *World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work* (Geneva: ILO, 2021).

[8] ILO, "Policy responses".

[9] Amelita M. King-Dejardin, *Homeworking in the Philippines: Bad job ? Good job ?,* ILO Working Paper 25 (Geneva, ILO, 2021).

[10] Ibid.

[11] Joseph B. Fuller, *Building the on-demand workforce* (Boston: Harvard Business School and BCG, 2021).

[12] Mark Graham, Isis Hjorth, and Vili Lehdonvirta, "Digital labour and development: impacts of global digital labour platforms and the gig economy on worker livelihoods*," Transfer: European Review of Labour and Research* 23, no. 2 (2017): 135-162.

particularly in India (US$26 million worth of work), which accounts for almost 20 per cent of the total market, followed by the Philippines (US$16 million worth of work). The demand for online workers largely comes from Australia, Canada, Germany, New Zealand, UK, and US.[13]

But there are challenges to the upholding of labour rights and protections in the context of digital web-based labour. Online freelance workers often struggle to get sufficient well-paid work to earn a decent income, adding to the global problem of working poverty (high proportion of employed people who remain poor despite having jobs). Social protection schemes, such as child and family benefits, maternity leave benefits, unemployment support, accident and health insurance, and other social security benefits, remain inaccessible to many freelance workers, which is particularly concerning during a pandemic. They are also not able to participate in the collective bargaining that would allow them to articulate their rights-based concerns and demand that these be addressed.[14] While these challenges actually remain intractable even in traditional forms of work, the cross-border nature and increasing digitalisation of work require a more relevant and comprehensive rights and social protection framework for digital labour that transcends national borders.

A Rights-Based Social Protection Framework for Online Freelancing

According to the Guiding Principles on Business and Human Rights, endorsed by the UN General Assembly, even though governments are mandated to resolve and reverse violations of workers' rights within their jurisdictions, addressing labour issues that transcend border continues to be a key challenge.[15] In this regard, governance plays a critical role in the world of digital work, particularly in regulating platforms and businesses to create sustainable employment and in ensuring the protection of workers' fundamental rights. Traditionally, governance of the world of work is facilitated through various tools that include national laws, labour market regulations, tripartite social pacts, collective agreements and implementing rules, such as codes of conduct and other voluntary private initiatives. International labour standards serve as a normative framework for the development of governance tools for protecting workers' rights.   However, web-based, cross-border digital labour platform is a different story. Governments must be able to quickly and adequately adapt to technological and digital innovations under way. [16]

These innovations develop new job opportunities and transform existing ones. Along with job creation and transformation, there are additional benefits from such diverse forms of employment including helping individuals to balance work and family responsibilities, known as work-life balance. But it cannot be ignored that this creates a new type of 'invisible' work which is being accomplished outside the physical workplace. It entails unrecognisable boundaries between work and non-work, and in other cases, lack of job security, and inadequate social protection.

The 2019 United Nations System Strategy on the Future of Work strongly emphasises that all forms of employment, including the 'invisible' digital labour, need protection from labour rights violations. All forms of work must be recognised by society, regardless of how 'invisible' these may be, and addressed in legal frameworks.[17] The Global Commission on

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[13] ILO, *World Employment.*

[14] Ibid.

[15] United Nations, "United Nations system strategy on the future of work," 29 May 2019, https://unsceb.org/sites/default/files/2020-09/CEB_2019_1_Add.2_E.pdf

[16] Ibid.

[17] Ibid.

the Future of Work, created by the ILO, issued a key report in 2019 outlining a wide range of policy recommendations on improving the future of work. The Commission's *Work for a Brighter Future* proposes a "*human-centred agenda for the future work that strengthens the social contract by placing people and the work they do at the centre of economic and social policy and business practices*".[18]

A Human-Centred Framework

The human-centred framework entails providing social protection benefits even to those in the web-based digital labour based on the principles of solidarity and risk sharing. Technology-enabled future of work needs to have gender equality measures that advance women's voice and leadership, eliminating violence and harassment at work, and implementing pay transparency policies. The framework also prescribes that all workers, regardless of their contractual arrangement or employment status, should enjoy labour rights, a sufficient living wage, maximum limits on working hours, and protection of safety and health at work. As they must enjoy freedom of association and the right to collective bargaining, with the State as the guarantor of those rights, the Commission argues that workers' associations must adopt innovative organising strategies to better represent and articulate the voices of those who are engaged in digital labour platforms. There should be a "human-in-command approach" to regulating, harnessing, and managing technology and data use for decent work, ensuring that human beings have the autonomy to make final decisions affecting work.[19]

