

Review of the Regulatory Framework for Homeworkers in Indonesia **2013**

By **Miranda Fajerman**

MAMPU – Access to Employment and Decent Work for Women Project

ILO JAKARTA

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Foreword

Homeworkers are commonly engaged by employers or their intermediaries in Indonesia to conduct work from their homes or communities. However, little is known about homeworkers in Indonesia, their working conditions, employment relationships or working methods. There is even less knowledge among labour market actors of the legal status of homeworkers as workers.

Homeworkers are often overlooked in the labour market. In international and national supply chains, labour inspectors and international buyers conducting compliance assessments tend to limit the scope of their supervision to the workplace of employers. National labour regulations and policies tend to ignore the characteristics and specific needs of homeworkers. Homeworkers are also invisible in national labour force and industry statistics and are often forgotten by trade unions, whose primary membership comes from workers on regular employment contracts in workplaces. These, mostly women workers, work in the privacy of their homes or within their communities and are amongst the most vulnerable and precarious workers in Indonesia.

The Australian Aid funded ILO MAMPU – Access to Employment and Decent Work Project is designed to promote decent work for homeworkers in Indonesia. One of the central aims of the Project is to improve the regulatory framework and supervisory mechanisms for home work through technical assistance and institutional capacity building of national stakeholders.

The purpose of this review of the regulatory framework for home work in Indonesia was to bring attention to key gaps and barriers to the protection of homeworkers both in law and in practice. The review provides some suggestions on how to fill the gaps and address ambiguities in the current regulatory framework to provide responsive protection to homeworkers. A specific regulation that responds to the characteristics of home work and provide explicit protections to homeworkers is recommended. Given the complexities involved in effectively regulating home work, this also report looks beyond government institutions as the principal source for labour law enforcement and regulation. The report considers the fundamental role of social dialogue and individual and bipartite actions of unions, civil society organisations, employers and international buyers in addressing decent work deficits experienced by homeworkers and recommends greater support be given to these processes.

I would like to thank Miranda Fajerman for drafting this report. I would also like to thank Novita Hendrina, Lilis Suryani and Agnes Gurning for their contributions through local consultations, the Decent Work Country Team in Bangkok for their review, and MWPRI (Mitra Wanita Pekerja Rumahan) for implementing a comprehensive baseline survey and facilitating focus group discussions with homeworkers in East Java.

We hope that this review will generate dialogue among ILO constituents on ways to collectively address deficits in the regulation of home work in Indonesia. We look forward to continuing to work with the Government, employers, workers and civil society organisations to devise practical measures and regulatory responses to the protection and empowerment needs of homeworkers.

A handwritten signature in black ink, appearing to read 'Peter van Rooij', with a long, sweeping horizontal stroke extending to the left.

Peter van Rooij

Director

ILO Country Office for Indonesia and Timor-Leste

Introduction

Home work is a notoriously difficult area to regulate and monitor effectively. Home work, also known as the industrial putting out system, whereby workers perform work similar to that of factory workers, but from their homes, has emerged as a response by employers to avoid the traditional costs and risks associated with regular employment of labour. On paper, the general labour laws in Indonesia apply to homeworkers. In practice, however, homeworkers are engaged through informal mechanisms and are beyond the scope of most law enforcement mechanisms. Homeworkers have not yet received explicit legislative, regulatory or policy attention in Indonesia, nor do they fall within the scope of work performed by labour inspectors and they are not beneficiaries of any specific government program. Homeworkers operate on the fringes of society and within the gaps of the legal and regulatory system.

Often working at the bottom of complex supply chains and in the privacy of their homes, the invisibility, isolation and vulnerability of homeworkers calls for strong legal protection, supervision and oversight by authorities. This report offers an overview of the current situation of homeworkers in Indonesia and the extent to which existing regulatory mechanisms are able to afford effective protection to these workers. It draws attention to current challenges to the application and enforcement of regulations for homeworkers and offers some suggestions for regulatory, policy and programmatic responses.

This report was developed from a desk review and consultations with national and local stakeholders, including the Ministry of Manpower and the Ministry of Women Empowerment, Government officials, the judiciary, labour inspectors, private sector employers, trade unions and civil society organisations. It also relies on a series of surveys implemented in East Java with over 200 homeworkers and on various focus group discussions that were carried out with homeworkers in East Java and North Sumatra in 2012 and 2013. Surveys and focus group discussions with homeworkers provided a good overview of the characteristics, employment relationships, working methods and challenges faced by homeworkers and supported identification of shortcomings in the regulatory and enforcement mechanisms currently in place. Consultations with stakeholders also revealed significant gaps and inconsistencies in knowledge and understanding of homeworkers, their status as workers and their rights under the law.

The practice of employing homeworkers is not a recent phenomenon in Indonesia. The employment of homeworkers coincides with increasing globalisation and flexibilisation of the labour market and production processes and high rates of underemployment and unemployment. Employers are increasingly trying to find more and different flexible ways to hire labour. Practices of outsourcing, sub-contracting and casualization of labour are widespread and are contributing to an increase in highly vulnerable and precarious forms of employment including home work in Indonesia. The difficulties in regulating this area of work is exacerbated by the fact that it is precisely these vulnerable and precarious employment relationships that are frequently not recorded or monitored and for which no appropriate or effective supervisory mechanisms currently exist. In a sense, homeworkers are still ‘invisible’ workers.

Although national data identifying the number and characteristics of homeworkers do not exist, field research and anecdotal accounts from interested organisations indicate that the majority of homeworkers in Indonesia are women.¹ Home work tends to attract more women than men due to the flexibility it

¹ From a survey conducted in East Java in 2013, approximately 87% of respondents are women. See ILO Baseline Report – Homeworkers, East Java 2013 (forthcoming).

provides women to organise and fulfil domestic tasks around work. However, this flexibility is one of the few benefits of home work. Home work is typically characterised by highly exploitative employment relationships whereby homeworkers receive sub-standard remuneration, work long and unpredictable hours, face serious occupational health and safety risks, have no written contracts, job security, or social security. Homeworkers also tend to be among the poorest of the working poor, they are not organised and consequently lack bargaining power vis-à-vis their employers. Given their relative isolation and often low levels of education, homeworkers lack knowledge about their rights and mechanisms they can call on to support the fulfilment of their rights and interests.²

The Manpower Act, promulgated on 25 March 2003, is the principal source of labour legislation in Indonesia. Despite formal coverage of homeworkers as employees in an employment relationship by the Manpower Act, Law No.13 of 2003, homeworkers are engaged through informal mechanisms in practice and fall outside the scope of the Ministry's current labour policies and programs.³ The legal status of homeworkers is not well understood by stakeholders, including the Government, trade unions and employers, in Indonesia. Nonetheless, there appears to be political will, on the part of the Ministry of Manpower and Transmigration and the Ministry of Women's Empowerment and Child Protection, to promote a common understanding of homeworkers' status as workers under Indonesian labour laws and to promote decent work for these workers through better implementation of the law. Readiness to address persistent gaps in the legislation and application of the law with regards to homeworkers has also emerged.

This Report seeks to support the process of developing specific national regulations on home work, by reviewing and identifying shortcomings in the national legal framework as it applies to homeworkers. The Report also makes reference to international standards on home work, namely those contained in the ILO Home Work Convention, 1996 (No.177). This ILO was established in 1996 as a response to the sub-standard working conditions experience by homeworkers around the world. The Convention has not been ratified by Indonesia.⁴ Nonetheless, the Convention provides the international framework for the minimum standards to be applied to home work.

The assumptions and analysis in this Report are based on confirmation received from the Legal Bureau, Department of Industrial Relations and Social Security, Labour Inspectorate and Department for Workers' Placement in the Ministry of Manpower and Transmigration, that homeworkers are considered workers in industrial employment relationships, as defined and governed by the Manpower Act.

² Mitra Wanita Pekerja Rumahanda Indonesia (MWPRI), Research reports and focus group discussions with homeworkers in East Java, West Java, Central Java, Yogyakarta, Bali and South Sumatra, 2005-2012.

³ In so far as labour inspectors and other mechanisms do not yet extend to homeworkers. Theoretically homeworkers could access dispute resolution mechanisms (labour mediators and the industrial relations court) to resolve their disputes.

⁴ As of March 2013, Albania, Argentina, Belgium, Bosnia and Herzegovina, Bulgaria, Finland, Ireland, Netherlands, Tajikistan and the former Yugoslav Republic of Macedonia have ratified the Convention.

Who is a homeworker?

Homeworkers are not defined by national laws or regulations in Indonesia. For the purpose of this analysis, the definition of homeworkers provided by the ILO Convention on Home Work, “a person who carries out work in his or her home or in other premises of his or her choice, other than the workplace of the employer; for remuneration which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used”,⁵ will therefore be used. This definition of homeworkers embraces common elements of an employment relationship - defined work, remuneration and a degree of subordination. In the context of Indonesia, the existence of these elements of an employment relationship determines the extent of coverage of national labour laws. ‘Homeworkers’ must be engaged in an employment relationship to receive the protection of the law. Given there is normally no direct supervision by the employer or contractor over the homeworkers’ labour and contribution to the production process, there is a lack of common understanding among the government officials at the local level as well as employers and workers of the relationship and responsibilities of employers vis-à-vis homeworkers in Indonesia.

The ILO Convention on Home Work distinguishes homeworkers from other categories of workers who perform work in premises other than the workplace of the employer. Those persons who have a “degree of autonomy or/and of economic independence necessary to be considered an independent worker” (self-employed or self-account home-based workers) and secondly, those workers who “occasionally perform their work as employees at home, rather than at their usual workplaces” are not considered homeworkers under the Convention.

The lack of explicit legal recognition of homeworkers as a specific category of workers in Indonesian laws and regulations is also reflected in the dearth of national statistical data on homeworkers. National labour force statistics (Sakenas) are not currently able to identify homeworkers or home-based workers in Indonesia. Nor is the practice of home work captured by industry or sector-specific survey instruments. This ‘invisibility’ of home work in the national laws and labour statistics reflects the informal and invisible nature home work in Indonesia.

⁵ ILO Convention on Home Work, 1996 (No.177), Article 1.

Homeworkers in Indonesia

Following the definition of homeworkers as provided by the ILO Convention on Home Work (No.177), homeworkers in Indonesia are those workers who work in their homes or communities as part of the industrial putting-out system. These workers are in employment relationships with employers, or their intermediaries, and contribute to the production of a specific product as determined by the employer.⁶

Various forms of homework are found in Indonesia. Workers, the majority of whom are women, are engaged in both commercial and industrial forms of subcontracting. In commercial subcontracting, often referred to as the 'putting-out' system, the out-contractor does not participate in the actual production process. On the other hand, in industrial subcontracting, the out-contractor(s) themselves engage in the production process. Both traders and producers can function as out-contractors. Traders specialised in marketing a specific range of products can organise production through subcontracting selected enterprises or individuals who have to produce according to standards and specifications set by the out-contractors. Producers, however, will use subcontractors for executing specific tasks within their overall production process.

With the rise of complex global supply chains and increasing competition for low-cost production, the practice of subcontracting production to homeworkers has grown significantly in the manufacturing industry. Homeworkers are often working at the very end of long and complex supply chains. These types of arrangements often involve multiple intermediaries, who each take a cut from the contract and reduce the amount of money from the top of the chain to the homeworkers conducting the work. These arrangements are often informal and blur the responsibilities of the principal employer and intermediary to the homeworker. This can make it difficult for homeworkers to know who is ultimately responsible for their pay and conditions of work and who they should report to if they have a complaint. This complex web of sub-contracting relationships is one reason home work is an extremely difficult area to supervise and ensure application of labour standards. A second reason it is poorly monitored relates to the prevalence of home work among small-medium sized enterprises. In situations where small-medium employers are employing homeworkers, (this is particularly common in the Batik industry in Yogyakarta)⁷ relationships with the entrepreneurs who are providing the work to homeworkers are often based on familial, community or social ties. The entrepreneurs and enterprises themselves are also often informal. As such, the parties to the relationship do not always perceive the interaction between homeworkers and entrepreneurs as a formal employment relationship bearing legal rights, roles and responsibilities.

In many instances, the concepts of home work and homeworkers can be confused with the notion of entrepreneurs in small-scale or micro operations. Self-account workers or micro-entrepreneurs are often extremely dependent on a small number of suppliers and purchases. This tends to blur the distinction between independent entrepreneurship and the employment relationship. Indeed, sometimes it can be difficult to determine the employment status of home-based workers. The relationship between a homeworker and employer (trader or producer) can sometimes appear to be a commercial relationship rather than an employment relationship as a result of employers' attempts to relocate risks and responsibilities to homeworkers or due to the working arrangements of the homeworkers. Piece-

⁶ Note in Baseline studies conducted in East Java with over 200 homeworkers, all homeworkers reported employment in manufacturing sector. See ILO Baseline Report – Homeworkers, East Java 2013 (forthcoming).

⁷ Reports from NGO, YASANTI, engaged with homeworkers in Yogyakarta.

rate remuneration; requirements for homeworkers to source their own tools, equipment or materials; the lack of direct supervision over homeworkers as they complete their work; the autonomy of the homeworker to work according to their own schedule; the responsibility assumed by homeworkers over quality of outputs; and, in some cases, the ability of homeworkers to engage additional helpers in their work, can make the relationship between a homeworker and employer appear commercial. Ambiguous and disguised employment relationships are common in home work, which make it all the more difficult sometimes to determine the existence of an employment relationship. This is further complicated by the fact that many homeworkers engaged in home work do not even consider themselves as workers.⁸ Rather, they consider their work as a side activity, hobby, or for ‘pocket money’, even in instances where they are the primary breadwinners for the household and work over forty hours in a week.

