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New Work, Data and Inclusion in the Digital Economy:
A Middle East and North Africa (MENA) Perspective

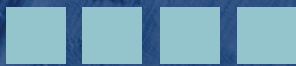
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Reaction Note on the Draft Labor Law Regarding the New Forms of Labor

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Egypt: Reaction Note on the Draft Labor Law Regarding the New Forms of Labor



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Introduction

The new labor law currently under discussion in the House of Representatives introduced a new chapter on new forms of labor.

This chapter was recently added by the ministry of manpower due to advocacy efforts from different stakeholders, including the Access to Knowledge for Development Center (A2K4D) at the Onsi Sawiris School of Business at the American University in Cairo, which contributed a policy note on how to include new forms of labor to the new labor law.

This policy note was presented to the presidency and to a number of parliamentarians and led to the inclusion of a chapter on new forms of labor in a second draft of the labor law.

This reaction note aims to analyze and evaluate the current version of the draft legislation in terms of introducing basic labor rights to new forms of labor. It will also assess the gaps between the recommendations included in our earlier policy note and the current version of the draft law.

This assessment will be done based on three semi-structured interviews with a representative of the manpower ministry and a parliament member, in addition to a review of published remarks by CSOs on the law.

The reaction note will focus on highlighting the advantages and disadvantages of the new draft legislation with the purpose of facilitating an analysis of the gaps in the new law.

First, the advantages of the new chapter added to the draft law on new forms of labor

The new labor law

Part III titled “Work relationships”, chapter 2 “New forms of work”, articles 95-100.

Article 95 gives examples of new forms of work:

1. Working from home or teleworking.
2. Working via digital platforms.
3. Part time work.
4. Flexible hours work.
5. Work sharing (work that is done by a certain number of persons, dividing roles or times as well as wage, as agreed).
6. Any other form of work identified by a decision of the minister of labor.

Article 96 stipulates that all rights granted to traditional workers apply to digital workers, as well as all duties.

Article 97 gives the right to the worker to work with multiple platforms, and also to be self-employed.

Article 98 stipulates that work relation should be identified in a written contract whether on a paper or electronically. It also gives the right to the worker to prove the work relation in all ways possible.

Article 99 grants to all workers in new forms of work all rights and duties accessible in traditional work setups, especially social protection, social security, minimum wage and its calculation method, training and skill development programs, the right to collective bargaining, and freedom of association as per the pertinent law of 2017.

Article 100 gives the minister a 6-month period to issue all decisions relevant to the regulations of new types of labor, such as exemplary contracts and how to prove work relations and mechanisms to ensure rights to both parties (employers and employees).

In fact, two stakeholders advocated for such additions to the law. The Union and the Access to Knowledge for Development Center.

It is important to note that this chapter was added after the policy note published by A2K4D was presented and discussed with the presidency consultant Hala El-Said and parliamentarians.

Since, the House of Representatives has received a second version of the draft law. "It was important that a NEW labor law includes the NEW forms of labor", says the legal advisor to the minister of manpower Ihab Abdel Atty. This is why the ministry of manpower introduced these additions to the draft law.

The advantages of this new chapter:

-For the first time in Egypt, the law identifies the types of new work. The definition is inclusive of all types of digital work, especially the most vulnerable with the lowest set of skills.

The chapter gives them equal rights as the traditional labor, especially the right to prove the work relationship with platforms, minimum wage and social protection. A precedence over many advanced economies, where labor laws still do not include new forms of work.

It gives digital workers the right to choose the platform they would adhere to as a main employer and the right to work with multiple platforms, in addition to the

option of being self-employed.

-The advisor to the minister explains that the government had in mind especially those who work with ride hailing platforms and delivery platforms. The ministry aimed to balance the interests of such international and big companies and the interests of those who work for these platforms.

The disadvantages of the current version:

Such rights are not necessarily guaranteed for new forms of work, as the government opted for an indirect approach. It gives the minister the power to decide how to set mechanisms for workers to obtain their rights (article 100).

-The advisor to the minister also explains that the approach to gain such rights would be via litigation (not mentioned in the draft law). He explains that they will leave it to workers to resort to courts if they want to prove the employment relation, giving the examples of developed countries.

-Very limited participation and dialogue on this draft law means little buy-in from all parties and stakeholders.

Moreover, in general, this version of the new labor law (under discussion) belongs to an old approach to labor rights. It is rather the same old law of 2003, with few articles added or changed. Thus, it does not build enough on the ILO modern literature and agreements to optimize such rights. This is a missed opportunity as it does not opt to reform the Egyptian labor market in a manner that guarantees the eradication of highly abused, highly deprived, informal labor, including those who work with digital platforms.

