

# **SEED WORKING PAPER**

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the Global Economy*

# **Home Work in Brazil: New Contractual Arrangements**

by

Lena Lavinas  
Bila Sorj  
Leila Linhares  
Angela Jorge

InFocus Programme on Boosting Employment  
through **S**mall **E**nterpris**E** **D**evelopment  
Job Creation and Enterprise Department

International Labour Office Geneva

## FOREWORD

This report is part of a series of studies carried out by the International Labour Organization (ILO) in connection with the Latin American component of the ILO inter-regional project “Homeworkers in the Global Economy”, financed by the Government of Denmark.

The purpose of these studies is to determine whether home work in Latin America is a residual form of work that is “becoming extinct”, as was considered for many years to be the case, or whether it is in fact a mode of employment that is re-emerging in a context characterized by the fragmentation and relocation of production processes, an increasingly flexible labour market and the individualization of labour relations.

With that end in view, an attempt has here been made to provide an overview of the number and profile of workers engaged in this form of employment, and to analyse the relevance and effectiveness of the legal framework governing home work. Likewise, the perceptions and attitudes of governments and employers’ and workers’ organizations towards this modality of work are examined.

The countries reviewed reveal major differences in terms of the relative preponderance of the rural and urban populations, the structure of work (incidence of modern work and composition of the informal sector), levels of employment and unemployment, level of industrialization and openness of the economy, among other aspects. Nonetheless, the studies are unanimous in indicating that the number of homeworkers is significant and may be increasing, although evidence to that effect tends to be of an anecdotal nature. Similarly, although home work is the subject of extensive legal regulation in many countries, it is not registered or protected in practice.

The scant attention that has traditionally been devoted to this subject by public policies, particularly those relating to the labour market, and by public institutions and social stakeholders is to be attributed to the fact that no clear and common criteria exist regarding the nature of home work and exactly what the concept covers.

These and other aspects were highlighted during the Technical Tripartite Consultation organized in Santiago, 26-28 May 1999, by the former Department of Development Policies (POLDEV), in collaboration with the Santiago Multidisciplinary Technical Team (MDT) and the Regional Office, for the Americas.

One of the main objectives of this consultation and of the project was to identify possible areas of study and action in order to better understand home work, its characteristics and future trends, and to outline possible support policies. Follow-up activities are underway within the framework of the recently established InFocus Programme on Boosting Employment through Small Enterprise Development of the Employment Sector. We would like to express our thanks to the Bureau for Gender Equality, which kindly financed the translation of these studies into English.

Christine Evans-Klock  
Director  
InFocus Programme on Boosting Employment  
through Small Enterprise Development

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## ACRONYMS

BNDES	Banco National do Desenvolvimento Economica e Sociale (National Bank for Economic and Social Development)
CLT	Consolidation of Labour Laws
EAP	Economically Active Population
FAT	Worker Protection Fund
IBGE	Brazilian Geographical and Statistical Institute
IPEA	Applied Economics Research Institute
OECD	Organisation for Economic Co-operation and Development
PNAD	National Survey by Samples of Households
PROGER	Job and Income Generation Programme
RAIS	Registro Administrativo de Informaçoes Sociais (Administrative Registry of Social Information)
SENAI	National Industry Service
PSDB	Brazilian Social Democrat Party
PT	Workers' Party

## 1. Home work in recent literature

Until the 1980s, home work was considered to be an obsolete and residual form of employment in developed economies, while in developing societies it was equated with informality, marginality and exclusion. It was meant to decline and disappear, as a result of modernization. This view was based on the firm belief that an inextricable link, exemplified by the wage relationship, existed between economic growth and the consolidation of social and workers' rights in democratic societies.

Recent economic developments, both in Brazil and in other countries, augur a break with this model and with the wage-earning paradigm as prime form of labour organization. Technological advances, combined with economic growth based on high-labour productivity and scant job creation, is reviving and giving rise to new occupations and new forms of labour relations. Temporary work, part-time jobs, outsourcing and subcontracting of homeworkers have become the focus of new labour management strategies.

In addition, the process of globalizing production activity has incorporated home work, together with other informal occupations, in production chains which stretch beyond national borders. The social and political implications of this phenomenon have yet to be assessed. Several authors, however, provide us with some pointers for a more close analysis of future prospects.