Due to the general lack of attention given to homeworkers by the governments and law enforcement apparatuses, many employers do not realise that the employment of homeworkers is regulated by the Manpower Act.⁹ Most believe the employment of homeworkers falls within a gap in the legal framework or is in fact not legal. Nonetheless, employers have found the employment of homeworkers to be a convenient and flexible way to meet fluctuating demands and as means to displace the overhead costs associated with standard labour employment. This system, in any of its variations, is most beneficial to the entrepreneur who can avoid investments in additional workspace and, through their informal means of engaging homeworkers, evade responsibilities to provide working conditions and benefits associated with formal labour to homeworkers. Moreover, employers can effectively reallocate many of the costs associated with production and risks and responsibility for product quality to the homeworker. Intermediaries, likewise, are able to make a modest profit from allocating work and overseeing production without the burden of marketing the finished product.

Home work is particularly attractive for women because it allows them to perform their dual functions of domestic work and childcare while earning additional income for the family. Home work tends to take place in the privacy of homeworkers’ homes and as a supplementary activity that women partake in alongside domestic chores. In many instances, this type of work is also perceived as more culturally ‘appropriate’ for women as they can avoid the ‘dirty’ or inappropriate social interaction that is associated with factory employment and it permits their husbands to be the visible breadwinners. Prior research undertaken in the early to mid 90s as well as recent focus group discussions in Malang and Medan have indicated that home work tends to involve women with particularly low levels of formal education – most having only graduated from elementary or junior high school.¹⁰

Foremost among the reasons that lead women to engage in home work is the need to survive. Indonesia’s significant unemployment and underemployment has emphasised the increasing need for women from poor households to engage in income-generating activities. Increasing landlessness of families, particularly in Java, has meant that most families cannot rely on agricultural production for subsistence living. The growing phenomenon of female-headed households in Indonesia, where male members of the family are forced to migrate in search of cash employment or because of divorce, abandonment or death of their husbands has also pushed many women into seeking home work as their main source of income.¹¹

⁸ ILO, Report from focus group discussions, Malang, November 2012 (unpublished).

⁹ Consultations with employer representatives, East Java and North Sumatra, 2013, See Annex 2.

¹⁰ See ILO, Focus Group Discussion Reports, Medan and Malang, November, 2012 (Indonesia) (unpublished).

¹¹ During focus groups discussions in Malang (December 2012), one woman homeworker explained that her husband had migrated to Jakarta to find work in construction. In the three years that he had been gone, she received only two small payments from him. Other homeworkers indicated that their husbands had moved to Bali or other areas to find work.

Challenges faced by homeworkers in Indonesia

The general impression that homeworkers undergo a highly exploitative situation, working for long hours and earning sub-minimum wages in a system in which they have little or no bargaining power and zero job security, holds true in Indonesia. Employers chiefly hire homeworkers to evade their responsibilities under the labour laws, and at the same time reallocate risks and responsibilities that are usually assumed by an employed on to the homeworker. Some of the striking characteristics of homeworkers surveyed are the poor working conditions under which they work, their low wages, lack of social protection and general conditions of poverty.

Homeworkers have traditionally been perceived by trade unions as a threat to the formal employment relationships of the enterprise – the typical working contract that unions rely on for the majority of their membership.¹² Early responses of unions to the practice of home work were to advocate for the banning of home work. Now unions are increasingly interested in organising homeworkers and advocating for their rights and interests as workers. However, given the general anti-trade union attitude of many employers, homeworkers often fear that organising and association with trade unions will pose a risk to their livelihoods. Indeed, in instances where homeworkers have successfully organised and bargained for higher wages, attempts have often backfired and resulted in employers simply shifting the production process to another village or group of workers.¹³ Given homeworkers work in their homes or communities, these workers tend to be scattered and difficult to locate and identify for organising purposes. Organising efforts are further challenged by the lack of consistent social interaction with groups of homeworkers beyond their immediate community or neighbours. Trade unions have found that traditional approaches to organising cannot be applied and do not work.

Even for community-based women's organisations, organising women homeworkers has proven to be incredibly difficult. MWPRI and other women's organisations have had some success in developing relationships with homeworkers by sending staff and community facilitators to live in communities and to work and interact intensively with homeworkers. Methods for organising have also begun through the organisation of social gatherings or livelihoods activities such as vocational skills trainings, which women enjoy and which promote group cohesiveness, social interaction and engagement. This is important as many of the women who are now members of a homeworker union in East Java indicated during focus group discussions that their main motivation to join unions was to be more sociable rather than due to motivations to improve their conditions of work or social protection.¹⁴ Many homeworkers do not understand or see any benefits to organising. The relative lack of interest of women in organising to improve their livelihoods and welfare can be attributed to their low levels of education, lack of access to information and awareness of alternatives and their general lack of awareness of their rights and status as genuine workers. Although most women homeworkers have pressing concerns about their daily survival, their health and the education of their children, they do not readily perceive the link between organising, collective bargaining and improved conditions of work or welfare.

¹² See, ILO, *Homeworkers of South-East Asia – Silent no more* (Bangkok, 1993).

¹³ Focus group discussions conducted by ILO in Malang, December 2012 (Unpublished).

¹⁴ Focus group discussions conducted by ILO in Malang, December 2012 (Unpublished).

The extreme poverty and lack of employment opportunities for these women involved in home work encourages competition for employment opportunities between homeworkers in neighbouring communities. Without a collective form of representation or ability to collectively bargain for higher wages or better working conditions, homeworkers tend to compete against each other for work. This has a downward impact on wages and permits employers to unilaterally determine remuneration.

Homeworkers are typically paid on a piece rate basis. In surveys conducted in East Java, it was very rare for a homemaker to receive the equivalent of the minimum wage for the region, even when engaged in full time (40 hours a week) employment. Homeworkers contributing to the production of badminton rackets in Malang, for example, indicated that they earn Rp 2,500 (approximately USD 0.25) per dozen rackets finished. In two days they can complete five dozen rackets. This means a daily income of Rp 5,000-7,500 (USD 0.50-0.75) in peak season. Similarly, homeworkers working on shoes in the outskirts of Malang can earn Rp 1,000 – 2,000 (USD 0.10-0.20) per pair of shoes they stitch together. They can generally stitch one pair in about 30-40 minutes.¹⁵

Home work in Indonesia is characterised by fluctuating and unpredictable work and income. Orders generally fluctuate according to market demand and periods of work can be as short as one day. At times, homeworkers may be required to work long hours at short notice to fulfil quota demands of employers. At other times, they receive no, or very little work and need to find alternative income generating opportunities for themselves. This creates a highly uncertain and precarious employment situation for homeworkers. Therefore, during peak seasons, homeworkers usually enlist the support of their children or other family members to maximise output.

In the putting-out system, employers push the risks and responsibility over the quality of production on to the homeworkers themselves. Homeworkers frequently bear the costs of mistakes they make to products by only being paid for work that meets quality standards. Costs of production such as electricity, tools and equipment, maintenance of equipment, storage and often even the costs associated with pick-up and transportation of the materials and final products are also usually assumed by homeworkers. Another method of reallocating risks to homeworkers involves a system that provides for half or incomplete payments for completed work.¹⁶ This is not an uncommon practice and appears to represent a guarantee that the employer's investment in the inputs will be returned. Thus, in this type of system, the homemaker who accepts only partial payment for their finished work, lends their capital to the employer in the form of credit for the other half of the work. Employers, however, frequently default on these 'loans' during periods of slow demand by reducing inputs, refusing to pay for work or by paying a reduced rate.

Homeworkers generally do not have access to social security nor are they provided health benefits by their employers. In the event of injury or illness, there is little or no protection or safety net to help them or their families survive on a reduced or cut-off income. Usually friends or family supports are drawn on but these are often also limited. Various homeworkers have multiple creditors they are indebted to - not only to cover unexpected health-related expenses, but also to cover their daily costs of subsistence living. In rare instances, employers or intermediaries provide loans or cash advances to homeworkers in need, which are then repaid through homework over a series of months.¹⁷ These arrangements have the potential to create forced labour situations.

¹⁵ Focus group discussions conducted by ILO in Malang, December 2012 (Unpublished).

¹⁶ ILO Baseline Report – Homeworkers, East Java 2013 (forthcoming).

¹⁷ ILO Baseline Report – Homeworkers, East Java 2013 (forthcoming).

Employers or their intermediaries rarely provide occupational health and safety training or support to homeworkers. The employer or intermediary will often train homeworkers on how to complete a particular task. However, it appears from available data that they are not normally trained in the proper use or disposal of equipment, tools or materials. This can place homeworkers at high risk of experiencing an occupational health or safety problem and can affect the homeworkers' families and community, particularly when homeworkers work with and have to dispose of chemical substances or other hazardous materials.

Focus group discussions have revealed the intergenerational impact of home work. Most of the women who were interviewed in focus group discussions in Malang had become involved in home work at a very young age as a result of their mothers' involvement. The perception of additional or 'easy' income through homework in peak seasons can entice children to leave school prematurely to help out their parents. Although many homeworkers readily identify the health and education of their children as their top priorities,¹⁸ most find it financially difficult or impossible to support the on-going education of their children.

Home work is a survival strategy for low-income families. It offers jobs that are convenient and flexible for women with domestic responsibilities, but these are jobs of poor quality, and with very poor working conditions. Poverty forces women to engage in home work and working in home work means continued poverty for these workers.

¹⁸ ILO, Focus group discussions with homeworkers in Malang, 2012 (Unpublished).

Review of application of Indonesian legislation to homeworkers

The Manpower Act, promulgated on 25 March 2003, is the principal source of labour legislation in Indonesia. This Act regulates employment relationships and provides for the minimum terms and conditions of work for workers.

As noted earlier, the Manpower Act does not explicitly cover home work or homeworkers, however, homeworkers can be considered regular workers engaged in an industrial employment relationship as per definitions stipulated by the Act. This is of critical importance as employment and labour law usually only apply to parties to an employment relationship. Indeed, the provisions in the Manpower Act chiefly govern the roles, responsibilities and rights of employers and workers in industrial employment relationships. Therefore, it is critical that homeworkers be considered part of an employment relationship for the application of national labour laws.

Employment Relationship

The Manpower Act defines an employment relationship as “a relationship between an entrepreneur and a worker / labourer based on a work agreement, which contains the elements of job, wages and work order”.¹⁹ Here, “workers” are defined as “any person who works and receives wages or other forms of remuneration”.²⁰ This broad definition of a worker can be applied to anyone involved in some form of income generating activity. The other party to the employment relationship is the “entrepreneur”. Here, the Manpower Act distinguishes between “entrepreneurs” and “employers,” and only obliges entrepreneurs to abide by requirements within the act related to employment relationships, including agreements, minimum wages, overtime, hours of work, rest, and vacation.²¹ The Act defines an “entrepreneur” as -

- a. An individual, a partnership or a legal entity that operates a self-owned enterprise;
- b. An individual, a partnership or a legal entity that independently operates a non-self-owned enterprise;
- c. An individual, a partnership or a legal entity located in Indonesia and representing an enterprise as mentioned under point (a) and point (b) that is domiciled outside the territory of Indonesia”.²²

In contrast, an “employer” is defined as an “individual, entrepreneur, legal entity, or other entity that employs manpower by paying them wages or other forms of remuneration.”²³ Manpower, “is every individual or person who is able to work in order to produce goods and/ or services either to fulfil his or her own needs or to fulfil the needs of the society.”²⁴

¹⁹ Manpower Act, Law No.13 of 2003, article 1(5).

²⁰ Manpower Act, Law No.13 of 2003, article 1(3).

²¹ Manpower Act, Law No.13 of 2003, articles 77-79 and 80.

²² Manpower Act, Law No.13 of 2003, article 1(5). The wording of this provision has also been included in other laws such as *Act No. 2/2004 regarding Industrial Relation dispute-Solution*, *No 21/2000 on Trade Union* and *No. 3/1992 concerning Manpower Social Security*

²³ Manpower Act, Law No.13 of 2003, article 1(4).

²⁴ Manpower Act, Law No.13 of 2003, article 1(2).

Under the Manpower Act, “employers” only carry a basic obligation to provide “protection, which shall include protection for their welfare, safety and health, both mental and physical”²⁵ to those workers they employ. The substantive content of the ‘protection’ to be provided by employers is not clearly defined by the Manpower Act.

The employment relationship includes within its scope only those “employers” who are operating or representing a self-owned or non-self-owned enterprise²⁶. As such, individuals who are not running enterprises or operating legal entities cannot be considered as involved in an “employment relationship” with a worker.

As noted, one of the key elements of the definition of who is a worker is having a “work agreement”. A “work agreement” is defined by the Act as an agreement made between a worker and an entrepreneur that specifies work requirements, rights and obligations of the parties. Work agreements can be made either orally or in writing.²⁷ Therefore, the existence of an employment relationship does not rely on the existence or evidence of a written agreement. The relevant issue for both parties is that specific rights, duties and job requirements are expressed and agreed upon in some form.

Home work typically involves traders or producers of legal or non-legal entities, providing work through verbal orders or agreements to homeworkers, predominantly in the manufacturing sector. In these situations, the Manpower Act definition of “employment relationship” adequately captures these types of employers (traders or producers) who hire homeworkers.²⁸

Home work, as a particular type of work, also fits within the definition of an employment relationship. The Act defines an employment relationship as ‘a relationship between an entrepreneur and a worker based on a work agreement, which contains the elements of job, wages and work order.’²⁹ ‘Wages’ under the Manpower Act refer to any form of remuneration that employers have the obligation to pay in return for work that has been performed.³⁰ While the terms ‘job’ and ‘work order’ are not defined in the Act, these are commonly understood to refer to a defined task and to elements of instruction, command and subordination.³¹ Under these definitions, it is of little consequence that homeworkers are operating outside of the enterprise. However, establishing a homemaker’s subordination is not always straightforward. Various dimensions come into play such as the extent to which the work uses their own machinery and equipment; whether they work for multiple employers or just one; the hiring of auxiliary labour to support the completion of work; and methods of supervising the production. In regular employment, supervision refers to the direct presence or observation of the employer in the place of work over the worker. However, in a broad sense, requirements that demand the performance of work according to employer specifications and deadlines and remuneration that is only to be paid if such work meets prescribed specifications, could be considered indirect forms of supervision. Arguably, a worker

²⁵ Manpower Act, Law No.13 of 2003, article 35(3).