The ILO's recent report on digital labour platforms calls for policies and measures that guarantee online workers' rights which include:

- safeguarding social security/protection to all workers including digital platforms online workers;
- providing for wage protection, fair payments, and working time standards;
- ensuring that workers' employment status is correctly classified per national laws;
- mandating clear and transparent terms of engagement and contractual arrangements for workers and businesses;
- protecting workers' personal and work-related data;
- extending the application of anti-discrimination and occupational safety and health laws to digital labour platforms and their workers;
- guaranteeing collective bargaining and fair termination policies for platform workers; and
- ensuring easy access by online workers to independent dispute resolution mechanisms.[20]

While the framework for the rights and protections of web-based workers seems to be responsive and comprehensive, the ILO also recognised that countries still face challenges in enforcing regulations, particularly concerning online web-based platforms, where platform operators, clients and workers are located in different jurisdictions. In this regard, the ILO recommended that one good model is the ILO Maritime Labour Convention as it covers a widescale, cross-border industry with multiple stakeholders operating across different jurisdictions.[21]

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[18] Global Commission on the Future of Work, *Work for a brighter future* (Geneva: ILO, 2019), 11.
[19] Ibid.
[20] ILO, *World Employment.*
[21] Ibid.

The Global Commission for the Future of Work also recommended the institutionalisation of an international governance system that will uphold fundamental rights and protections for digital workers and mandate platforms and their clients to uphold them.[22] In this regard, given the limitations of national labour protection legislation, an international governance system would therefore be critical in ensuring the rights and social protection of cross-border freelance online workers. However, such system has yet to be established and negotiations among states and governments have yet to be commenced. A mechanism should also be explored as to how digital labour platforms would adhere to such international governance system to guarantee fundamental rights and social protection for freelance workers.

Opportunities And Risks for Web-Based Freelance Workers In Southeast Asia

In Southeast Asia, there is no exact figure of how many people in the region are actually online freelance digital workers. This has been partly due to the "invisible"[23] nature of this new form of digital labour. The invisibility of online workers, who are mostly working from home, stems from the existing limitations to their identification in household labour force surveys and labour registries by national governments. Thus, there continues to be a lack of statistical information on home-based online freelance workers.[24] They are not recorded in any official national labour record and mostly do not have an office-based employer. With the invisibility, there is always a risk that their minimum labour rights would also be invisible. It is also reflective of the lack of regulation for this new form of digital work that can help guarantee freelance workers' rights.

In the region, the Philippines is at the forefront of the digital freelance economy. According to the country's Department of Information and Communication Technology, there are approximately 1.5 million Filipinos who are online freelance workers.[25] The Global Gig Economy Index ranked the Philippines as the sixth-fastest growing gig economy market in the world, with a massive 35 per cent growth in total freelancer earnings in 2019. Filipino independent online workers reportedly represent 18.9 per cent of the global freelance digital labour force.[26] There were also around 170,000 Indonesian users registered in major digital freelance platforms in 2018.[27] As of now, the top 10 countries with workers on five major platforms include the Philippines and Indonesia according to the Oxford Labour Index[28] Other industry reports indicate that 40,000 registered platform users are in Vietnam, also 40,000 in Singapore and 20,000 are residing in Thailand.[29]

[22] Global Commission on the Future of Work, *Work for a Brighter Future.*

[23] ILO, *Working from home: From invisibility to decent work* (Geneva: ILO, 2021).

[24] Ibid.

[25] Government of the Philippines, "digitaljobsPH: DICT Free Trainings for Online Freelancing," accessed 22 July 2021, https://governmentph.com/digitaljobsph-dict/.