Ulrich Beck<sup>1</sup> draws attention to the effects of a situation in which capital is globally mobile while states are territorially bound. While a single product is part of a production chain that stretches over several countries and continents, the geographical location of profit becomes increasingly unclear. This encourages companies to adopt tax avoidance strategies. Indeed, the internationalization of production offers entrepreneurs two major advantages: it promotes global competition between dear labour and cheap labour and between tax conditions and the distribution of tax-monitoring among states, and ultimately undermining them. Hence, market laws are transferred to politics. The place of investment, the place of production, and the place of taxation and domicile may be chosen entirely independently of each other. Many companies benefit simultaneously from a low level of taxation in poor states and a high standard of living in rich states. They pay taxes where the tax burden is lower and live where the quality of life is higher, taking advantage of expensive infrastructure facilities. The author suggests that this situation is a hotbed for dispute. On the one hand, disparities arise between virtual and real tax-payers, the latter consisting of those who still have regular jobs and of smaller companies that have not yet attained the same mobility and are therefore subject to conventional taxation mechanisms. Meanwhile, the giants of economic growth are courted by politicians, undermine the authority of the State, and demand benefits but withhold taxes.<sup>2</sup>

Recent research has revealed some new developments in regard to home work. These include:

**a) heterogeneity of production and employment patterns:** a survey carried out in six European Union countries<sup>3</sup> elicited a wide range of situations. In Italy, for example, a small artisan company manufacturing children's footwear for a large United Kingdom retailer was identified. The company,

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<sup>1</sup> "Capitalismo sem Trabalho", *Ensaio FEE*, Porto Alegre, v.18, 1997.

<sup>2</sup> "Entrepreneurs discover the new alchemist's stone. The new magic formula reads as follows: capitalism without work plus capitalism without taxes. Revenues from personal income tax and tax on company profits fell in Germany between 1989 and 1993 by 18.6%; its share of State tax revenues fell by almost half (from 6.4% to 3.7%) while, in many cases, profits simultaneously rose to over 10%" (Beck, 1997).

<sup>3</sup> Jane Tate, *Every Pair Tells a Story*, Report on a Survey of Homeworking and Subcontracting Chains in Six European Countries in the European Union. (Greece, Italy, Netherlands, Portugal, Spain, United Kingdom), European Commission Directorate General V, Employment and Industrial Affairs, March 1996.

in turn, hired both independent artisans and homeworkers who were not all registered. This case is typical of the region consisting of small enterprises which responded to the crisis of the Italian industry by consolidating the process of decentralization and specialization of production. A slightly different case was identified in Portugal where homeworkers worked for subsidiaries of large firms based in Northern Europe, producing only one component of the footwear that was assembled in France. In Spain, a company combined two production approaches. Their *standard* products were made in Asia, while the quality and fashion line was produced nationally, with part of the production process being outsourced to small establishments employing homeworkers. These examples serve to demonstrate that home work is a crucial solution in achieving flexibility, including small enterprises. Home work may take the form both of independent craftwork or salaried employment, which may or may not be registered, and which produces a component of a product or a finished product.

**b) home work as part of an international production chain:** the pressures of international competition have caused companies to seek similarly internationalized production spaces, taking advantage either of the skills of workers in different parts of the world or of lower rates of pay. In addition to the above examples, which are confined to Europe, mention may be made of the outsourcing practised by the clothing and footwear industry as far afield as Asia (China and Viet Nam), North Africa and Turkey and, more recently, the countries of Central and Eastern Europe. Home work has assumed an important place in corporate strategies under the new economic order.

These two features of heterogeneity and internationalization of home work appear to go hand in hand, at least with regard to the industrial sector, with the characteristics of high female participation and low quality of employment that are traditionally associated with this occupational modality.

Women continue to predominate in homeworking, as a result of the obstacles which they encounter in terms of access to permanence and mobility within the labour market. As per the occupations which are considered to be suitable for women, the gender division of tasks with regard to domestic and family responsibilities, and their strong links with the community, women account for the majority of homeworkers.

Likewise, when compared with the usual jobs in the industrial sector, home work may be considered to be of low quality. It is not only a precarious occupation, but frequently offers no protection under labour legislation and few possibilities of training and advancement. Home work is part of an extremely heterogeneous context including, at one extreme, enormous, highly concentrated companies that operate at the world level, in terms of both supply and demand and, at the other, relatively vulnerable and unprotected forms of occupation.

Account must also be taken of studies which seek to assess the impact of increased flexibility of employment on conditions of work. Carnoy, Castells and Benner,<sup>4</sup> in their analysis of the upsurge of flexible employment in Silicon Valley over the past decade, are of the view that, although unskilled work becomes more insecure, the same does not apply for highly qualified workers. Systems engineers have been able to use the new labour management practices, with high job rotation, in their own favour. The facility of inter-firm mobility allows workers to use one company to gain experience and then move on to earn a higher wage in their next job, benefiting from their previous experience. In addition, the rapid movement of engineers and programmers between firms means that innovation is disseminated very rapidly in the regional economy, which opens up glowing career prospects for any highly qualified people. In short, flexibilization is not a one-way street that invariably undermines workers' interests.