²⁶ Manpower Act, Law No.13 of 2003, article 1(6). An enterprise is:

- a. *Every form of business, which is either a legal entity or not, which is owned by an individual, a partnership or a legal entity that is either privately owned or state owned, which employs workers/ labourers by paying them wages or other forms of remuneration;*
- b. *Social undertakings and other undertakings with officials in charge and which employ people by paying the wages or other forms of remuneration.*

²⁷ Manpower Act, Law No.13 of 2003, article 51.

²⁸ Conversely, individual employers of domestic workers, workers providing a service of housekeeping, childcare or other domestic work in the home of the employer, are not considered “entrepreneurs” and are therefore exempt from having to provide standard labour protections and benefits to domestic workers.

²⁹ Manpower Act, Law No.13 of 2003, article 1(15).

³⁰ Manpower Act, Law No.13 of 2003, article 1(30).

³¹ ILO and Supreme Court of the Republic of Indonesia, Training Curriculum for Industrial Relations Court Judges, Indonesia 2013.

retaining some degree of freedom and flexibility over the performance of work should not preclude the existence of an employee-employer relationship based on dependence.

The Legal Bureau of the Ministry of Manpower and Transmigration has confirmed this interpretation, however, practices of local Manpower Offices indicate inconsistency in interpretations of the application of the employment relationship to homeworkers. Many Manpower Offices at the district level understood homeworkers to be informal workers who are not covered by the Manpower Act.

Indeed, another key challenge in demonstrating an employment relationship between employers (traders and producers) and homeworkers is that the mechanisms employers use to engage homeworkers are often disguised, concealed or fraudulent, whereby the worker is passed off as an independent or self-employed worker. Some employers in Indonesia have, for instance, established systems whereby they sell products to homeworkers, homeworkers then provide some added value. Then the employer purchases the product back from the homeworkers. Others request homeworkers to register themselves as self-employed, or deliberately involve multiple layers of intermediaries through subcontracting or outsourcing arrangements to blur their responsibilities, or they establish community workshops which are subsequently run by homemaker groups. These ambiguities have led to poor application of the Act for homeworkers.

Following initial consultations, the Legal Bureau and other directorates of the Ministry of Manpower and Transmigration at the national level have now publicly acknowledged the legal status of homeworkers under the Manpower Act.³² However, significant confusion on the status of homeworkers persists within the Ministry at the provincial and district levels. Many officials perceive homeworkers as existing wholly within the informal economy. Given the lack of attention of the Ministry to the subject over the past decade, this is not a surprising assumption given homeworkers are, in practice, hired through informal mechanisms and are generally operating beyond the scope of law enforcement apparatuses. During consultations with local officials in East Java and North Sumatra, disagreement among Manpower officials within the same offices on the legal status of homeworkers was common. This indicates a need for a clear directive on homeworkers from the national Manpower Office. Disagreement among officials on homeworkers' legal status may also be influenced by the variety of employment relationships and working mechanisms of homeworkers in their districts. Indeed, as noted above, it can sometimes be difficult to differentiate between an employer-employee relationship of dependence and a commercial relationship between an entrepreneur and a home-based self-account worker.³³

The term 'homeworker' or 'pekerja rumahan' (in Indonesian), is also a term that is relatively new for many Manpower officials. It has not yet been defined by the Government, and has received limited attention from academia in Indonesia. During consultations, Manpower officials, employers and trade unions frequently misinterpreted the term 'homeworker' (pekerja rumahan) as meaning 'domestic worker' (pekerja rumah tangga). This has also led to misguided statements on the status of 'homeworkers' under the Manpower Act and is indicative of the weak level of awareness by constituents of the existence of homeworkers and the challenges they face as workers. Officials in East Java tended to have a better understanding of homeworkers than those at the national level and in North Sumatra. This is possibly due to the advocacy work and engagement of the homeworkers' association and Indonesian chapter of HOMENET South-East Asia, Mitra Wanita Pekerja Rumahan Indonesia (MWPRI), in the province.

³² ILO, Report from provincial tripartite homemaker workshops, Surabaya and Medan, September 2013 (Unpublished).

³³ See Annex 2.

Judges and legal aid providers tended to understand homeworkers to be covered by the Manpower Law and relevant national labour laws and regulations.

It appears that the absence of a clear official definition of homeworkers has contributed to the confusion among industrial relations players and government officials on who homeworkers are. The lack of explicit recognition of the legal status of homeworkers and the employment relationship between homeworkers and employers (and their intermediaries) has also contributed to inconsistent understandings of the legal status of homeworkers as workers. While there is scope for the Manpower Act to apply to homeworkers, and a series of authoritative interpretations by the Ministry of Manpower exist to this effect, greater efforts are required to generate a clear and consistent understanding of homeworkers and their legal status.

Homeworker assistants

There is a lacuna in the law in relation to the legal status of homeworkers' assistants. Indonesian laws do not deal with whether or not homeworkers (or other workers, for that matter) are permitted to seek the assistance of another or others in the completion of their work. This omission in the law has potentially far-reaching consequences. The lack of clear prohibitions on the use of homeworker assistants creates difficulties in understanding the rights of homeworker assistants and the corresponding roles and responsibilities of those homeworkers who hire the assistants. It also fails to define whether and to what extent, an employer has responsibilities to a homeworker assistant.

Furthermore, this gap in the law provides employers with an opportunity to further evade their responsibilities as employers by putting homeworkers in the position of an 'employer'. In some instances an employer might engage a homeworker and require the homeworker to act both as a homeworker and intermediary in the sense that they would be in charge of handing out and collecting work from other homeworkers in the community. In order to avoid entering multiple employment relationships with many homeworkers, an employer may alternatively choose to overburden an individual homeworker with orders that are impossible for one worker to complete. This forces the homeworker into a situation where he/she is compelled to seek the assistance of additional labour, thus placing himself or herself in a position of a quasi-employer to the homeworker assistant. This system of work allocation adds yet another layer to an already complex supply chain and potentially has the effect of transferring employers' risks and responsibilities to highly vulnerable homeworkers – workers without the capacity to assume the responsibilities of an employer.

Intermediaries

Employment relationships between employers and homeworkers are often complicated by the existence of sub-contracting arrangements and the use of intermediaries. Intermediaries are persons who derive an income from taking orders from one or more enterprises and having them carried out by one or more homeworkers. In practice, they usually charge the employer a fixed fee or receive a percentage of the piece-rate of the homeworker. In Indonesia, this type of relationship is an accepted means of matching supply and demand. Regulations on the legal relationship of an intermediary(ies) with an employer and their legal responsibilities vis-a-vis employers for the working conditions of workers are clearly defined by the Manpower Act. All uses of sub-contracting and outsourcing are highly regulated. Nonetheless, much of the current practice of use of intermediaries for the purpose of hiring

homeworkers in Indonesia do not comply with regulations on sub-contracting or outsourcing and these intermediaries typically fail to fulfil their responsibilities to workers.

Under the Manpower Act, employers are only permitted to engage third parties who are legal entities and through written agreements for sub-contracting or outsourcing arrangements. The nature of the work to be sub-contracted or outsourced should be a secondary or ancillary activity, also known as ‘non-core business’, to the main business of the enterprise. If these conditions are met, entities to whom work is outsourced or sub-contracted assume full responsibility to ensure the working conditions, benefits and rights of workers employed directly by them.³⁴ However, if any of these conditions are not met - existence of a written agreement, legal status of the individual or entity to whom the work is being sub-contracted or outsourced, or the work being sub-contracted or outsourced is non-core business – then the principal enterprise that utilizes the service of the labour provider or who contracts the work to the contractor, shall be held legally responsible for the employment and fulfilment of working conditions of workers provided to it by the labour provider or contractor.³⁵ This concept of head-contractor liability is designed to protect workers from employers abusing sub-contracting arrangements to evade responsibilities.

In practice, there are often multiple tiers in international and national value chains and various forms of sub-contracting take place before work reaches homeworkers. Most often, intermediaries directly engaging homeworkers are individuals rather than registered enterprises and these individuals rarely have a written contract with the principal employer or with the homeworkers. Similarly, the work performed by homeworkers is most often work contributing to the core activity of the enterprise, eg) in a factory producing shoes, homeworkers are likely to contribute to one or two parts of the overall production process of the shoes. These types of arrangements involving homeworkers through intermediaries do not conform to the legal requirements for outsourcing or sub-contracting. Under the Manpower Act regulations, it is therefore most often the legal responsibility of the principal employers (and not the intermediary) to ensure the working conditions of workers.

This further challenges the application of decent working conditions. If intermediaries are divested of responsibility to fulfil the working conditions and rights of homeworkers they have little incentive to make efforts to ensure decent working conditions for the homeworkers. As long as there is an over-supply of cheap labour, production quotas can be met despite the provision of sub-standard working conditions. Similarly, the reality is that homeworkers usually do not know who their principal employer is. If they are unable to identify their employer, it is difficult for homeworkers to demand better working conditions and/or bring a complaint against the employer.

It therefore emerges that the use of intermediaries is an effective way for employers to avoid dealing with homeworker labour and to evade their responsibilities. While the law provides a clear framework for the assumption of responsibilities over the conditions of work of workers in subcontracting and outsourced arrangements, the use of outsourcing and sub-contracting in Indonesia has proven to be an incredibly difficult area to supervise.³⁶ In the case of subcontracting and outsourcing of work through intermediaries to scattered homeworkers, supervision and enforcement of the law is even more complex.

³⁴ Manpower Act, Law No.13 of 2003, articles 64-66. Note, these responsibilities of third parties were reconfirmed by the Constitutional Court of the Republic of Indonesia in its Decision No. 27/PUU-IX/2011.

³⁵ Manpower Act, Law No.13 of 2003, articles 65(8) and 66(4).

³⁶ Since outsourcing and subcontracting were permitted in the 2003 Manpower Act, the Indonesian Government has issued a series of additional regulations and guidance to employers to attempt to curb non-compliant practices of subcontracting and outsourcing. See, for instance, Manpower and Transmigration Ministry Regulation on Requirements for Outsourcing No. 19 of 2012, which replaces earlier Ministerial decrees, KEP 11/MEN/VI/2004 and KEP 220/MEN/2004.

Employment Contract

Workers in employment relationships are generally guaranteed all the rights and benefits provided in the Manpower Act. This means that parity should exist between homeworkers and on-site employees in terms of remuneration and other terms and conditions of employment. However, the Act also provides for ‘specified time’ contracts, which permit employers to hire workers on a seasonal or short term basis. The employment benefits for these groups of workers are less favourable than indefinite term³⁷ employees in terms of termination of employment benefits.

There are certain limitations to the types of work that are permitted to be performed on a ‘specified time’ contract. These include:

- “Work to be performed and completed at once or work which is temporary by nature;
- Work whose completion in estimated time is not too long and no longer than 3 (three) years;
- Seasonal work; or
- Work that is related to a new product, a new activity or an additional product that is still in the experimental stage or try-out phase.”³⁸

The Manpower Act requirements for specified time contracts generally support the presumption of a permanent employment relationship in instances where the nature of the employment is disguised as a temporary one. The Act protects workers who are consistently employed on short-term contracts from being treated as contract workers if the employment persists for longer than 3 years, the work is not temporary in its nature, or the employment contract does not comply with other Manpower regulations (for instance, it is not in the written form).³⁹

Although the legal obligations of employers hiring workers on a temporary or permanent basis are clear, the reality is that employers employing homeworkers frequently breach the majority of these requirements. The work sent out to homeworkers is not always seasonal or temporary in its nature and homeworkers rarely receive confirmation of their employment or the terms and conditions attached to their employment in writing.⁴⁰ In theory, this provides significant scope for those homeworkers employed on a regular basis or without a written contract, to assert their rights as permanent or ‘unspecified time’ employees.⁴¹ In practice, however, it could be difficult for homeworkers to demonstrate regular employment in the absence of a written agreement and pay slips, and due to the often fluctuating nature of their work.

It could be argued that regulations restricting the employment of temporary workers (in combination with other regulations that increase the costs of hiring regular labour) may have contributed to employers’ use of informal labour, including the practice of employing homeworkers. Home work allows employers to pay for labour only when such labour is in demand. While some homeworkers appear to work on a more or less permanent basis, the majority surveyed have fluctuating work orders and unpredictable work hours. Therefore, although the regulation protecting workers from exploitative

³⁷ Employees who engage in a non-specified time contract.

³⁸ Manpower Act, Law No.13 of 2003, article 59(1).

³⁹ Ibid, article 57.

⁴⁰ ILO Baseline Report – Homeworkers, East Java 2013 (forthcoming).

⁴¹ Manpower Act, Law No.13 of 2003, article 57(1)(2).

use of specified-time contracts applies, at least in theory, to homeworkers, it would be prudent to review these provisions in light of current practices.

Security of employment

As noted above, when an employer cannot guarantee full-time employment, it is their responsibility to ensure a written contract for a specified time is given to the homeworker. Unless explicitly agreed otherwise and in writing, any contract of employment is considered a permanent one under the Manpower Act.⁴² Therefore, in theory, homeworkers without written agreements for a ‘specified time’ should be guaranteed regular employment and income.

The Manpower Act is protective in terms of ensuring workers’ security of employment. There are only a few instances where termination of employment is permitted – these include workers violating the provisions of a work agreement or company regulations (and three warning letters have been issued); the enterprise has to be closed down; the employer changes the status of the enterprise or there is a change in ownership; the enterprise goes bankrupt; workers enter pension age or die; the worker is absent from work for five or more consecutive days without excuse; or the worker commits a serious crime and is found guilty by a criminal court.⁴³

Most homeworkers work on a piece-rate order basis. Therefore in the instance that there is a permanent cessation of work orders to homeworkers, this would imply termination of employment and should be dealt with under national legislation in the same way that other terminations of employment are dealt with.⁴⁴ However, because homeworkers are in practice treated as informal workers, employers do not feel compelled to comply with the provisions in the Manpower Act protecting workers from termination of employment. In practice, homeworkers often have no idea when their next work order will be given, how much work they will gain from it or when the orders will cease.⁴⁵

As noted earlier, one of the key reasons employers engage homeworkers through informal mechanisms is to access highly flexible labour – labour they can call upon immediately when needed and ignore as soon as orders drop. However, this system is not beneficial to homeworkers. Homeworkers face unpredictability in terms of income and employment. This makes it difficult for them to plan their lives and make ends meet. Balancing employers’ requirements for access to flexible labour in order to remain competitive with homeworkers’ needs for employment and income security is a complex issue that demands clear regulation.