[26] C. Diesel, "The Southeast Asian gig economy: capitalism at its most brutal?" *ASEAN Today*, 23 November 2019, https://www.aseantoday.com/2019/11/the-gig-economy-capitalism-at-its-most-brutal/

[27] Yudho Giri Sucahyo, Arfive Gandhi, and A. Labib Fardany Faisal, "Digital Labour: Numbers, Type and Income of Online Gig Workers in Indonesia," Development Implications of Digital Economies (DIODE) Strategic Research Network, 15 October 2019, https://diode.network/2019/10/15/numbers-type-and-income-of-online-gig-workers-in-indonesia/.

[28] "Top 15 countries," Oxford Labour Index, accessed 22 July 2021, https://livedataoxford.shinyapps.io/1490198815-8pmoe2dwg9r7n6d/.

[29] Not all registered users are necessarily nationalities of these countries but may come from any country around the world and are just legal residents there. See "ASEAN Freelancer Job and Work Online," Jobandwork.asia, accessed 22 July 2021, https://jobandwork.asia/freelance/asean/.

Job Flexibility and Income Opportunities

One of the principal advantages from working on web-based, digital labour platforms is the flexibility that it can offer to freelance workers—in terms of their preferred location, time zone, work duration and how they would like to work. According to an ILO (2021) global study on online freelance working, in developing countries, the key motivating factors for freelance workers are the preference or need to work from home (36 per cent of the survey participants) and getting extra pay outside their regular jobs (26 per cent). In particular, working from home or job flexibility is particularly important for women. A higher proportion of women (35 per cent) than men (25 per cent) on web-based digital labour platforms are attracted by the flexibility that online work offers.[30]

Online freelance work provides women, particularly mothers, with opportunities to earn an income while juggling child care responsibilities. The ILO study on freelance platform cited a female respondent from the Philippines regarding its benefit for her: "*I participate in freelance work because I was never this available to my children when I worked in the corporate set-up. This allowed me to become a mom yet still provide like a breadwinner.*"[31] In another study on online freelance workers in the Philippines, the forefront of web-based digital labour in the region, female online workers cited their need to take care of their young children as a primary reason why they chose online freelancing.[32]

Work on digital labour platforms is an important source of income for many workers. Online freelancing is widely marketed by digital labour platforms as excellent income opportunities.[33] Undeniably, well-paid jobs that can be done at home in front of a computer exist. The ILO global study revealed that higher complementing pay is the main motivation for accepting tasks on online, web-based platforms (39 per cent). For instance, virtual assistants from the Philippines can earn monthly incomes ranging from US$300 to US$650.[34] For many online workers, online freelance jobs are definitely more attractive than office-based jobs, and that income from online jobs is at least twice to triple of what they would receive in the Philippines. Furthermore, maintaining a flexible schedule on top of a stable monthly income allows them to accept additional freelance jobs from other clients, thus raising one's earnings further. Most of them are just simply equipped with a good working laptop, a mobile phone and a regular internet data plan.[35]

Unpaid Work and Lack of Job Security

However, they have no long-term, regular monthly salary as well as non-wage income benefits, making them vulnerable to unpredictable and volatile income. The other side of the freelance job spectrum is comprised of online platform tasks with very short–term contracts and highly volatile earnings. The average hourly earnings of a freelance online worker ranged between US$2 and US$6.5, according to a 2017 ILO global survey, with a high proportion of workers earning below the national minimum wage.[36] With the impact of COVID-19 on online labour platform, the labour supply on platforms has increased significantly, while the demand for workers has decreased, putting downward pressure on average earnings.[37] Studies have also shown that non-wage benefits, such as paid sick leave, paid vacation leave, paid

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[30] ILO, *World Employment*
[31] Ibid., page 145
[32] King-Dejardin, *Homeworking.*
[33] Graham, Hjorth, and Lehdonvirta, "Digital labour."
[34] King-Dejardin, *Homeworking.*
[35] Ibid.
[36] ILO, *Policy responses*.
[37] ILO, *World Employment and Social Outlook: Trends 2021* (Geneva: ILO, 2021).

maternity leave, performance bonus, paid public holidays, and health insurance, are hardly given to freelance workers, despite the fact that several of them are performing duties like a regular employee, though they are contractually identified as independent contractors/service providers.[38] Even with so-called flexible schedules, they are asked to devote minimum hours (e.g., to log in for 9 hours a day) for the job or minimum outputs to be submitted daily, through a written agreement, akin to what a regular employee does.[39]