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<sup>4</sup> Labour markets and employment practices in the age of flexibility: A case study of Silicon Valley, in *International Labour Review*, vol. 136, no.1, 1997/Spring.

Increased flexibility in industrialized countries has somewhat blurred the frontier between the formal and informal sectors. The strong links between the two, which informed Latin American studies of labour markets in the 1970s and 1980s, are now being identified and analysed by European authors in the context of high-income countries. These recent developments in the world of work in the advanced economies has thrown new light and given new momentum to the debate regarding the definition of home work.

At present, no international consensus exists in this domain. The ILO approach, as reflected in a Convention adopted in 1996,<sup>5</sup> describes home work as the production of goods or services by an individual, in his/her home or other place of his/her choice, in exchange for pay, under the direction of an employer or intermediary. This definition gives greater weight to the subordination factor in the relationship between the worker and the employer than to the place of work. Consequently, it tends not to consider independent (or self-employed) workers in the role of homeworkers, since their activity does not depend directly on a contractor. Similarly, it is not equated with sales persons who generally work outside the company premises or who are independent. In Brazil, this is considered to be a separate category with its own regulations.

### **1.1. Telework or home-based work**

It is apparent that home work is highly conducive to production restructuring and increased flexibility of labour, in that it accommodates adjustments which allow companies to become more competitive internationally.

Until recently, home work was synonymous with precariousness, low earnings, unskilled occupations without legal and social security coverage or career structure, and with a low level of organization and representation of workers' interests. Meanwhile, case studies of telework, particularly as it occurs in the computerized services sector, reveal a situation which calls for rethinking the manner in which home work has traditionally been viewed and categorized. These occupations involve skilled workers who can command high earnings and are in a position to introduce innovative contractual arrangements between clients and suppliers, be they individuals or micro-entrepreneurs.

Teleworkers constitute one manifestation of increased flexibility. According to Breton,<sup>6</sup> telework has three characteristics: it is an activity that is carried out remotely, outside the sphere in which it may be expected to produce results; the order-giver cannot physically control the execution of the task and overseeing is based on results as opposed to being direct; the task is carried out through computers or other informatics or telecommunications hardware. Ray,<sup>7</sup> for example, in a study on telework (or remote work, removed from the production centre), describes how the prevailing principle of hierarchy is ceasing to be central in relations between the employer and the worker. While, previously, the status of the worker and his/her rights relied on the relationship of subordination to the employer, the relationship today assumes other, more complex forms in which the control of the worker and his/her physical capacity is no longer sufficient. Intellectual work, and all that it implies - capacity of initiative and responsibility, independence, cumulative nature, different time frame - are now rendering

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<sup>5</sup> The delegates to the 83<sup>rd</sup> ILO Conference approved a text on home work, in June 1996. The text recognizes that homeworkers constitute an expanding sector of the labour market and should be entitled to minimum wage and occupational conditions, embodied in an international convention.

<sup>6</sup> Breton, Thierry. *Le Télétravail en France, Rapport au Ministre de l'Intérieur et de l'Aménagement du Territoire et au Ministre des Entreprises*. La Documentation Française, 1994.

<sup>7</sup> Ray, Jean-Emmanuel. *Le Droit du Travail à l'Épreuve du Télétravail: le statut du travailleur*. In *Droit Social*, no. 2, February 1996, p. 121-127.

unnecessary any direct overseeing of execution of a task or series of activities, with the result that particular areas of labour legislation have become anachronistic.

The concept of control that is intrinsic in the current definition of home work, in the form of control of equipment or inputs or modes of operation which underlie the concept of the homeworker as a disguised employee, should be reassessed for homeworkers engaging in telework.

It becomes apparent that what is in question is the form of organization of the activity in terms of its location, rather than the actual status of the worker who may be independent or might work in a situation that is closer to that of a sub-contracted wage-earner. In other words, the term home work is no longer sufficient, as it was in the past, to convey the nature of the worker's situation. As Elizabeth Prügl<sup>8</sup> points out, dependence is a matter of degree. Homeworkers may use their own inputs and equipment but still be dependent on one main client to put their products on the market or to find a client for the services they are qualified to provide. The watershed between the traditional homeworker and today's counterpart, brought about by the new production requirements, is the fact that the former was a "disguised" employee while the contemporary homeworker, whose individual standing has been enhanced, reflects the figure of the independent worker who is not in a wage relationship. The situation of the new homeworker is the outcome of a conscious, negotiated, deliberate choice.