Terms and conditions of employment

Despite formal coverage of homeworkers by the Manpower Act, homeworkers are engaged through informal mechanisms in practice and fall outside the scope of the Ministry’s current labour policies and programs, including labour inspection activities. This makes enforcement of the law particularly challenging. Nonetheless, it is worth considering the extent to which current labour laws offer comprehensive protection of homeworkers and to identify where these regulations fail to

⁴² Manpower Act, Law No.13 of 2003, article 57.

⁴³ Manpower Act, Law No.13 of 2003, articles 161-172.

⁴⁴ Manpower Act, Law No.13 of 2003, articles 163-172.

⁴⁵ ILO, Focus group discussions with homeworkers in Malang, East Java, November 2012. (Unpublished)

adequately address the situation of homeworkers. The following analysis will examine the extent to which responsive regulations and policies need to be formulated so as to strengthen the rights and protections of homeworkers in Indonesia.

Non-discrimination

The Manpower Act provides for equality and non-discrimination in terms of opportunities and conditions of work for all workers.⁴⁶ However, no specific grounds for equality have been identified in the Act. As far as homeworkers are concerned, their implicit inclusion in the labour provisions suggests that the Manpower Act provides for equality for homeworkers vis-a-vis regular workers. However, given this is not explicitly recognised, it is arguably not sufficiently clear to employers that homeworkers should be provided the same conditions of employment and access to opportunities as regular workers.

International standards, as provided in ILO Convention No.177, provide for equality in treatment for homeworkers vis-à-vis other types of workers. However, the Convention notes that it is also important to take into account “the special characteristic of home work”. Here, recognition of the need for differential treatment of homeworkers, given their particular characteristics as workers in the home, is provided. This is where the national law falls short of providing sufficient protection to homeworkers. The failure of labour laws to recognise the particular characteristics of home work, (by responding specifically to this type of work through responsive regulations), results in homeworkers being treated in the same way as regular workers by the law, when in fact in practice their unique situation demands somewhat differential treatment. For instance, there are no provisions in national laws to regulate the extent to which homeworkers should be compensated for assuming various costs and risks that are normally shouldered by the employer. This includes, for instance, costs for the provision and maintenance of equipment, tools and machinery and risks and costs associated with meeting quality standards for production.

Freedom of Association and Collective Bargaining

Freedom of association and collective bargaining are guaranteed by the Manpower Act⁴⁷ and Trade Union Act, Law No.21 of 2000. All workers, whether or not they are working inside or outside of an enterprise in Indonesia have the right to organise and collectively bargain.⁴⁸ On top of the challenges of organising homeworkers, a barrier to freedom of association and collective bargaining emerges in practice, when homeworker organisations attempt to register with their local Ministry of Manpower Office. To date, homeworker organisations have only been successful in registering trade unions in Malang and Probolinggo in East Java.⁴⁹ Manpower offices in other areas in East Java and Indonesia generally have not permitted homeworkers to register their organisations as trade unions.⁵⁰ This is largely due to the lack of awareness among ministry officials of the legal status of homeworkers under the Manpower Act and a generally weak understanding of the application of the Trade Union Act to all workers in Indonesia.⁵¹ These institutional obstructions to homeworker organisations embed their marginalisation and invisibility in the world of work. Without registered trade unions of homeworkers, homeworkers

⁴⁶ See ILO Convention on Home Work, 1996 (No.177), Article 4.

⁴⁷ Manpower Act, Law No.13 of 2003, Articles 104(1), 111 and 116.

⁴⁸ Trade Union Act, Law No.21 of 2000, Article 1(1), 5, 25.

⁴⁹ ILO, *Institutional Needs Assessment of MWPRI* (2013) (unpublished).

⁵⁰ Ibid.

⁵¹ See Annex 2.

face barriers to participation in bipartite and tripartite mechanisms to represent and further their rights and interests as workers.

Remuneration

Most wages of homeworkers are piece-rate. This is largely due to the inability of employers to supervise and monitor homeworkers' production and the time they dedicate to each task. The methods of payment, based on piece-rate, also represent employers' efforts to maximise profits by reorganising the risk over quality of production to homeworkers. If an item does not meet quality standards or specifications, homeworkers are not rewarded the piece-rate remuneration for that particular piece. While there are no legal obstacles to homeworkers negotiating the rate of pay for piece-rate work with employers, as noted above, homeworkers are, for the most part, poorly skilled and unorganised in Indonesia. Wages are therefore left wholly to the employer to unilaterally determine.

Under the Manpower Act, no wages should fall below the local minimum wage. The minimum wage is the lowest possible wage permitted to be paid to employees and can consist of a basic wage and fixed allowances in Indonesia. Minimum wages are set at the provincial or district/city level, or by sector at the provincial or district/city level. Minimum wages apply equally to non-permanent workers, including those hired for a specified period of time, or to complete a certain task, as well as piece-rate workers in employment relationships.⁵² Under the Manpower Act, workers who are paid based on the piece-rate method must be paid at least the minimum wage for ordinary hours of work (40 hours in one week), even if their actual piece-rate earnings are below minimum wage. If their actual piece-rate earnings are higher than the minimum wage, then they should be awarded the higher amount.⁵³ Therefore even if homeworkers' piece-rate permits them to earn only three-quarters of the minimum wage in one month, if they are working regular hours (eight hours per day, five days per week or seven hours per day, six days per week, or the equivalent to total 40 hours per week on average), then they are legally entitled to receive the equivalent of the minimum wage.

The method of calculating piece-rate wages as prescribed by the regulations is flawed in the case of home work. The application of minimum wages to piece-rate workers implies that employers must calculate the reasonable amount of time it takes to complete tasks, and then determine piece-rates on this basis. This type of calculation, however, doesn't take into consideration 'dead time' or the time spent at work that is not wholly dedicated to the production process – such as machinery set up, sorting materials, breaks, cleaning and maintenance of equipment, troubleshooting etc. Similarly, homeworkers are not likely to be able to complete tasks in the same amount of time as workers in a factory due to the lack of other workers supporting the work (through sorting, setting up of equipment etc) and the often less sophisticated equipment and tools used by homeworkers.

As noted earlier, the wages regulations also fail to take into consideration the responsibility of employers to compensate workers for the costs they assume. This is particularly important in the context of home work, as homeworkers need to cover many of the costs of production, such as electricity, water, workspace and are also often responsible for delivering the completed products, sourcing materials, production tools, equipment and machinery and the upkeep of these work instruments. Current

⁵² Manpower Act No.13/2003, articles 56, 88-90; MOM Regulation No. PER-01/MEN/1999, articles 14-15.

⁵³ MOM Regulation No. PER-01/MEN/1999, article 15.

regulations fail to address reimbursement responsibilities of employers to additional costs borne by homeworkers in the calculation of remuneration.

Employers are permitted to apply for a postponement of minimum wage payments if they are able to demonstrate they are not financially capable of paying minimum wages. This can be pursued by lodging an application with the local Manpower Office. The request must be based on written agreement between the employer and workers and must include a financial report of the company demonstrating financial need. Postponement of minimum wages can be made for up to 12 months.⁵⁴

Wage deductions

In principle, workers only receive wages if they perform the work specified by the employer. However, a level of protection for workers' wages is necessary to prevent arbitrary, unfair or unforeseen subtractions from anticipated remuneration. This principle is affirmed by Government Regulation No.8 of 1981, on the Protection of Wages. Under the Regulation, deductions to wages may be made to compensate for damages or other losses to employers' property or goods, however, these should not exceed 50% of the wages.⁵⁵ This compensation should be arranged in advance through a written agreement with the worker or through company regulations so that workers are aware of the possibility of loss of wages due to loss or damage of products or equipment.

It is unclear from the definitions provided in the Regulation, whether non-fulfilment of product specifications or quality standards constitute 'damaged goods', particularly in instances where remuneration is based on a piece-rate. In the context of home work, where wages are piece-rate, deducting up to 50 per cent of wages for 'damaged' goods can be significant. During focus group discussions with homeworkers in Malang, homeworkers reported frequent deductions or non-payment for work that does not wholly meet employer specifications or quality standards.⁵⁶ Because quality control usually only occurs upon completion of the production process, homeworkers are placed in a vulnerable position vis-à-vis employers, who are able to make arbitrary deductions to their expected wages on the basis that products do not meet their standards or specifications. In these situations, work is typically either sent back to homeworkers to revise or they are simply not paid for work performed.

It is not clear whether employers are relying on the Regulation to justify this practice or if it is merely intrinsic to the nature of home-based piece-rate work that they have established. Given workers are normally employed to provide labour, and are not responsible for producing a final product, this mechanism for deduction of wages places homeworkers in a quasi-subcontractor role. Whether or not the practice links to the Regulation on deductions from wages, the current ambiguities in the Regulation provide space for employers to deprive homeworkers of payment due based on subjective and potentially arbitrary judgments of quality.

Payment of wages

Wages should be paid regularly, directly and at such a place and time as to avoid risk of abuse. Under national wage regulations, on each payment, workers should receive the entire amount of wages due to

⁵⁴ MOMT Decree No.KEP.231/MEN/2003; MOM Regulation No. PER-01/MEN/1999, articles 20-23.

⁵⁵ Government Regulation No.8 of 1981 on the Protection of Wages, article 23.

⁵⁶ ILO, Focus group discussions with homeworkers in Malang, East Java, November 2012. (Unpublished)

them. Where intermediaries are involved in the distribution of work, employers have a responsibility to ensure that the workers' pay will not be diminished as a result of the intermediaries' commissions. There should also be no delaying of payment of wages.⁵⁷ This means that any practice of withholding part of homeworkers' wages as a form of security over the products and materials being sent out to communities is not lawful.

Hours of work

Although it may be difficult and even inappropriate to regulate the hours of work of workers who are genuinely free to organise their working time, freedom of choice in this regard should not lead to excessive and unhealthy hours of work. When time limits for delivery of products are too short or the employer underestimates completion times, homeworkers can feel compelled to work excessive hours just to earn a basic wage particularly if their piece-rate wages are low or their employment is highly seasonal.

Ordinary hours of work and overtime are detailed in the Manpower Act. Ordinary hours of work are seven hours a day, six days a week, with one rest day per week; or eight hours a day, five days in a week, with two rest days per week. The total number of ordinary working hours per week is forty. Any additional hours of work performed are considered overtime and higher rates of pay should be awarded for these extra hours of work.⁵⁸ Such provisions for daily rest and overtime explicitly apply to piece-rate workers and daily labourers as well as permanent employees.⁵⁹ The Manpower Decree of 2004 further stipulates the methods for calculating rates of pay for overtime for piece-rate and daily workers.

When deadlines for the completion of tasks require homeworkers to work extraordinary hours or on public holidays, they should be paid overtime rates for these additional hours. The Manpower Decree of 2004 provides the process to calculate overtime rates for piece-rate workers.⁶⁰ Annual leave, paid sick leave and paid public holidays are benefits that employers generally do not associate with casual, seasonal, piece-rate or daily workers. However, employers are under an obligation to provide these benefits to all workers, including non-permanent workers.⁶¹ Paid leave is to be calculated in accordance with the time worked and salary earned, however, challenges remain in terms of understanding the application of these provisions for workers who are not regularly employed and particularly homeworkers whose volume and frequency of work fluctuates.

Under these regulations, employers hiring homeworkers are obliged to calculate the amount of time to complete tasks and ensure delivery dates respect workers' rights to weekly rest and comply with statutory hours of work. The quantity of work should not be such that workers are obligated to work excessive hours or to hire family members or others to complete tasks. As noted earlier, hours of work should also be linked to appropriate methods of calculation of remuneration for tasks to guarantee that homeworkers can earn a decent income during ordinary hours of work. This is already provided for in the Manpower Decree of 2004 (see above under Wages), however, implementation of these regulations seems to be weak.

⁵⁷ Government Regulation No.8 of 1981 on the Protection of Wages, article 11.

⁵⁸ Manpower Act, Law No.13 of 2003, articles 77-79.

⁵⁹ See MOMT Decree No.102/MEN/VI/2004, article 9.

⁶⁰ See MOMT Decree No.102/MEN/VI/2004, article 9.

⁶¹ See Manpower Act, Law No.13 of 2003, articles 85 and 93 and Government Regulation No.8 of 1981 on the Protection of Wages, article 5.

Occupational Health and Safety

The Manpower Act outlines the general responsibility of medium-large employers to implement occupational safety and health (OSH) management systems in their workplaces.⁶² Various Ministerial regulations and the Work Safety Act, Law No.1 of 1970, provide the framework for developing OSH management systems, including an OSH committee.⁶³ Workplaces that should be covered by these regulations include “any room or space, closed or open, moving or stationary, where an employee is employed or which is often entered by an employee on behalf of an undertaking, where a source of danger is present”.⁶⁴ This broad definition includes all places where work is performed and therefore would appear to include the home of a homeworker.

National regulations for occupational health and safety Management Systems only apply to workplaces employing 100 employees or more, or those workplaces that are deemed to be dangerous due to the characteristics of the material process of production. This includes processes that can lead to accidents such as explosions, fires, pollution and work related diseases. However, these provisions imply that only those workplaces with large numbers of workers or particularly dangerous processes actually feel compelled to implement OSH systems. Similarly, regulations for developing an OSH committee comprising of worker representatives and management is mandatory for these types of workplaces (over 100 employees or particularly dangerous workplaces).