In Southeast Asia, web-based digital labour is unregulated, making freelancers easily vulnerable to exploitation by being overworked, underpaid or their contract being easily terminated.[40] The 2018 study by PayPal revealed that 58 per cent of freelancers in four Southeast Asia markets (Singapore, Philippines, Indonesia, and Vietnam) have experienced not being paid. One major reason is that they are not being taken seriously by clients. In several instances, some clients have the assumption that freelance work rendered online is free.[41] There are differences in pay across gender. The ILO 2017 global survey showed that accounting for unpaid work, women's average pay is between 5 and 18 per cent less than that of men, depending on the platform.[42] Moreover, as demonstrated in the Philippines, female online workers' income sources are less diverse as compared to income sources of their male counterparts. Online work contributes 89 per cent of monthly earnings of women in digital labour platforms. In contrast, online job provides only 66 per cent of the monthly income of men in digital labour platforms.[43] It also means that the insecurity of online freelance job is especially challenging for female platform workers who depend on it as a main source of income.

The Need for Social Protection

The 2017 ILO global survey showed that the lack of social protection was also a real concern.[44] Social protection is a pivotal element of a human-centred, rights-based approach to providing decent work. Also known as social security, the ILO defines "*social protection as the set of policies and programmes designed to reduce and prevent poverty, vulnerability and social exclusion throughout the life cycle. Social protection includes child and family benefits, maternity protection, unemployment support, employment injury benefits, sickness benefits, health protection (medical care), old-age benefits, disability benefits and survivors' benefits.*"[45]

In Southeast Asia, the debate on extending social protection to digital workers is largely interconnected with the issue on the lack of social protection for the region's informal workers. The challenges to providing social protection to large pool of informal workers is further complicated by the rise of new forms of employment, especially the digital platform economy. Most of the online workers are considered to be among those who have informal employment in the region. Approximately 244 million workers or 79 per cent of all workers in the ASEAN region are in informal employment, above the global average.[46]

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[38] King-Dejardin, *Homeworking*.

[39] ILO, *Working from home.*

[40] Graham, Hjorth, and Lehdonvirta, "Digital labour."

[41] The ASEAN Post Team, "Southeast Asia's rising freelance economy, " *The ASEAN Post*, 24 September 2019. https://theaseanpost.com/article/southeast-asias-rising-freelance-economy.

[42] Berg, et al., Digital labour platform.

[43] King-Dejardin, *Homeworking*.

[44] ILO, *Policy responses.*

[45] Quynh Anh Nguyen and Nuno Meira Simoes da Cunha, *Extension of social security to workers in informal employment in the ASEAN region* (Geneva: ILO, 2019), 2.

[46] Ibid.

The ILO regional study on social protection for informal workers in ASEAN identified the Philippines and Indonesia as being the top countries in the region in terms of estimated numbers of online workers.[47] However, the study found that the debate on the employment status of platform workers largely concentrates on the ride-hailing and delivery platform companies but there is no significant policy discussion on the employment status and social protection benefits for crowd workers or online freelance workers.[48] The 'invisibility' of their status also means that they are invisible in terms of social protection coverage. National labour rights and social security frameworks in the region have not yet adequately covered online freelance jobs. This inadequacy indicates grey areas in legislation, with workers finding themselves in unclear and ambiguous employment relationships and operating between self-employment and dependent employment.[49] The ambiguous definition of what an employee or an independent worker means in web-based digital labour platforms has important implications for workers' rights and social protection.

The ILO regional study also provides a list of challenges to extending social protection coverage for informal workers, such as online workers in digital platforms, in the ASEAN region. The list includes, among others, (i) legal obstacles; (ii) inadequate implementation of labour laws and regulations; (iii) lack of policy coherence and integration among social protection policies and between social protection and other policy areas; (iv) complicated bureaucratic procedures and processes; (v) limited contributory capacity of informal online workers; (vi) inefficient governance structures and capacities; (vii) inadequate public awareness and information of social protection; (viii) lack of organisations that can represent informal workers ; as well as (ix) knowledge gaps about workers in informal employment.[50] Specifically, it must be noted that the cross-border operating model of web-based digital labour poses jurisdictional and regulatory challenges for national labour laws and regulations, including those pertaining to social protection responsibilities of employers.