Following are some examples of articles undermining wage earners' rights, that would have a negative impact on new forms of labor:

1. Childcare facilities are only granted to large firms employing more than 100 women. This condition applies on less than 5% of firms in Egypt.
2. Improved maternity rights (4 months of maternity paid leave) are offset by giving the employer -if he provides "a legitimate reason"- to fire or terminate the contract of new mothers (article 54). In addition, no paternity leave was added.
3. Minimum wage per hour is not guaranteed to children less than 18 years old. This would encourage firms to employ children.
4. All articles granting rights to wage earners, within this draft law, do not include any consequences on the employer in case of any violation.
5. A newly established Labor Court imposes on the worker (the plaintiff) all or part of the expenses, in case the Court dismisses the case (article 8). In addition, this article misses their right to be appointed a lawyer in case they cannot afford it (article 8).
6. Article 116, which deals with the maximum numbers of hours per day and per week for workers, retained a very high number of hours: 8 hours per day and 48 hours per week (excluding break times). In contrast, most advanced economies are implementing a shorter work week as low as 34 hours.
7. Article 117 gives the right to the minister alone, and not via a collective bargaining process, to exempt industries and sectors from this ceiling to working hours.
8. Article 127 defines the emergency leave as a part of the annual leave.

Second, what does the draft law miss? A gap analysis approach:

This section includes a gap analysis between the rights granted to digital workers by the draft law and the outcomes of the policy note written after a focus group discussion discussing new forms of labor.

	Recommendation Concerning the Labor Law	Other Recommendations	Status (Adopted or Not)	Evaluation In Comparison With Recommendations (Adequate or Not)
Definitions Of New Work	Yes		Adopted	Adequate
Data Collection in Official Surveys on New Work		Yes	Not	
Prove Work Relationship	Yes		Adopted	Not
Minimum Wage	Yes		Adopted	Adequate
Working Hours, Annual Leaves, Maternity Leaves	Yes		Adopted	Not
Occupational Safety and Health	Yes		Adopted	Adequate
Complaint Mechanisms	Yes		Adopted	Yes

	Recommendation Concerning the Labor Law	Other Recommendations	Status (Adopted or Not)	Evaluation In Comparison With Recommendations (Adequate or Not)
Collective Bargaining	Yes		Adopted	Not
Unionization	Yes	Yes	Adopted	Not
Social Security		Yes	Not	
Data Collection and Data Processing of Workers		Yes	Not	
Registration of Platforms on a Platform Created By The Ministry of Communication		Yes	Not	
Governance And Transparency of Platforms	Yes		Adopted	Not

The table shows that the draft law addresses most of the recommendations included in the policy note. Four recommendations were adequately included, which means the text guarantees the right of the workers/employees.

These are: the definitions of forms of new work, the minimum wage application and the occupational safety and health.

On the question of unionization, the law gives the right to unionize, and the recent law on unionization simplifies the rules. However, in practice, workers who would unionize still face retaliation from employers.

In the same context, the focus group discussions included a recommendation that grievance mechanisms should be installed within platforms to settle individual complaints of the workers. The law did not settle this recommendation.

However, the draft law included a mechanism to deal with collective complaints. It has two steps: Reconciliation, then mediation and arbitration. A center for Mediation and arbitration to be created, aiming to settle collective litigations. It is not clear how this mechanism would work.

Labor Courts would also be created to rule in labor-related cases. The law provides free legal consultations to workers in each of these courts.

The law has also addressed a lot of concerns raised by different stakeholders, such as working hours, annual leaves and maternity leaves. These are basic rights that platform workers are lacking. So, it is indeed an advantage that they would be granted such rights. Yet, as mentioned earlier, the law gives the employers the right to omit such rights. In addition, in the case of digital workers, it is more difficult to prove work relationship via litigation in the case of young informal non-unionized workers dealing with gigantic multinationals like Amazon or Uber.

Concerning governance and transparency, the law stipulates all firms should provide the concerned public administration entity with lists of employees in a periodical manner. Yet, in practice, the ministry has little capacity to ensure adherence to this law. Second, not all platforms are listed as firms. In addition, the law does not stipulate that such platforms announce their audited balance sheets.

Moreover, as per the policy note, the Social Security Fund (SSF) cannot track their commitment to paying their contributions, as platforms don't have to be registered as companies. If the workers choose to enlist at the SSF as self-employed, they would be deprived of benefits needed in the younger age, such as unemployment benefits and maternity benefits.

In conclusion, the new law must tackle the issue of high informality in the labor market in a more integrated approach. It also must grant all rights directly to digital workers and not via litigation, establish grievance mechanisms and -last but not least- ensure platforms contribute to the Social Security Fund.