Therefore it could be argued that homeworkers working for these types of enterprises should be incorporated into the OSH management system and be able to voice their concerns to the OSH Committee. In reality, employers do not consider homeworkers in the establishment of OSH Committees and they tend to be excluded from workplace OSH management systems and policies. Homeworkers are unable to access OSH Committees either as representatives of the workers or to voice their OSH concerns due to their isolation from the principal workplace of the employer, their lack of knowledge of their rights as workers and employers’ discriminatory treatment of homeworkers vis-à-vis regular employees. Indeed, involving homeworkers in established OSH Committees at work places, may not be the most appropriate way to respond to or deal with OSH concerns of homeworkers. Other mechanisms could be explored.

Separately from the OHS Management System requirements, all employers of any sized enterprise, where equipment or processes can cause dangerous accidents⁶⁵ are required to provide personal protective equipment at no cost to the workers to protect them from workplace hazards such as chemicals, noise, air pollution, sharp objects, wet processes, eye injuries or burns.⁶⁶ This includes a broad list of different types of work processes and equipment. Employers are required to train workers on how to use the equipment, and put up notices reminding workers of their obligation to use it at the workplace. Various additional provisions to ensure workplace safety in relation to workplace seating, lifting heavy objects and safety devices for machinery are also provided. If workers believe they face an imminent and serious danger to life or health, they may refuse to work, and they should not be punished for doing

⁶² Manpower Act, Law No.13 of 2003, articles 86-87.

⁶³ See, Government Regulation on Occupational Safety and Health Management System; MOM Regulation No. PER.05/MEN/1996; MOMT Regulation No.PER.18/MEN/XI/2008 (article 2(1)); MOMTC Regulation No. PER.03/MEN/1978; MOM Regulation No.PER-05/MEN/1996, (Appendix II, Section 1(4)); MOM Regulation No.PER-04/MEN/1987, (articles 2-4, 12); and MOM Regulation No.PER/04/MEN/1987.

⁶⁴ Work Safety Act, Law No.1 of 1970, article 1(1).

⁶⁵ See MOMT Regulation on Personal Protective Equipment No. PER.08/MEN/VII/2010, article 4. This provides a broad list of processes and types of work, which could apply to work performed in homes.

⁶⁶ MOMT Regulation on Personal Protective Equipment No. PER.08/MEN/VII/2010, articles 2, 5.

so.⁶⁷ These provisions largely reflect occupational health and safety provisions in Convention No.177 and Recommendation No.184, however, they do not specifically cater to the situation of work being performed in the home of the worker, nor is there any explicit provision in the national regulations to ensure homeworkers are informed of any hazards that are known or ought to be known by the employer associated with the work given to them and of the precautions to be taken.

Based on the above requirements, OSH provisions for personal safety equipment should apply to all workers engaged in potentially dangerous processes. However, an obvious concern is that employers only apply these regulations at the enterprise workplace and only enterprise workplaces are subject to monitoring by labour inspectors. Obligations to extend these OSH activities to the workplaces of homeworkers need to be made clearer to employers. Given the risks of exposure of homeworkers, their family members and communities to work-related injuries or illnesses, current supervision over OSH measures at enterprise workplaces is inadequate.

Social Security

National law provides that all workers are entitled to social security.⁶⁸ However, national schemes in place at the time of writing (2013) are most appropriate and responsive to workers in permanent employment or those independent workers who can afford consistent contributions. Flexible arrangements for contributions of seasonal or casual workers are lacking.

All enterprises that employ ten or more employees, or that pay at least IDR 1,000,000 (equivalent of approximately USD 100) in wages per month are obligated to provide a social security program for their workers. The scope of the law covers all workers in employment relationships.⁶⁹ However these requirements imply that most enterprises that currently comply with the Act are those in the formal economy or legal entities. This scheme covers loss of or reduced earning as a result of accidents, illness, pregnancy, old age and death. Employers are obligated to register themselves and their workers to become members of Jamsostek or another social security service provider.⁷⁰

Employers typically declare that workers who are paid on a daily basis or are contract workers are not insurable under Jamsostek or other social security schemes.⁷¹ Although this is common practice and national schemes currently do not allow employers to pay flexible and variable contributions, employers are legally obliged to enrol and make social security contributions for all workers. This is made clear in the Social Security Act No.3 of 1992, which states its intention to cover non-permanent workers in employment relationships. As Employees under this Act, workers are defined as anyone “working in employment as an individual or an enterprise and who receive wages, including daily, casual and contractual workers...”⁷²

The calculation for the amount of monthly contributions from employers for daily workers, contractual, piece rate and seasonal workers to the social security schemes is provided for in Government Regulation No.14 of 1993. However, difficulties arise in the implementation of this regulation. As

⁶⁷ Ibid, article 5.

⁶⁸ Manpower Act, No.13 of 2003, art 99.

⁶⁹ Manpower Act, No.13 of 2003, art 99.

⁷⁰ See, Labour Social Security Act No.3 of 1992, (articles 1, 3, 17-19, 22); National Social Security System Act, No.40 of 2004 (articles 13,15,18); Government Regulation on Workers’ Social Security Program No.14 of 1993 (articles 2-7).

⁷¹ ILO, *Indonesia Implementation of National Social Security System Law* (ILO Sub Regional Office for South East Asia).

⁷² Social Security Act No.3 of 1992, Elucidation of article 4.

mentioned above, employers rarely consider themselves obliged to enrol or contribute to social security schemes for non-permanent employees. Furthermore, even presuming application of the law, employers will not continue to provide contributions to a social security scheme when they do not have workers on contract. This means that during non-employment periods for seasonal, contract or casual workers, there will be no contribution from the employer and the workers need to fully finance the contributions during these periods themselves to maintain coverage.

While some homeworkers work on a more or less permanent basis, many receive orders for work on an entirely ad hoc basis and may not receive orders for work for months on end. The irregularity of their work presents challenges to implementing the national social security scheme, not only in terms of clarity of legal obligations of employers vis-à-vis homeworkers' social security, but also in terms of practical implementation and payment of contributions. Regulators are faced with a challenge of ensuring all workers, including homeworkers whose employment fluctuates, are covered by social security even during those periods of no work.

The Ministry of Manpower has formulated a voluntary scheme for informal, self-account workers.⁷³ This provides the same benefits and coverage as the national Jamsostek scheme for regular employees, but allows informal workers to select just two or more of the coverage areas, for example, workers may opt for just health and work-place injury insurance. This scheme also permits flexibility in payments, allowing for monthly or quarterly contributions, which can be made by individuals or organised groups. However, the total amount of contributions for informal workers is a flat rate amount based on a percentage of the regional minimum wages. This scheme basically replicates the structure of the scheme for formal employees without having conducted a risk assessment of informal economy workers. The scheme also places the whole burden of contributions on the worker (ie employers usually pay a higher percentage of social security contributions), which makes the scheme unaffordable for most workers who are not receiving the equivalent of minimum monthly wages (homeworkers included).⁷⁴

As such, current schemes are not adequately responsive or able to protect low-income earners or those with irregular employment and income such as homeworkers. This is a significant challenge that regulators need to address in the search for universal coverage and the provision of social safety nets in Indonesia.

Child Labour

The Manpower Act prohibits anyone from employing or involving children in the worst forms of child labour.⁷⁵ A 2003 Decree issued by the Minister of Manpower Regarding Types of Work that are Hazardous to the Health, Safety or Morals of Children stipulates that the minimum age of employment for non-hazardous work is fifteen years of age.⁷⁶ The Decree also prohibits children under the age of eighteen from performing work that is hazardous to their health, safety, and morals. Among the conditions of employment identified as posing a threat to a child's health, safety, and morals, includes working between 6pm and 6am and jobs related to dangerous machinery or equipment (including

⁷³ See Ministerial Regulation, PER-24/MEN/VI/2006.

⁷⁴ ILO, *Indonesia Implementation of National Social Security System Law* (ILO Sub Regional Office for South East Asia).

⁷⁵ Manpower Act, Law No.13 of 2003, article 74(1)(2). The worst forms of child labour include slavery or practices similar to slavery; jobs that use, procure, or offer a child for prostitution, pornography or gambling; jobs which use a child to procure, or involve a child for production and trade of alcoholic beverages, narcotics, or psychotropic substances; and all kinds of jobs harmful to the health, safety, and morals of a child.

⁷⁶ Decree of the Minister of Manpower, Number: KEP.235/MEN/2003, Regarding Types of Work that are Hazardous to the Health, Safety or Moral of Children, article 3.

cutting, sewing, knitting or weaving machines, boilers or lifts), or engage in heavy lifting. They also must not perform work that could expose them to harmful chemicals, dangerous processes, high levels of dust or noise, extreme temperatures or heights.⁷⁷ As such, children below the age of eighteen should not be engaged in homework after 6pm or work that involves processing machinery. Children who are employed should have a work agreement signed between the employer and parents. These regulations are clear, however, many employers of homeworkers ignore child labour provisions when providing work to homeworkers. Most often, employers, or their intermediaries, do not put in place measures to avoid direct employment of children or to prevent them from being indirectly employed as homeworker assistants by the adult homeworkers who receive work orders. This is an area that labour inspectors and other law enforcement officials have failed to adequately supervise in the fight against child labour and in pursuit of universal education in Indonesia.

Children between the ages of thirteen and fifteen may be engaged in light work (that is not considered hazardous) so long as it does not disrupt children's physical, mental or social development, is no longer than three hours per day and does not interfere with their schooling. The reality is, however, that many children work excessive hours to augment their parents' income. Obligations on the employer also exist to ensure occupational safety and health requirements are complied with when employing children.⁷⁸

The Manpower Act also provides that children should be separated from adults when they are employed together with adults.⁷⁹ Application of this provision to home work is clearly problematic given the nature of home work, whereby children often assist members of their family. Given the greater difficulties in supervising work and the ease at which homeworkers can involve their children in employment, current general provisions and guidance on child labour are not adequate to address children involved in home work.

Maternity and Other Protective Measures for Women

The Manpower Act provides protection against termination of employment for women due to pregnancy, maternity and miscarriage.⁸⁰ It also provides for three months of paid maternity leave⁸¹ and reappointment of the worker to their previous position upon return to employment. This applies to all women workers whether permanent or temporary employees.⁸² However, there are no provisions that require an employer to extend a short-term contract of pregnant workers upon the expiration of their contract. This is a significant shortcoming in the Manpower Act and implementing regulations from the point of view of home work, as many homeworkers receive orders on a monthly, weekly or even daily basis. Employers of women homeworkers can readily avoid responsibilities for maternity leave by simply not providing another contract of work to them when they perceive the worker to be pregnant. Homeworkers would need to demonstrate consistency of orders to make out a case of permanent or longer-term temporary employment to be entitled to such benefits.

⁷⁷ Ibid, I.C(4) and (9).

⁷⁸ Manpower Act, Law No.13 of 2003, article 52(1)(B), 69, 74.

⁷⁹ Manpower Act, Law No.13 of 2003, article 72.

⁸⁰ Manpower Act, Law No.13 of 2003, article 76.

⁸¹ Paid leave entitlements for piece-rate and non-permanent employees can be calculated based on the average daily wage over the past 12 months. This cannot amount to less than the local minimum wage, see Manpower Act, Law No.13/2003, article 157.

⁸² Manpower Act, Law No.13/2003, article 153, and Manpower Ministerial Decree No. PER-03/MEN/1989 on Prohibition of the Termination of Female Workers because of Marriage, Pregnancy, or Giving Birth, article 3.

General provisions in the Manpower Act for non-discrimination apply to all workers in relation to their opportunity to obtain employment.⁸³ As such, the withholding of orders on the basis of pregnancy could be considered discrimination against women in terms of employment opportunities. In the absence of organized homeworker groups, access to legal assistance and justice mechanisms, however, enforcement of this provision is exceptional.

The difficulties in applying current maternity protection provisions to homeworkers indicate the need for the development of specific social security schemes, including maternity protection, that are responsive to the needs and characteristics of homeworkers. Employer responsibilities to provide proper opportunities for women workers to breastfeed during working hours and to protect women from hazardous work (including excessive hours and exposure to harmful chemicals) during pregnancy also require further guidance for application in the context of home work, particularly in relation to the setting of work orders, to ensure mothers are able to take sufficient breaks in the day to breastfeed.⁸⁴

Menstruation leave

In the context of home work, it is difficult to conceive how protective measures such as menstruation leave could be applied in practice. Normally women paid on a piece-rate basis in an enterprise would remain at home for two days (and therefore not continue to work) and they may be required to prove through medical certificate or otherwise that they are menstruating. In the context of home work, it can be difficult (though not impossible) for women to demonstrate to employers that they are menstruating given contact with employers is not regular (proof of menstruation would likely only be provided to the employer after taking the leave) and it is even more difficult to demonstrate that the worker is not being productive during those two days of leave. In practice, this could potentially be overcome by merely requiring employers to pay an additional two days to all women without proof of absence from work for two days per month (however this would, of course, have a discriminatory impact on male homeworkers). If these arguably overly protective measures are to be continued for women in employment, practical implementation regulations for their application to home work are necessary.⁸⁵

Supervision and monitoring

Apart from the shortcomings in the national law to adequately regulate and protect homeworkers, the greatest single problem in Indonesia is the lack of supervision and enforcement of the law. The labour inspectorate does not currently involve oversight of employers' use of homeworkers. This is a consequence of the lack of attention of the Ministry of Manpower and Government at large to the situation of homeworkers. There are no reporting, registration or recording requirements for employers to provide details of homeworkers to labour inspectors or local government offices. Without reporting or registration obligations, it is extremely difficult to detect the existence of home work in a medium-large enterprise and almost impossible to identify homeworkers in small enterprises or working for traders.

⁸³ Manpower Act, Law No.13/2003, article 5.

⁸⁴ Manpower Act, Law No.13/2003, article 83.

⁸⁵ Note the continued need for provisions relating to menstruation leave are being debated in Indonesia. These are considered as overly protective by many. See Manpower Act, Law No.13/2003, article 81.