In the case of most Filipino online workers, for instance, they are paying out of their own pockets for voluntary inclusion in the government's social security programmes, instead of the usual employer-employee joint contribution, just to have some form of security in case of illness, accident or death. For them, "*the principal downside of online "freelancing" is that it rarely provides health insurance, and certainly not social security benefits*."[51]

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[47] Ibid,

[48] Ibid.

[49] C. Behrendt and Quynh Anh Nguyen, *Innovative approaches for ensuring universal social protection for the future of work, ILO Future of Work Research Paper Series, No. 1* (Geneva: ILO, 2018.).

[50] Nguyen and da Cunha, *Extension of social security*.

[51] King-Dejardin, *Homeworking*, 41.

Protecting Online Freelance Workers: Possible Areas for Action

ASEAN-ILO Collaboration: There must be enhanced collaboration between ASEAN and its external partners such as the ILO in pursuing labour rights for online freelance workers.

At the regional level, ASEAN labour officials have already recognised that the recent wave of technological change has profound implications on the employer-employee model. They have recognised that rise of the platform economy drove the biggest and most prominent shift so far seen in the region concerning the nature of employment. The ASEAN Labour Ministers' Statement on the Future of Work, issued in 2019, outlines broad regional initiatives to respond to the changing nature of employment. However, it is not specifically focused on web-based digital labour. Nonetheless, some of its recommended actions can still be relevant to providing basic rights and social protection for online freelance workers. Labour ministers pledged to enhance collaboration between ASEAN and its external partners such as the ILO in sharing of good practices, experiences and lessons learnt in preparing workers to adapt to new trends in employment. They also vowed to promote private and public national social protection initiatives to uphold workers' well-being. They also offered states' support to workers' organisations for improved collective representation so as to advance the rights and protection of workers. [52]

But it has yet to be demonstrated as to how these recommendations can be implemented. And it has yet to be seen as to whether all member states consider the protection of web-based online workers as a common area of interest or only a few member states regard it as a critical element in the growing platform economy, which has long been dominated by location-based online delivery and ride-hailing digital platforms. Nevertheless, the establishment of the Regional Centre for the Future of Work by Singapore in 2020 is a nascent and critical step towards regional preparedness to the complexities brought about by the digital transformation in the world of work.[53] The Centre's work to facilitate continued social dialogue and capacity building should progressively be extended to finding a regional approach to address social protection issues brought about by the growth of the gig economy, particularly the increase in self-employment or freelancing in web-based, cross-border digital labour platforms.

Systematic Data Gathering: ASEAN member states should be able to have an accurate account of the number of online freelance workers in their respective jurisdictions.

There are regulatory challenges to the protection of the rights of freelance workers in the digital world given the cross-border transactions and multiple jurisdictions involved, as explained in section 3 of this NTS Insight. With these, there are grey areas in the social protection of online workers, their minimum rights, as well as in compliance and enforcement mechanisms. The region must enhance its knowledge base on the online platform economy by bolstering their national assessments and data collection on the nature and extent of online freelance work among their national workforce. By doing so, governments will have the accurate data of how many online freelance workers would need social protection assistance from them.

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[52] ASEAN, "ASEAN Labour Ministers' Statement on the Future of Work," Singapore, 29 April 2019. https://asean.org/storage/2012/05/ASEAN_Labour_Ministers%E2%80%99_Statement_on_the_future_of_work_Embracing_Technology_for_Inclusive_and_Sustainable_Growth.pdf

[53] Regional Centre for the Future of Work, "Overview," 2020, https://www.futureofwork.gov.sg/about/overview/.

Given that web-based freelance work is cross-border in nature, there is currently no practical regulatory mechanism for governments in the region to compel digital labour platforms and client companies, which are based overseas, to provide social security benefits to their online workers. What governments can do, once they identify who the online workers are, is to fully extend their national social protection coverage to these workers who might not have any insurance at all with their self-employed status. The extension of coverage necessarily involves additional public expenditure, including the combination of different financing sources, such as contributions from workers and taxes.[54]

This initiative does not need to start from scratch as Southeast Asian countries can build on current efforts at national and regional levels to broaden the scope of social protection for informal workers, which include online freelancers. The ASEAN Declaration on Strengthening Social Protection refers to the importance of implementing social protection systems for all people as a basic human right. It stresses the gradual expansion of coverage, from formal to informal employment, in terms of persons covered, availability, quality, equitability and sustainability.[55] In 2018, ASEAN adopted the Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection. It contains strategic actions to extend social insurance to informal workers.[56]

Broadening National Efforts: There are relevant efforts by national governments to address key challenges to gradual extension of national social protection coverage to online workers.