It is no coincidence that in some countries, such as France, a specific legal regime has been formulated to regulate the different modalities of remote work and telework, in response to the ambiguities inherent in the emergence of previously unknown forms of home work in which technology masks and blurs subordination relationships.

In Brazil, where legislation has not yet been amended, the ambiguity persists and has given rise to disputes as large enterprises, particularly in the informatics and electronics services sector, outsource part of their activities with a view to cutting back their fixed costs (labour and infrastructure, rent, etc.) or adapt their staff to processes of relocation of their headquarters or industrial plants. According to an interview with the *Gazeta Mercantil*,<sup>9</sup> Kodak Brazil describes the success of its strategy of basing sales and technical assistance staff at home rather than in company premises. Staff members continue to be company employees, the employment relationship is maintained, and they work to meet goals established by the company. The company has achieved clear, irrefutable productivity increases, according to Kodak executives. Meanwhile, some of these homeworkers have lodged complaints against the company, demanding payment of overtime or payment of such costs as reimbursement of rent of space that is not paid for by the company in the worker's home. It is such allegations that are dealt with by the Labour Court pursuant to complaints by employees who were relocated to their homes when staff was being cut back.

Meanwhile, an increase is occurring in the number of independent or self-employed workers who are in fact micro-entrepreneurs or one-person companies owning their own business. The type of service performed by such individuals may frequently be equated to the situation of the home-based employee, based on a contract signed between the contractor and contractee. It is customary for both to sign a service contract or company contract specifying the purpose of the work and the expected results. In contrast to the work contract, which stipulates concrete conditions of execution of the activity to be carried out (weekly hours, premises, sum of basic remuneration), thereby establishing the existence of a clear relationship of subordination between the employer and the employee - by extension guaranteeing the latter a series of protection mechanisms - the service contract presupposes

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<sup>8</sup> Bias in Labour Law. A critique from the standpoint of homebased workers, In Boris, Eileen and Prügl, Elizabeth, *Homeworkers in Global Perspective: Invisible No More*. Routledge, N.Y. 1996.

<sup>9</sup> *Gazeta Mercantil*, 7 August 1997, page C-8, "Cresce a opção por trabalhar em casa".

the independence of both parties in defining objective collaboration, both assuming the economic risks and each accepting responsibility for their own protection. The sole link between the service provider and the service recipient is to obtain the desired result. In France, in response to a concern regarding the range of provisions that might be applied to home work, thereby hampering a clear understanding of the employment relationship effectively in question, the law defined three possibilities: the independent worker, the homeworker and the classic employee.<sup>10</sup> The distinction between them lies in the degree of independence (choice of clients, price fixed, deadlines and assumption of risks inherent in the activity). It should be noted, however, that these three definitions may be combined and applied to a single individual in the light of the manner in which his/her work time is distributed.

## 1.2 Home work in Brazil

Home work studies in Brazil concentrate on analysing the traditional industrial sectors, such as the garment and footwear industry. Two studies are of particular note.

Roberto Ruas,<sup>11</sup> in his study on home work in the footwear industry of Southern Brazil, examined whether and to what extent the garment and footwear industry might develop along the lines of the client-supplier networks that have emerged in Japan, where contracting companies seek to establish stable relationships with their suppliers, in addition to providing wide-ranging and ongoing technical assistance. The author concludes that, in Brazil, subcontracting relationships generally exist in less developed forms. The “networks” model is confined to a few industrial sectors - particularly the mechanical engineering and automobile complexes - and, even then, the instances of mutual collaboration in the technological development of the product supplied are rare.

Fiercer international competition in the footwear sector has triggered two production strategies. The first, which exists in a market niche which attaches importance to quality and design, has led to a more selective competition process, with higher priced products (most Italian and some Spanish products). This strategy focuses on improving labour subcontracting conditions by endeavouring to establish stable client-supplier relationships. The competitiveness of the second production strategy is based on the use of cheap labour and price-reducing processes and instruments, including extensive access to tax subsidies. Brazilian footwear manufacturing, and its positioning on the international market, pursues the second strategy.

According to Ruas, three elements are combined in meeting the requirements of low prices and barely acceptable quality: use of direct work, in the form of intensive use of low skilled and low cost labour; subcontracting; and partial and sporadic mechanization. Several production approaches were identified in connection with the subcontracting of work:

**a) distributed homework:** distributors hired by the manufacturing companies visit homes near the factory and distribute tasks which consist, for the most part, of manual operations for which pay is fairly low. The work is generally carried out by women and/or other members of the family, often children and the elderly, who are provisionally or permanently outside the labour market and have few skills.