Although there are no institutional barriers preventing the labour inspectorate from entering and monitoring the workplaces of homeworkers in their private homes,⁸⁶ the labour inspectorate lacks the human resources and capacity to extend its services to the monitoring of home work. At present, it is already overstretched and unable to fully implement its mandate in formal enterprises. Additional resources, recruitment of staff, a specific training program, tools and guidance to monitor and supervise employment conditions and employment relationships of homeworkers would be required before they could expand. Alternative informal systems for oversight of the implementation of the law, such as trade unions and civil society organisations, have not yet been sufficiently involved in observing or reporting on the working conditions of homeworkers. This is largely due to the lack of organisation among homeworkers as well as the general lack of education, information and public knowledge on homeworkers' legal rights as workers. Without a functioning system for monitoring and supervising homeworkers' working conditions and employment relationships, the rights of homeworkers on paper are of little value in practice.

⁸⁶ Manpower Act, Law No.13 of 2003, Chapter XIV.

Recommendations for regulatory reforms and enforcement mechanisms

Legislative reform is essential to produce an enabling framework from which homeworkers can begin to clearly articulate and seek enforcement of their rights. However, legislative reform alone is insufficient to protect homeworkers in practice. A combined strategy that encompasses campaigning, legislative and regulatory reform, private sector engagement and social movement strategies involving the participation of homeworkers is most likely to progressively ensure effective and on-going homemaker protection.

The general labour protections afforded to all workers in Indonesia provide a basis for the legal protection of homeworkers. However, as discussed above, the current regulatory framework does not provide adequate protection to homeworkers. This relates to the fact that the regulations were primarily designed to address the working conditions and employment relationships of workers who work at the workplace of their employers. There is also very little awareness among employers, government and the general public of the status of homeworkers under the Manpower Act and how it applies to them. Responsive regulations that are specifically designed to govern the employment relationship between employers and homeworkers are required to address the current gaps and ambiguities in the legal framework and to provide regulatory measures that better respond to the practical issues related to employing workers in their homes. Specific regulations that define and take into consideration the characteristics of home work and clarify employment relationships, most often through a series of intermediaries, are necessary to ensure that basic labour protections, such as payment of minimum wages, social security, occupational health and safety, and employment contracts, are fulfilled.

Special attention also needs to be paid to strengthening the oversight mechanisms for home work. Without strong mechanisms to support supervision, monitoring and enforcement of homeworkers' rights, reforms to the labour law or development of specific regulations and guidance on home work at the national level will have little impact on the conditions of work of homeworkers. Strengthened supervision and monitoring of the conditions of work for homeworkers should go hand in hand with promotion of homemaker organising. The relative isolation and lack of organisation of homeworkers needs to be addressed through support from community organisations and trade unions who can assist in forming groups and engaging in collective action to articulate and seek enforcement of homeworkers' rights and interests.

One the greatest and most challenging and persistent barriers to decent work for homeworkers also relates to the lack of understanding among all stakeholders of their characteristics and the challenges they face at work, as well as the roles and responsibilities of employers to homeworkers. Awareness raising and promotion of homeworkers' rights at all levels (national, provincial, local) and with all stakeholders, including the Ministry of Manpower, private sector, trade unions and interested organisations, needs to take place. This is an important end in itself- to raise awareness on the existence of homeworkers, as well as to promote recognition of their rights as workers.

This section of the Report will briefly outline possible responses to some of the key issues that require regulatory responses. Annex 1 of this Report (Policy notes for the development of regulations for homeworkers in Indonesia) provides some suggested policy responses that could be adopted to provide greater legal protection to homeworkers. These could take the form of a Regulation or Decree and be supported by industry Codes of Conducts and Practical Guidelines for employers. This section of the Report will also highlight key responses that trade unions, the private sector and civil society could adopt to improve the situation of homeworkers.

Definition of homework and presumption of employment relationship

Any policy or regulation on home work should provide a clear definition of homeworkers and their status as employees in an employment relationship. A definition of homeworkers can be derived from the ILO Convention on Home Work (1996), No.177. Once home work is explicitly regulated, it is perceivable that many employers currently employing homeworkers may attempt to manipulate the relationship so as to pass it off as commercial contract between themselves and an independent contractor or entrepreneur. These types of manipulations or ‘disguised’ employment relationships are common as they enable employers to avoid their responsibilities to employed workers. Therefore, any regulation that defines home work and seeks to protect homeworkers’ labour rights needs to include a presumption that workers engaged in employment from their homes or a place other than the workplace of the employer and who are conducting work according to the specifications or requirements of the employer in return for remuneration are homeworkers in an employment relationship. This presumption of existence of an employment relationship should take precedence over the titles or labels the parties assign to one-another and should not be influenced by whether or not a worker is registered as a ‘self-employed’ worker. Home-based workers should only be considered independent or self-account workers if the facts of the situation clearly demonstrate a lack of economic dependence and true autonomy and independence in terms of the economic activities they perform.

Employer and intermediary responsibilities

As discussed above, the current framework for outsourcing and sub-contracting is consistently violated by employers in the case of subcontracting for home work through intermediaries. Given this situation, regulators have a range of options. Firstly, regulators could recognise the current practices of employers and provide some regulations and safeguards around the way in which this occurs. This would involve regulating for written contracts between intermediaries and employers and apportioning responsibility over conditions of work of homeworkers between employers and intermediaries. It may be more practical to require intermediaries to be held responsible for overseeing the implementation of working conditions of homeworkers given they have the day-to-day interaction with these workers. Similarly, in most instances, homeworkers will only identify the intermediary with whom they have contact, as their employer. If some type of apportioning of responsibility is to be made, employers should still retain the chief responsibility for ensuring adequate resources are provided to fulfil responsibilities to homeworkers.

A second option, which could be used in conjunction with either an apportioning of responsibility, or the current legal framework on outsourcing and sub-contracting, could address the problem that homeworkers need to be able to seek redress for violations of their rights in situations where they are

unable to identify the principal employer to whom they should make a claim. In this type of situation, developing a system that provides for responsibility at a higher level in the value chain in the event that an intermediary fails to deliver on their responsibilities, (for example, to pay wages of a certain value) may be a possible alternative. In this system, a homeworker could make their claim on their perceived employer (who in fact may just be an intermediary) if wages have not been paid in full, or they haven't received another benefit or entitlement due to them. In the event that the 'perceived employer' is merely an intermediary and has not been provided sufficient resources from the employer to make the full payment or fulfil responsibilities to homeworkers, they can refer the claim to another person (presumably the employer) who is in fact liable for the payment to the homeworker. This type of system of creating liability along the value-chain has been adopted in Australia to protect homeworkers against non-payment for work performed.⁸⁷ Under the Australian system, a homeworker need only to serve their claim on the person they think is their employer. The onus is then on the intermediary to pass on the claim to the ultimate employer. In terms of implementation, the application of this principle relies heavily on the existence and feasible access of homeworkers to a functioning and efficient dispute resolution system. As such, consideration of application methods would be essential.

Contracts of employment

It is important that regulators consider the need to balance homeworkers' concern for security over income and employment with current practices and employers' demands for access to flexible labour. Current home work practices tend to be defined by fluctuating and seasonal work. This means that income and employment for homeworkers is highly volatile and difficult to predict. This places homeworkers in a precarious and vulnerable situation. In response, policy-makers could consider guaranteeing homeworkers a minimum amount of work and therefore wages while on contract. A minimum amount of, for example, 15 hours of work could be mandated for all homeworkers on contract (whether the contract they hold is a seasonal one, short term or of indefinite period). This requirement may also provide the necessary incentive to employers to begin providing written contracts of employment to homeworkers, so as to define the length of employment.

While this Report does not recommend that homeworkers be provided fewer protections in terms of employment security than regular workers in Indonesia, it may be wise for regulators to consider reviewing requirements for the reissuance of specified time contracts in light of current practices and demands in home work. Home work tends to be a means used by employers to evade responsibilities under the national labour laws. Current practices of home work, engaging homeworkers through informal mechanisms, involves employers freely providing and ceasing orders with minimal associated costs. Given the often seasonal nature of home work, and one of the key reasons this type of employment exists, it may be useful to consider removing the limitation on reissuing specified time contracts based on seasonal work, when that work is of a truly seasonal nature (as is sometimes the case in the putting out system). By permitting a small degree of greater flexibility to seasonal contracts, employers may be encouraged to engage homeworkers on formal contracts. A limitation on the amount of time a 'season' can be, could instead be applied – for example, specified time contracts for seasonal work may be limited to not more than nine months in a given year, but may be renewed seasonally.

⁸⁷ Under the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012, No.33, article 17A, 'outworkers' may make a claim against a person they believe to be their employer. Thereafter, the recipient of the claim is liable to the outworker for the amount claimed unless they exercise their right to refer the claim to another person who is in fact liable for the payment.

Homeworker assistants

It is essential that regulators deal with the lacuna in the law that ignores the existence of homeworker assistants. In some countries, the number of homeworker assistants that can be employed by a homeworker are limited by legislation.⁸⁸ In others, their employment is prohibited. It would seem advisable to prohibit the employment of homeworkers' assistants in order to protect children from engaging in some of the worst forms of child labour and to protect homeworkers from assuming responsibilities they are ill-equipped to take on. It would also protect homeworkers' assistants from ambiguous employment relationships. In Indonesia, this situation could be dealt with through a combination of regulations that simultaneously prohibit the employment of homeworker assistants and regulate the contracts and permissible volume of work to be sent out to an individual homeworker.

Child labour

Significant efforts have been made by the Government to abolish the worst forms of child labour in Indonesia. Nonetheless, child labour continues to be found in home work. Policy-makers could respond by considering adopting specific programs to combat child labour in home work. Such programs could involve targeted education campaigns for homeworkers, community work with local NGOs and trade unions involved in organising homeworkers and labour inspection of home work premises. Programs could also be combined with existing child labour programs, such as the Conditional Cash Transfers and removal and rehabilitation of child labourers programs.

Policy makers could also consider establishing a positive duty for employers to take steps to prevent the unlawful employment of minors in their home work arrangements. Provisions regulating the volume of work to be sent out to homeworkers and ensuring minimum wages are applied could also reduce the exigency for homeworkers to involve their children in work. Particularly dangerous and hazardous forms of work could also be banned to prevent children's exposure to hazardous chemicals and substances in their homes or communities and employers could be required to record the number and ages of children in the homes of homeworkers as well as the weekly volume of work provided to minors (if anyone under the age of eighteen is employed) as part of their record-keeping and reporting requirements (see below, registration of homeworkers).

Prohibition of forced labour

The common practice of employers withholding pay as a form of security over the materials being sent out to homeworkers should be explicitly banned in a specific regulation on home work. Homeworkers should not feel bound to continue working for an employer so as to receive remuneration due to them for previous work performed. This is unacceptable in all its forms. Regulators could also consider prohibiting employers from issuing loans and other forms of bonds to homeworkers they employ so as to prevent homeworkers from entering situations of bonded or forced labour.

Freedom of association

Lack of organisation and representation is one of the fundamental barriers to decent work for homeworkers. Organisation of homeworkers is essential to enable homeworkers to collectively

⁸⁸ See, for example Argentina, Act No.12.713/41 and Regulatory Decree No.118.755/42.

pursue their interests and rights. The most significant challenges faced by homeworkers to exercising their right to freedom of association relate to their isolation, invisibility and the absence of labour consciousness. Significant education, training and support to civil society organisations and trade unions is necessary to support progressive organisation and representation of homeworkers. Given the unique characteristics of homeworkers, trade unions and civil society organisations will need to adapt their traditional organising and community engagement methods to respond to the specific challenges faced by homeworkers. Methods used by some organisations such as MWPRI, YASANTI and civil society organisations and trade unions overseas (such as SEWA in India, the trade union movement in Australia and Britain) could be adapted and applied in Indonesia. These methods include intensive community engagement, organisation of social activities and life skills or vocational training as an entry point as well as the development of non-traditional self-help mechanisms and services. Homeworker organisations could also be encouraged to form linkages with national trade union federations and confederations to strengthen their voice and representation at the policy table and vis-à-vis employers. Informal monitoring of working conditions by trade unions may also prove to be the most effective method of supervision and support to progressively improve homeworkers' working conditions.

Institutional barriers to registering trade unions also need to be addressed by the Ministry of Manpower. Officials could consider explicitly providing for the right to freedom of association and collective bargaining in a regulation on home work and explicitly prohibiting anti-union behaviour and discrimination against homeworkers on the basis of their association with or involvement in trade union activities. Given the fundamental nature of this right, greater efforts should also be made to ensure its application. Establishing internal directives to support registration of homeworker trade unions could be one mechanism. Provision of information to homeworkers on their rights to organise and establishing a complaints office to receive complaints related to allegations of employer anti-union behaviour could be another option. Manpower offices could also actively convene tripartite forums at the district or provincial level involving homeworker representatives to promote dialogue between homeworkers and employers and to facilitate discussion on issues faced by homeworkers and their employers. A possible entry point could be through local Minimum Wages Setting Councils and the involvement of homeworker representatives in the calculation and setting of minimum piece-rate wages for home work.

Equality and non-discrimination

Policy makers could consider making an explicit statement that homeworkers should not be discriminated against in the terms and conditions of their employment or access to opportunities vis-à-vis ordinary workers. The current situation that sees homeworkers receiving substandard wages and poor conditions of work is essentially a gender equality in employment issue given the majority of homeworkers are women. To promote gender equality in employment, it is important that homeworkers are not systematically discriminated against in relation to their terms and conditions of work and access to opportunities. As such, explicit acknowledgement of the responsibility of employers to provide for equal remuneration for work of equal value is of key importance. It is also important that employers understand that principles of equality and non-discrimination also apply to the provision of employment opportunities for homeworkers. Here, specific recognition of employers' responsibilities not to discriminate on the basis of sex, ethnicity, religion, race, national extraction, social origin, political opinion, health status, marital or maternity status, disability and other grounds prohibited in national law could be made.

Wages and hours of work

Rate of wages is the single most important issue as identified by homeworkers.⁸⁹ Most homeworkers surveyed in East Java reported receiving substandard wages, which were well below the local minimum wages, despite working forty or more hours in a week. Regulators should therefore pay close attention to addressing wage issues for homeworkers and it is suggested that wages and hours of work be considered together. Through the establishment of a decent wage that is linked to regular hours of employment (forty hours in one week), homeworkers may feel less compelled to work excessive hours or to involve their children in their work.