Lowering legal barriers is often the first essential step towards the extension of population coverage. Relevant examples include extending mandatory social insurance to self-employed workers (as in Indonesia and the Philippines) and revising eligibility conditions on the minimum period of employment or working hours (as in Vietnam). The Social Security Law in the Philippines was revised to progressively provide self-employed workers with mandatory coverage. Indonesia has steadily expanded social security coverage to self-employed workers, in accordance with the amendment to its Constitution in 2002, which mandates universal right to social security.[57]

States can also subsidise the social insurance coverage of online workers. For instance, Thailand now includes self-employed workers, who were not formerly covered by the compulsory social insurance, by subsidising their coverage in the national scheme. Indonesia, the Philippines and Vietnam subsidise health insurance schemes for certain population groups, including freelancers, which can lead to the steady extension of coverage and advance universal health coverage.[58]

However, there are limitations to national social protection mechanism as it does not guarantee the upholding of all minimum rights that any online worker should have as listed in Section 3. Regulating digital labour platforms is complex and involves cross-border implementation of policies relevant to decent work. According to ILO Conventions and Recommendations, every worker has universal labour rights. But how can the rights of online freelance workers be guaranteed?

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[54] Nguyen and da Cunha, *Extension of social security*.

[55] ASEAN, "ASEAN Declaration on Strengthening Social Protection," Bandar Seri Begawan, Brunei Darussalam, 9 October 2013.

[56] ASEAN, *Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection* (Jakarta: ASEAN Secretariat, 2018).

[57] Nguyen and da Cunha, *Extension of social security*.

[58] Ibid.

With the shortcomings of existing national labour frameworks to protect new types of workers, particularly online freelancers, a rights-based, protection-oriented framework for cross-border digital labour must therefore be pursued. The ILO's Global Commission on the Future Work has already put forward a human-centred agenda for the future of work. It called for an international governance system that could set minimum requirements and develop the rights-based regulatory framework for web-based digital labour. It could also establish a representative board to adjudicate disputes between platforms, clients, and workers.[59] While there is no international convention yet for digital labour governance, ongoing global, multistakeholder discussions have begun to explore its potential. ASEAN and concerned member states should therefore participate in such discussions and pro-actively engage digital platforms and their clients. ASEAN labour officials can jointly explore with other ASEAN bodies, such as the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the ASEAN Intergovernmental Commission on Human Rights, on how to mainstream online workers' rights and social protection. Through this pathway, Southeast Asian states, especially those that have a significant number of online workers, would be able to help shape the future international governance system for web-based digital labour rights and protections.

Conclusion

This NTS Insight offers a preliminary study on the emergence of online, cross-border digital labour and its impact on labour rights and social protection, with a special focus on online freelance workers from Southeast Asia. This new form of work has not only disrupted traditional business and employment models but also current regulatory mechanism that upholds and protects universal labour rights. One of the key advantages to working in web-based digital labour platforms is the flexibility and additional employment income that it can provide to workers. Furthermore, online work offers women, who are unable to participate in traditional employment, to work from home while earning their own income.

But as demonstrated in this NTS Insight, there are challenges to the upholding of labour rights and protections in the context of cross-border, web-based digital labour. Social protection remains inaccessible to many online workers. In Southeast Asia, there are regional and national efforts to plug the gaps in the social protection of informal workers. But national regulatory and social protection mechanisms, instituted for traditional forms of employment, may confront challenges brought about by digital labour such as the lack of accurate data on online workers, their "invisibility", and compliance issues due to cross-border jurisdictions, among others. The creation of an international governance system that primarily involves governments, labour platforms, clients and workers themselves would be critical in ensuring basic rights and protections for freelance workers. Whether the future of work in the context of cross-border, web-based digital labour would be brighter depends on how much protections and rights are enjoyed by online freelance workers.

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[59] Global Commission on the Future of Work, *Work for a Brighter Future*.

About the Author

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