**b) home work in manual workshops:** a “workshop” in the footwear industry is a space that is connected with a home and is organized and adapted as production premises. Workshops are headed by former industrial workers and are very widespread in the footwear industry throughout the world.

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<sup>10</sup> In Ray, Jean-Emmanuel, op.cit.

<sup>11</sup> “Relações entre trabalho a domicílio e redes de subcontratação” in Abreu, Alice, R.P. e Sorj, Bila (orgs.), *O Trabalho Invisível. Estudos sobre Trabalhadores a Domicílio no Brasil*, Rio de Janeiro, Rio Fundo Editora, 1993.

It is a way of reducing labour costs and making the price of the product more competitive. The intensive use of female and child/adolescent labour in Brazil exists in different contexts, including family micro-enterprises, that may or may not be registered, and which either subcontract other workers or rely solely on family labour. The tasks handed out are very similar to those for **distributed** home work, including manual operations that are fairly simple to carry out and are delivered directly by the distributor.

**c) home work in specialized workshops:** devoted either to sewing, assembly or cutting. They generally have one or two skilled workers; the remainder are unskilled. These workshops have a direct relationship with the manufacturer, and sewing or assembly machines are used; they commonly employ outside labour for work which may be carried out in nearby homes. Sewing is executed primarily by women, who divide their time between their home work and their domestic tasks. In contrast, the more specialized work of cutting and assembly is carried out by men. Such workshops engage an average of seven individuals, and no employment relationship exists between the owner and the workers.

**d) home work in specialized workshops B components and moulds:** this is the most developed form of home work, with a high potential for becoming a micro or small enterprise. The relationship with the contractor accommodates a greater margin for negotiation in comparison to the previous forms of collaboration and subcontracting. The reason for this lies in the type of product and its importance in terms of the quality of the finished products. Such workshops employ a larger number of male workers, using more skilled labour and more machines and equipment. For these reasons, in the medium term, such undertakings tend to be moved out of the family home and set up in specific work premises. Meanwhile, as in the previous cases, relationships are informal and sporadic, with no collaboration between clients and suppliers and certainly no joint upgrading programmes.

Ruas concludes that, although the use of home work continues to be a prominent aspect of company strategy in the sector, particularly in making work more flexible, employers rarely take any steps to improve the technical and organizational conditions of workshops. Employment of labour continues to be relatively precarious, consisting primarily of low-skilled labour and a rudimentary technological base. Abreu and Sorj,<sup>12</sup> in studying home sewers in the garment industry of Rio de Janeiro, draw attention to the existence of an extremely heterogeneous labour market in small enterprises producing “off-the-peg” women’s wear.

This gender-based labour market, featuring a series of possible forms of female employment, ranging from the few qualified professionals of the large garment enterprises to the *modelistas*, by way of workers with recognized skills - such as the professional sewers or overlock operators - to the various ambiguous forms of employment, such as apprentices and workers without signed work papers. The last link in this sequence of different relationships is without doubt the homeworker, who works in his/her own home for garment manufacturing enterprises. The use by industry of home work, which is the result of increasing flexibility of production processes in a diversified, seasonal market, constantly in crisis, fluctuates in accordance with the imperatives of cutting back costs and meeting tight deadlines or, on the contrary, cutting back production in response to sharp falls in demand. Most such workers are women and do not show up in official statistics.

Since homeworkers have no specific status in the Brazilian Consolidation of Labour Laws, they should have work papers signed by the employer like any other company worker, with social contributions paid by the employer. However, the situation on the ground is otherwise: of the 100 women sewers interviewed for the survey carried out by Abreu and Sorj, 98 had no formal written

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<sup>12</sup> “Trabalho a domicílio e relações de gênero: as costureiras do Rio de Janeiro.” In Abreu, Alice, R.P. e Sorj, Bila (orgs.), *O trabalho Invisível. Estudos sobre Trabalhadores a Domicílio no Brasil, Rio de Janeiro*: Rio Funo Editora, 1993.

contract. Companies seek to avoid any formal relationship with homeworkers - which would sharply increase the cost of labour - by transferring social costs to the sewers themselves, requiring them to register as independent workers and thus turning the relationship into one of purchase and sale of services between independent producers. This requirement is never checked and, indeed, only 34.2% of those interviewed were registered as independent workers at the time of the interview. In most cases, therefore, the relationship with the company is illegal and clandestine. Nonetheless, it continues to constitute a mode of employment that caters to a particular form of work organization.