Regulators could consider establishing a clear mechanism for determining piece-rate wages in the context of home work. A range of methods to determine the calculation of piece-rates already exist and could be adapted for home work. Any process for calculating piece-rates should involve active participation of homeworkers in the calculation process or validation of the final calculation. Piece-rates established through reference to the local minimum wages and regular hours of work should set the benchmark for the minimum or base salary for work performed by homeworkers.

In addition to the setting of piece-rate wages, there is a need for rates to be advertised and disseminated to homeworkers. Regulators could also consider publicising piece-rate wages in target communities and include requirements for wage rates to be provided to homeworkers when orders are sent out to them. This could potentially go some way in addressing competition between homeworkers in different communities for work.

Ideally, however, homeworkers' wages would be established through a process of negotiation and collective bargaining. Policy-makers could therefore consider promoting social dialogue through collective bargaining between homeworkers' organisations and employers in the determination of piece-rate wages. Including the negotiation of homeworkers' wages in local tripartite Wage Setting Councils could be a good way to introduce wage negotiations for home work, with the Government acting as a mediator and ombudsman in the process. Here tripartite councils could determine and classify appropriate piece-rates for different types of outputs through regard to local minimum wages. These Councils could also provide a forum for negotiation of higher piece-rate wages for work that demand a level of skill or experience.

Policy-makers could also consider regulating the responsibilities of employers to compensate for additional costs of production borne by homeworkers, such as transportation for delivery of completed products, reimbursement for tools, materials or equipment purchased or maintained by homeworkers, costs of electricity, water or gas. It is necessary to ensure that the take-home pay of homeworkers, after taking into consideration the additional expenditures they have to make to support the production and delivery of products, is at least equivalent to local minimum wages. Regulators could consider adopting a policy similar to other countries that have regulated home work. Various countries have provided provisions that require a certain percentage of homeworkers' monthly salary be paid in addition to the salary and/or specific costs be reimbursed to homeworkers to compensate for costs borne by homeworkers.⁹⁰

In relation to deductions for 'damaged goods' of the employer, regulators should consider providing a clear definition of 'damaged goods' and clarifying whether or not they are damaged (and to

⁸⁹ Focus group discussions 2012 and 201, East Java.

⁹⁰ See, for instance, regulations in France, Peru, Hungary, Austria, Mexico, Paraguay and Poland.

what extent). Ordinarily, if the quality of production of a worker in an enterprise is substandard, then the employer would assume the costs associated with product rejection or correcting. In the case of home work, this responsibility is pushed on to the homeworker. Homeworkers are employed for their labour; not to produce a final product of work – this would be the role of an independent contractor. As such, responsibility and risk over the quality of products should not fall wholly on the homeworkers. Following this line of argument, homeworkers' wages should only be deducted in instances of acts of wilful or gross negligence on the part of the homeworker, or for payment of damages caused by late delivery of products by the homeworker, provided such penalties and deductions have been agreed on previously by the homeworker and employer.

Alternatively, if deductions for substandard work are to be permitted, regulators could consider limiting the amount of deductions that can be made for substandard quality work on the part of homeworkers. If regulators are to consider retaining deductions for substandard work, specific regulations or an industry code should be established. These could require employers to (1) develop clear product specification guidelines for the work to be performed by homeworkers; (2) provide sufficient training to homeworkers to fulfil product specifications; (3) provide workers with a clear, written explanation of what their pay will be and the way in which the wage will be calculated (with reference to local minimum wages and/or collective agreements); and (4) establish a clear criterion for the maximum permissible deductions (with reference to legally permissible amounts) based on substandard quality, could be formulated to provide better legal protection from arbitrary wage deductions for homeworkers.

Although homeworkers should be free to accept as much or as little work as they choose, regulating the amount of work provided to homeworkers could prevent abusive practices of homeworkers, use of child labour and could prevent the need for homeworkers to subcontract to homeworker assistants. If piece-rates are calculated through reference to actual time required to complete tasks and minimum wages, homeworkers should not feel compelled to work excessive hours just to earn a living wage. Regulators could therefore consider limiting the volume of work provided to any individual homeworker to a level that is 'reasonably' achievable by a regular homeworker within the specified delivery time and which allows homeworkers adequate periods of rest. An upper limit on the amount of work, in terms of hours, could also be provided in regulations. In line with current regulations, overtime rates or higher piece-rates could also be applied for work that is required in excess of forty hours per week.

Occupational Safety and Health

Occupational health and safety can be a serious issue in homework, particularly when homeworkers are working with chemical or hazardous substances. Regulators could consider banning certain types of particularly hazardous work from home work practices and requiring home work practices to comply with national standards on occupational health and safety. Imposing responsibilities on employers to assess the occupational health and safety risks involved in the work to be performed by homeworkers; to provide safety equipment, clothing and tools; and to train homeworkers to manage occupational safety and health risks in homeworker workplaces and properly maintain equipment and tools, could also be considered for regulation. Regulations could also consider imposing duties on homeworkers to comply with prescribed safety and health measures and instructions from employers.

Essential for the effective implementation of occupational health and safety measures for home work is the operation of an effective monitoring system to supervise and oversee home work practices. Regulators should consider the role of the Government in developing a system for labour supervision

of home work, either through extending current labour inspection services or through informal or other means (see below discussion). It is also necessary to provide forums or other mechanisms to facilitate social dialogue between employers and homeworkers so that health and safety concerns can be raised and dealt with collectively. The Ministry of Manpower could consider adopting a facilitating role to support the establishment of social dialogue forums between homeworkers and employers that somewhat reflect the current enterprise-level Occupational Health and Safety Management Committees.

Social security

Mechanisms to apply the new social security law, (effective on January 1, 2014, based on Law No. 24/2011 regarding Social Security Administrators (or BPJS) which builds on Law No. 40/2004 regarding the National Social Security System (or SJSN) to homeworkers need to be determined. This new law provides for universal social security, however, the methods for delivering such a program continue to rely on employer contributions or direct contributions from informal workers. This new system will need to adopt an approach that takes into account the fluctuating nature of homeworkers' work and status. Rates and mechanisms for homeworkers' contributions when they are not employed as homeworkers will need to be established. A separate study on this could be procured.

Maternity leave and other leave entitlements

Current entitlements to maternity leave, sick leave and paid annual leave should be extended to homeworkers and awarded in proportion to the number of days they work in a year. Regulators could consider establishing a basic method to calculate entitlements for seasonal and irregular workers. Maternity leave, in particular, should be explicitly regulated for home workers given the majority of homeworkers are women. Provision of maternity leave and non-discrimination on the basis of maternity are areas that are typically very difficult to supervise in industries characterised by contract, seasonal or casual labour. Nonetheless, significant efforts should be made to develop an effective monitoring and supervisory system for home work.

Monitoring, supervision and awareness-raising

Effective enforcement of any regulations on home work rely on the establishment of an effective system for monitoring and supervision of working conditions and employment relationships. This could involve an extension of the labour inspectorate and/or the development of alternative monitoring systems. Local Manpower Offices could establish specific units to deal with home work and establish an information and complaints desk where homeworkers or their representative organisations could seek information about their rights and issue complaints for investigation.

As an initial step towards improved supervision, record-keeping, reporting and registration requirements for employers engaging homeworkers could be created. This should involve requirements to notify local authorities when home work is being sourced by an enterprise and to oblige employers to keep and maintain records listing the homeworkers they employ, the rates of pay for the homeworkers and a register recording the volume and nature of work performed by homeworkers. These records should also maintain an inventory of training and occupational health and safety support provided to homeworkers. Appropriate penalties for breach of such regulations could also be formulated.

While enforcement and oversight of the implementation of the law remains weak, international buyers, trade unions and homeworkers associations could also be encouraged to monitor the implementation of employers' responsibilities. Community monitoring systems involving trade unions or NGOs could be one option. The establishment of special tripartite or bipartite home work committees at the enterprise, community or sub-district level could be another option. If suggestions above on wages are taken up, an entry point could also be to involve the local Wage Setting Council in monitoring the implementation of piece-rate wages in home work.

International buyers are increasingly concerned about compliance of local suppliers with national labour laws and international labour standards. Systems for internal compliance audits for companies in international value chains could therefore be encouraged to extend their scope to include supervision over home work practices. This can be pursued through networks with international buyers or through programs like the ILO/IFC Better Work Program. Through initiatives with international buyers, private-sector incentives for improving the conditions of work of homeworkers could be explored and documented for dissemination to local supply chains.

Dissemination of information on employers' roles and responsibilities vis-à-vis homeworkers is essential. Although a significant number of employers deliberately evade their responsibilities to workers through informally engaging homeworkers, many employers are also ignorant of their legal responsibilities towards homeworkers.

General awareness raising on the existence of home work and legal literacy education campaigns are needed to up-skill the general public as well as interested trade unions and civil society organisations so that they are better equipped to oversee the application of employers' responsibilities to homeworkers. Trade unions and civil society organisations require technical assistance and, in some cases, additional resources, to extend their services and support to homeworkers and to participate in social dialogue forums at the local level to advocate for and represent homeworkers' rights and interests. Without a strong civil society organising and representing homeworkers as well as overseeing the application of their rights and interests, there is little chance, that any new regulations on home work will be of great practical effect.

Data collection

The lack of statistical data on homeworkers has undoubtedly contributed to the Government's lack of attention to homeworkers. At the same time, however, without significant Government attention to the issue, there has been no impetus to generate data. Officials at the Ministry of Manpower stated that without accurate data on the number, geographical spread and characteristics of homeworkers, they were unprepared and incapable of developing targeted programs or allocating a budget to this group of workers. Data collection, albeit on a small scale, should be promoted among district and provincial-level Manpower Offices to gain a clearer understanding of the prevalence of home work. This would support greater awareness of homeworkers and the barriers they face to decent work and would support greater ownership over the issue.

Overall, a significant number of regulatory reforms and enforcement mechanisms need to be developed and applied to the situation of homeworkers. Given the immense challenges of implementing effective regulatory oversight of home work, non-traditional methods of monitoring and supervision should be explored and tested. These efforts should be coupled with greater awareness-raising on home work, dissemination of information on homeworkers' rights and employers' roles and responsibilities, organisation of homeworkers by trade unions and civil society organisations and support for the development of social dialogue forums involving homemaker representatives.

Annex 1

Policy notes for the development of regulations for homeworkers in Indonesia

ILO Jakarta

MAMPU Project

It is suggested that the following areas be regulated for homeworkers: –

Key definitions

Home work is the production of a good or the provision of a service for remuneration for a hirer, according to the standards and specifications of the hirer and under an arrangement whereby the work is carried out at the homeworker's home or in other premises of his or her choice, other than the workplace of the hirer, irrespective of who provides the tools, materials or other inputs used.

Note - There is normally no direct supervision by the employer or contractor over this part of the production process. Commercial and industrial subcontracting can take place. In commercial subcontracting the hirer of homeworkers does not participate in the actual production process. In industrial subcontracting, the hirer themselves engages in the production process. Both traders and producers can function as hirers. Traders in marketing a specific range of products can organize production through subcontracting selected homeworkers, who have to produce according to the standards and specifications set by the hirer. Producers use homeworkers for executing specific tasks within their overall production process.

A homeworker is a person who conducts home work.

A hirer is an enterprise that directly hires, or an individual who is acting as a subcontractor or intermediary for an enterprise or trader, who hires a homeworker through an oral or written agreement to complete work according to standards and specifications dictated by the hirer or enterprise.

A trader is an enterprise or individual who trades goods. *Note – suggest to use national definition of a 'trader'*

An enterprise is (a) Every form of business, which is either a legal entity or not, which is owned by an individual, a partnership or a legal entity that is either privately owned or state owned, which employs workers/ labourers by paying them wages or other forms of remuneration; (b) Social undertakings and other undertakings with officials in charge and **who** employ people by paying the wages or other forms of remuneration.

Regular workers who work at the workplace of their employer are not considered homeworkers simply by occasionally performing their work as employees at home, rather than at their usual place of work.

Employment of homeworkers

A hirer may employ a homeworker or group of homeworkers to perform work according to the standards and specifications of the hirer or the standards and specifications of an enterprise or trader for whom the hirer is subcontracted to provide work.

Anyone engaged by a homeworker to assist the homeworker in the completion of their work is not covered by this regulation.

Contract

An agreement for home work can be made orally or in writing.

If an agreement for home work is made orally, the hirer has a responsibility to reflect that agreement in written form.

Homeworkers may be contracted for an unspecified time or for a specified time.

*** Consider making specified time contracts for homeworkers comply with existing national laws (Manpower Act, Law No.13 of 2003, arts 56-59).*

OR -

Given the often seasonal nature of home work (and the very reasons this type of employment exists), it may be worth considering removing the limitation on reissuing of specified time contracts based on seasonal work, (so long as it is work of a truly seasonal nature). Perhaps specified time contracts for seasonal work of no more than, for example, 9 months per year can be renewed seasonally.

Workers engaged on specified time contracts could also be provided preference for recruitment in future contracts.

In the absence of a written contract indicating a limitation in the duration of employment, homeworkers will be considered to be working on an unspecified time contract.

*Given the unpredictability of income for homeworkers consider requiring a minimum number of hours of work for homeworkers on permanent contracts. Eg-Homeworkers hired for an unspecified time must receive a minimum of 15 hours of work each week. In the event of total absence of available work, remuneration equivalent to 15 hours of work each week **should?** be provided.*

Responsibilities of the hirer

Hirers shall provide homeworkers with a written contract outlining the following:

- Name, address, age and sex of the homeworker (or all members of a group of homeworkers if there is a contract with a group);
- Name, address and contact details of the hirer. If the hirer is acting as an intermediary for an enterprise, the name and contact details of the enterprise must be provided as well;
- Information on the type and nature of the work to be performed;
- Rate and amount of remuneration for the work to be performed, including the method for calculation and deduction of the remuneration;
- Entitlements of homeworkers to reimbursement for costs incurred;
- Information on social security enrollment, payments and benefits;
- Commencement and duration of the contract;
- Completion dates for each installment of work and information on the dates and venue for delivery of completed home work; and
- Signature of the hirer and of the homeworker.