The work carried out by home women sewers involves assembling pieces, which have already been cut out in a factory, on their own sewing machine. Requirements vary in accordance with the type of garment. The more sophisticated the target market, the more delicate and expensive the inputs they handle, such as silk or linen, and the more elaborate the garments. When the garments are intended for popular markets, the fabrics are simpler and finishing requirements less stringent. The prices paid to sewers for a unit of the same item of clothing may vary by up to 500%. No benchmark exists.

Since home work is not directly supervised by the employer, it is necessary to select those workers who would appear to be best suited to meeting the company's needs. One of the main requirements for subcontracted work is reliability in meeting pre-established deadlines for the delivery of items. For this reason, qualities such as self-discipline, commitment and seriousness are extremely highly valued and perceived as being offered by the group of women of middle-age, who are married and have children.

The preference shown by companies for women in this category lies in the affinity between the requirements of home work and those of domestic tasks. In other words, although the routine of home life, on the one hand, involves constant interruptions of activity throughout the day, which may cause a drop in individual productivity, on the other, it ensures regularity in the amount of time devoted to sewing. Moreover, the fact that women are looking after their children means that they spend more time at home, that is, in the work place. Hence, the nature of female homeworkers' domestic activities tends to contribute to meeting employers' production deadlines. Of course, this is in itself not sufficient to ensure that the agreed deadlines are met, for which reason some firms have introduced bonuses, prizes or even penalties, such as reduction in the price paid per piece if delivered after the deadline. This is a way of guaranteeing the flow of production.

It is also in the interest of the entrepreneurs to have a familiar and stable group of external women sewers in order to curtail risk in connection with the investment in the inputs entrusted to them. Middle-aged, married women with children appear to offer the entrepreneur greater security than single women. While the job options for married women are more limited, unmarried women are more likely to be in a position to accept a job opportunity - and, indeed, the latter prefer to work in companies. The authors conclude that the gender division of labour within the family plays an essential role in the way in which companies manage home work in the garment industry in Rio de Janeiro.

Brazilian literature on home work reveals that studies concentrate on the manufacturing sector, particularly those considered to be of a traditional nature and which frequently employ a methodology based on case studies. As in the research carried out by Ruas, it is possible, on the basis of case studies, to identify and classify the different forms of home work existing, for instance, in the footwear industry, thus revealing a positive correlation between gender roles and production spaces, and thereby increasing our understanding of the various factors that influence home work. Nonetheless, the paucity of research of greater statistical representativeness has yet to be remedied.

As a result, this study seeks to present case studies on sectors and branches of activities that hardly feature in the reference bibliography and which provide a new image of this form of work.

These case studies in fact show no obvious precariousness, considerable heterogeneity of modalities and sectors; negotiation for the implementation of this new form of work; benefits shared between employers and workers in opting for this work modality; closer gender balance in contrast to predominantly female homework; and a link between company quality goals and improved working and living conditions.

## **2. From the work contract to the service contract: Challenges to the regulatory framework**

Over and above the work contract which defines the rights and duties of the employer and the worker, and constitutes the basis in Brazil of labour legislation, today the so-called service contract is gaining ground in the sphere of production. The idea of contract entails two contradictory approaches. On the one hand, freedom to lay down reciprocal conditions to be respected by both parties is curtailed while, on the other, a dimension of security within social relationships is guaranteed. “Security in the sense that the obligations of both parties are known and guaranteed, plus negotiated security, in the sense that reciprocal concessions are established by consensus and can evolve over time.”<sup>13</sup> Mention of contracts implies recognizing the existence of a wide range of forms of contract, which are almost as numerous and specific as the matters they regulate. This diversity has given rise to innovation and renewal in existing forms, in response to changes experienced in the labour market and in reaction to the standards pertaining to the traditional labour relationship (labour law, social security, etc.). The idea of a contract carries an inherent notion of trust. Although a contract may suggest the need to define commitments and thereby guarantee future compliance with a current agreement, with the aim of avoiding risks and misunderstandings and, in particular, non-fulfilment of the obligations, numerous authors have stated that a contract is justified only where a sphere of reciprocal cooperation and confidence pre-exists, which is frequently neglected by economists. In other words, trust is a constituent element of any contractual agreement, which tends to be interpreted, at the other end of the scale, as a means of dispute management. Lorenz<sup>14</sup> draws attention to the scant consideration paid by economic theory to the role of certain social relationships such as trust, empathy and loyalty within the trade system. The starting point is always the premise that, in an unforeseeable future, unexpected circumstances will cause the economic agents to act in an opportunistic fashion that is prejudicial to the established contract, requiring the intervention of a third party (justice) in order to ensure that the contract is fulfilled in the previously agreed manner. The new reading that has been made of this understanding - whether in inter-firm relations, in intra-firm relations or in relations between firms and individuals - is that, in work contracts, such links are not confined to establishing commitments backed by penalties, but are intended to establish a space of trust and shared interest which, in the event of disagreement, provides a framework of negotiation. As pointed out by Severin,<sup>15</sup> this is because trust is the basis on which long-term contracts can be concluded, where it is not possible to anticipate everything in advance. Another key idea is the understanding that trust is deepened and restored in the course of a mutual learning process, and is not solely *a priori*. Hence, it is a dynamic element that lends further dynamism to the new forms of contract which are becoming more widespread.