One copy of this document shall be provided to the homeworker. The hirer shall retain a second copy. The hirer must maintain these records of employment for at least two years following the final date of payment of remuneration.

Any revision made to the written agreement must be agreed on by the homeworker and issued in writing to the homeworker.

The hirer shall register the employment of homeworkers with the local Manpower Office.

Hirers of homeworkers are required to keep records of home work. The following information must be maintained in a logbook -

- Name, age, sex and address of homeworkers;
- Type and amount of work provided to homeworker and estimated time required to complete the work;
- Rate of remuneration;
- The time allocated to complete the work;
- Costs incurred by the homeworker and amount reimbursed;
- Social security number and contributions;
- Training provided to the homeworker (including OHS);
- Total remuneration provided and date(s) of payment;
- Any deductions made, including deductions for payments required by national laws and regulations; and
- Provision of equipment, tools and other materials and their status in terms of regular maintenance and checks.

The hirer shall provide a copy of the information provided in the logbook to the homeworker.

Roles and responsibilities of enterprise/trader and hirer when a hirer acts as an intermediary for the enterprise/trader

When a hirer is subcontracted by an enterprise/trader to employ workers and chooses to employ homeworkers to complete part or the entirety of the subcontracted work, the hirer and enterprise/trader shall conclude a written agreement for the provision of home work.

The written agreement for the provision of home work shall include the following **particulars :-**

- a) Detailed description of the work and requirements of the homeworker(s);
- b) The duration of the agreement (specified/unspecified);
- c) The terms and conditions of employment of the homeworkers(s), including the rate of remuneration;
- d) The obligations of the hirer to the homeworker(s).

The contract between the subcontracting enterprise/trader and hirer shall not include any agreement on the rights and benefits of homeworkers, which are less favourable than those stipulated in this regulation.

The subcontracting enterprise/trader has an obligation to ensure the hirer is provided adequate resources to fulfil the hirer's roles and responsibilities to homeworkers under this regulation.

The subcontracting enterprise/trader has the right to inspect the logbook and other documents of the hirer in relation to the employment of homeworkers.

The subcontracting enterprise/trader shall be held liable to fulfil payment of all money owed to homeworkers if the hirer fails to do so.

Rights of homeworkers

Freedom of association

Homeworkers have the right to freely associate, join or form trade unions or other representative organisations to promote their rights and interests, including through collective bargaining and other legitimate union activities.

Homeworkers shall not receive discriminatory treatment as a result of their trade union membership, affiliation or activities.

Protection from bonded or forced labour

A hirer is not permitted to demand or receive moneys in the form of insurance or a performance-based bond over the materials, products, equipment, or tools provided to homeworkers or to guarantee the performance of work, from a homeworker.

Hirers shall not provide loans to homeworkers that require repayment through the performance of home work or other work for the hirer or a third party with a relationship with the hirer.

Non-discrimination

Homeworkers shall be treated equally. Direct and indirect forms of discrimination on the basis of sex, religion, ethnicity or race, disability, social origin, maternity, marital status, national extraction or health status in relation to employment opportunities or treatment in employment are not permitted.

Homeworkers shall be treated no less favourably in terms of their conditions of work, benefits and entitlements than other workers who are employed to perform similar work by the hirer or subcontracting enterprise/trader at the workplace of the hirer or subcontracting enterprise or trader.

Remuneration

Homeworkers may be paid a monthly, weekly or hourly wage or one based on the completion of a specified task (piece-rate).

Remuneration for ordinary hours of work performed (40 hours in one week) shall be no less than the applicable minimum wage.

The rate of remuneration for piece-rate work must take into consideration and reflect the amount of time required to reasonably complete a task by a homeworker. The set piece-rate must enable homeworkers to earn at least the minimum wage for work performed during ordinary hours of work (40 hours in one week).

The calculation of wage rates, including piece-rate, must take into consideration time spent in maintaining machinery, equipment or tools, changing tools, sorting, unpacking and packing products, sourcing materials (if required), travel time and other such operations in connection to the performance of the home work.

Homeworkers should be paid equal remuneration for work of equal value. *This means the rate of remuneration of a homemaker should be comparable to that received by a worker in the enterprise of the hirer, or if there **are** no such workers, in another enterprise in the same branch of activity and region.*

Wages must be paid in full in monetary form upon delivery of products or services. Delays in payment are not permitted.

In the case of continuous work, wages should be paid at regular intervals of not more than one month.

Remuneration shall be paid directly to the homemaker. In the case where a group of homeworkers is contracted to perform work, payment can be made to a representative of the group to distribute among the homeworkers, provided consent from all homemaker members of the group has been freely granted.

Deductions

Deductions from the total remuneration owing to homeworkers for the performance of their work are not permitted **except** in the following instances –

1. Lawful deductions for hirer contributions to a recognized social security fund;
2. Compensation for loss to the hirer due to a willful act or gross negligence on the part of the homemaker, provided the conditions for such compensation have been agreed on by homeworkers and are specified in the written agreement;
3. Payment of damages or penalties in the case the homemaker delivers the work later than the scheduled delivery time, provided such penalties and damages have been agreed on by homeworkers and are specified in the written agreement;
4. Deduction in the cases of (2) and (3) shall not exceed more than 20 per cent of the remuneration the homemaker is entitled to receive for each installment of work; and
5. Other payments as specified by relevant laws and regulations.

Reimbursement for costs

Homeworkers shall be reimbursed by hirers for out-of-pocket expenses incurred in connection with their work including (but not limited to)–

- Purchasing of equipment, tools, materials or protective clothing;
- Maintenance of equipment or tools;
- Travel expenses related to the pick-up and/or delivery of products;
- Costs associated with disposal or management of waste associated with their work;
- Costs of packaging work;
- Communications; and
- Use of energy and water.

Hours of work

Homeworkers shall be notified at least one week prior to receiving an order of the volume and nature of the work to be completed.

The volume of work provided to any individual homeworker must be set at a level that is reasonably achievable **by a regular** homeworker within the specified delivery time and which permits the homeworker to adequate periods of rest.

Work orders and deadlines for work provided to individual homeworkers cannot be so excessive so as to require homeworkers to work more than 75 hours in one week.

If an order for work requires homeworkers to perform more than 40 hours of work in one week, the hirer shall provide remuneration at an overtime rate of at least 1.5 times the ordinary piece-rate or hourly rate for each hour of work performed in excess of 40 hours. *Or consider - a hirer must provide a higher piece-rate for work performed when orders require homeworkers to work in excess of 40 hours in one week.*

Homeworkers are not obliged to work on official public holidays.

Overtime rates of 1.5 times the ordinary piece-rate or hourly rate shall apply to work that is performed on official public holidays.

All overtime work must be agreed on by homeworkers.

Leave

Homeworkers on an unspecified time contract are entitled to annual leave of two weeks.

Homeworkers are entitled to receive their average weekly salary during the period of annual leave. For homeworkers who receive piece-based remuneration, the average weekly salary shall be calculated based on their annual wage during the preceding year.

Homeworkers on unspecified and specified time contracts are entitled to paid leave on public holidays. For homeworkers who receive piece-based remuneration, the payment for leave on a public holiday shall be the average daily wage of homeworkers over the past month of employment.

Sick leave

Homeworkers on unspecified and specified time contracts who fall ill are entitled to paid leave upon **demonstration (or presentation)** of a medical certificate. For homeworkers who receive piece-based remuneration, the payment for sick leave shall be the average daily wage of homeworkers over the past month of employment.

Occupational health and safety

Hirers have an obligation to assess the occupational health and safety risks involved in the work to be performed **by homeworkers** as well as the risks **present in** the workplace of homeworkers.

Hirers must inform homeworkers of any hazards involved with the work that are known or ought to be known and provide all necessary information, training and/or protective equipment, clothing and tools to homeworkers free of charge to the homeworker to mitigate risks associated with the work provided.

Hirers must ensure that all machinery, tools, equipment **or other** items provided to homeworkers are properly maintained and are equipped with appropriate safety devices.

The work to be performed in the house or other premises by a homeworker must satisfy national standards on occupational health and safety.

Home work that endangers the life, health or morals of homeworkers, members of a homeworker's household or the general public is not permitted.

Homeworkers have a responsibility to comply with prescribed safety and health measures and **to take** reasonable care for their own safety and health and that of other persons in their vicinity.

A homeworker who refuses to carry out work that he or she has reasonable justification to believe presents an imminent and serious danger to his or her safety or health should be protected from termination of employment or other undue consequences. The homeworker should report the situation to the hirer without delay.

Social security

Hirers have an obligation to **enrol** homeworkers on specified time and unspecified time contracts in a social security scheme in accordance with national laws and regulations.

The hirer shall make periodic contributions to the social security fund of a homeworker in accordance with national laws and regulations.

Homeworkers must be informed about their social security entitlements and benefits.

Maternity protection

Homeworkers on unspecified time and specified time contracts are entitled to three (3) months of paid maternity leave.

Hirers shall not discriminate against women who are pregnant in the hiring, firing or distribution of work.

Where the nature of the home work may pose a threat to the life or health of a pregnant homeworker or the **foetus** (as per medical advice), alternative work shall be provided by the hirer.

Minimum age

National laws and regulations on the employment of children under 18 years of age apply to home work.

It is the responsibility of the hirer to ensure children are not engaged as homeworkers or homeworker assistants except in so far as permitted under national laws and regulations.

Children under the age of 18 years of age who engage in home work are entitled to the same level of remuneration, rights and benefits as ordinary homeworkers under this regulation.

Termination of employment

In the instance that work orders cease for more than one month, a contract can be considered terminated and as a dismissal by the hirer. Homeworkers shall be entitled to receive termination of employment benefits in accordance with national laws and regulations.

Labour inspectors

In the instance that a hirer fails to fully pay a homeworker or group of homeworkers for work performed, or the homeworker does not receive other entitlements and benefits as provided by this regulation, the homeworker(s) may file a complaint to the labour inspectorate at the local Manpower Office.

Labour inspectors have the authority and responsibility to receive and respond to complaints lodged by homeworkers or their representative organisations, including through investigations into the facts and issuance of orders.

Labour inspectors have the authority to issue orders to the hirer or the enterprise/trader that has subcontracted work through the hirer to remedy defaults in payments or other forms of non-compliance with this regulation.

Labour inspectors have the authority to enter and inspect the workplaces of homeworkers and the establishments of hirers and conduct all other activities within their authority as labour inspectors in relation to home work in accordance with national laws and regulations.

Dispute resolution

National laws and regulations governing labour disputes settlement apply to disputes concerning home work.

Penalty provisions

Suggest to outline possible penalties for non-compliance with the provisions in the regulation.

Establishment of a homeworker protection committee

Suggest the establishment of a committee within the MoMT at the national and local levels to oversee the dissemination and implementation of these regulations. This Committee should also be responsible for conducting and disseminating research on homeworkers, reviewing the application of regulations on home work and develop policies and programs to strengthen application of regulations on home work.

Collection of data on home work

*Suggest to include a provision for sub-national Manpower Offices to collect and **analyse** data on the characteristics, number and geographical location of homeworkers in their locales.*

Establishment of a focal point/unit for homework at the sub-national level

Suggest to include a provision requiring the establishment of a unit or focal point within each Disnaker office at the sub-district, district and provincial levels to deal with homeworker issues, including the dissemination of the regulation.

Annex 2

The following consultations with stakeholders took place -

Meeting at ILO's office in Jakarta with Bapak Sunarno, Head of Legal Bureau of the Ministry of Manpower and Transmigration, with his assistant; Dyah Windajani Darmono, Deputy Director for Human Rights and Reporting and Dhahana Putra on 23 January 2013.

Meeting with Ibu Erna Wuryanti, the Head of Work Norm and Protection Section of Disnakertrans East Java Province, on 6 February 2013.

Meeting with Bapak Jaka Ritamtama, Head of Disnakertrans Kabupaten Malang; Ibu Gatot, Head of Inspection and OSH division of Disnakertrans Kabupaten Malang on 29 January 2013.

Meeting with Bapak Subkhan, head of Disnakertrans Kota Malang; Ibu Eni, Head of Inspection and OSH division of Disnakertrans Kota Malang, and Bapak Kasiyadi, Head of Industrial Relationship Division of Disnakertrans Kota Malang on 29 January 2013.

Meeting with representatives of the Manpower office of Deli Serdang: Bapak Syafran, Head of Industrial Relations Unit, Bapak Julkan Harahap, Head of the Labour Placement and Training Unit, Bapak Sahat Naibaho Mikes, Head of Labour Inspection Unit, and Bapak Agus, Head of Marketing, on 2 February 2013.

Meeting with representatives of the Manpower Office of Medan City: Ibu Akrida, Head of the Job Requirement Inspection Unit; Ibu Rosmalina Dewi, Head of Labour Inspection Unit; Ibu Gempita Sekarwaty, Head of the Labour Placement Section; Bapak Lepi Hutagaol, Head of the Labour Placement Section in February 2013.

Meeting with representatives of the Women Empowerment Bureau of Sumatera Utara: Ibu Marhamad Msi, Head of the Gender Mainstreaming Unit; Ibu Emi Suryana Lubis, Head of the Women Protection and Life Quality Unit, and Ibu Fatma Rizani Basril, Head of the Women Life Quality Sub-Unit on 6 February 2013.

Meeting with representatives of the Manpower office of North Sumatra Bapak Fransisco Bangun, Head of Labour Inspection Unit; Bapak Fransisco Siregar, Labour Inspector, and Ibu Helena, Head of Special Labour Protection Section in February 2013.

Responses provided by Industrial Relationships Court Judge Saut Manalo, Labour Court Judge at the Jakarta Provincial Court, via e-mail on 8 October 2012.

Responses provided by Ibu Paula Luciana, legal aid provider, via e-mail on 5 February 2013.