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<sup>13</sup> Favereau, O. et al. Introduction to the special issue of the publication *Sociologie du Travail*, XXXVII 4/96 *Contrats et Pratiques Contractuelles: pluridisciplinaires*, Paris: Dunod, 1996, p. 433.

<sup>14</sup> Lorenz, Edward. Confiance, contrats et coopération économique, in *Sociologie du Travail*, op. cit. p. 487-508.

<sup>15</sup> Severin, Evelyne. Propos Croisés entre Droit et Économie sur la Place de l’Incertitude et de la Confiance dans le Contrat. In *Sociologie du Travail*, op. cit. p. 607-620.

## 2.1 The ILO's definition

In a 1995 report on the subject of home work, the ILO examined the protection extended to workers in this category in over 150 countries.<sup>16</sup> The comparative analysis of such legislation identifies different legislative approaches, ranging from specific legislation on homework; its incorporation in general labour legislation; its exclusion from any state instrument, or its indirect inclusion as salaried employment.<sup>17</sup>

The ILO classifies Brazil among the countries in which labour law covers homeworkers, on the basis that this activity implies a work contract which gives rise to an employment relationship. Article 6 of the Consolidation Labour Laws (CLT) provides:

*“Art. 6 B no distinction is made between work carried out in the employer’s establishment and that executed in the employee’s home, provided that an employment relationship exists.”*

The ILO further recognizes, in the same document, that the legislation of member States, in general terms, is very imprecise in regard to the legal standing of homeworkers, drawing attention to the ambiguity inherent in the relationship between the “employer” and the “homeworker”<sup>18</sup>, and to the existence of a legal vacuum.

Another ILO document of 1997<sup>19</sup> deals with work under a subcontracting regime, drawing attention to the fact that the provisions applying to the employment relationship define its sphere of application as being the relationship between the employer and the employee. The document also draws attention to the fact that the definition of the “employer” and the “employee” has been built up by courts in the light of the wide range of existing situations. Thus, in many countries, courts have been able to extend the scope of labour protection to certain types of work falling under the subcontracting regime. This statement, which applies both to subcontracting and to home work, is contained in article 8 of the ILC:

This ILC rule is consistent with the principle of civil procedural law which recognizes that: “the judge is not exempt from deciding or resolving alleged *lacunae* or ambiguities of law. In judgements of this nature, the legal standards will be applied; if they do not exist, the judge will proceed by analogy with the general customs or principles of law”.<sup>20</sup>

In regard to home work, the application of labour law by analogy is based on particular foundations, including: a) the doctrinal approach regarding the need to protect the weakest from the strongest;<sup>21</sup> b) the concept of the existence of a relationship of subordination or dependence between

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<sup>16</sup> ILO, International Labour Office, Home Work, International Labour Conference, 82nd Session, Geneva, 1995.

<sup>17</sup> ILO, op. cit. p. 30.

<sup>18</sup> In this connection, the ILO itself, in employing the word “employer” to refer to one of the parties in this work relationship, ultimately describes it as an employment relationship and not a civil law relationship.

<sup>19</sup> ILO, *Work under a Subcontracting Regime*, International Labour Conference, 85<sup>th</sup> Session, Geneva, 1997.

<sup>20</sup> Code of Civil Process, article 126.

<sup>21</sup> Thus, one of the traditionally most prominent characteristics of Brazilian labour law relates to its protective nature. Studies of labour law feature numerous analyses which state such standards to be necessary in order to provide for the concept of contractual equality that is present in Civil Law. In other words, the work contract will not have the same characteristics as a contract of purchase and sale, for example, in which in principle the parties are free to set down their own terms. Under this approach, the idea of a social right is seen as being necessary in that workers and employers cannot

contractees and contractors.<sup>22</sup> Hence, in many countries, as stated by the ILO, dependence continues to be a fundamental element in an employment relationship. Brazilian courts have tended in this direction in applying labour standards to home work.

Although the ILO has given scant attention to the Brazilian legislation, it may be assumed that a number of considerations equally apply to Brazil. Interviews with legal experts who are active both in the areas of labour law and civil law, and the literature on the implications for the law of the changes in the world of work also make it clear that insufficient thought has been given to home work in Brazil. Consequently, the following remarks are not of a conclusive nature and should be considered as illustrative of the current debate on the Brazilian law. The ambiguities of the concepts of subordination or independent employment have been carried over, in our society, into the new models of contractual arrangements, which are in themselves ambiguous. In holding the homemaker to be an open or disguised employee, the Brazilian legislation does not take into account borderline situations imposed by the new organization of work. It is, therefore, the task of labour courts to interpret and apply the law on a case-by-case basis.

Although the judiciary cannot argue that the law is non-existent or obscure, it is however apparent that a legal vacuum exists. A great deal of the current discussions on labour relations in Brazil focus on the need for introducing greater flexibility into the labour standards governing formal employment situations.

The considerations put forward in this study are not confined to home work or to the condition of workers; they relate, more generally, to the different views held by legal experts on the so-called “modern labour law”.

## **2.2 Recent changes of direction in labour legislation**

The changes that have occurred in the world of work in Brazil have given rise to discussions on legal reforms aimed at granting a greater flexibility in labour relations. Such discussions began immediately after the Brazilian Federal Constitution of 1988 came into force. The General Provisions, article 3 of the Constitution provides for a constitutional review after five years. Even before this period expired, a number of sectors representing the enterprise world came to the conclusion that the Constitution itself obstructed governability and asked for its total or partial review. Consequently, in the early 1990s, under the Government of Fernando Collor de Melho, a parliamentary committee was established to draw up a reform of labour legislation. Some authors stated that the objective of the proposal was to curtail the States’ interventionist role in the sphere of labour relations, “returning to the parties involved in the employment contract the freedom to decide upon their inherent roles and procedures, as if these parties had equal strength in putting forward their ideas”.<sup>23</sup> On account of the political and economic crisis besetting the country and which culminated in the impeachment of the President, the committee did not complete its draft. The year 1993 and early 1994 saw the discussion in Congress and within society at large of a broad constitutional review which did not ultimately pass because of the pressure exerted by groups concerned that social rights might be eroded, and due to the political situation. The Government needed to bolster its legitimacy through demonstrable successes

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be considered to be on an equal footing. In this regard, the Brazilian State, in drawing up its labour legislation, broke with the premises of liberal law in order to serve as a protector of the party considered to be weakest.

<sup>22</sup> This statement is embodied in articles 2 and 3 of the Consolidation of Labour Laws B which define “employer” and “employee” respectively.

<sup>23</sup> See in this connection Prado Leite, Júlio César, “Desregulamentação do Direito do Trabalho”, in *Trabalho & Processo, Revista Jurídica Trimestral*, n 7, Ed. Saraiva, December 1995, RJ, in a paper offering a critical analysis of the preliminary draft by the Labour Legislation Modernization Commission.

and the Real Plan was its major triumph. In this process, it was apparent that many of the social rights had not been put into practice, either in the absence of regulation and monitoring of enforcement or due to the traditional distance between laws and social practices in Brazil. In addition, the high levels of inflation and the economic programmes of the Collor Government were largely responsible for the erosion of wages, which attracted trade unions' attention. The desire to reform the Constitution was also hampered by the electoral process for the general elections of 1994. The *Partido Social Democrata Brasileiro* (PSDB) and the *Partido de Trabalhador*, who were considered to be the front runners in the presidential election, drew up platforms which included proposals in the area of labour legislation.<sup>24</sup> The tenor of the two proposals gave a prominent place to the introduction of collective bargaining, based both on the demands of the major trade union confederations and on ILO guidelines.

In addition to proposals regarding labour legislation as a whole, the two parties put forward specific proposals regarding the rights of women workers, which did not substantially change the provisions contained in the Constitution of 1988. Immediately after the announcement of the results of the presidential elections of 1994, which gave the victory to Fernando Henrique Cardoso of the PSDB, the then Minister of Labour sent to the National Congress, in the first term, a Government bill proposing that the Compendium of Labour Legislation (CLT) should be amended and, by implication, also the Constitution, with a view principally to introducing greater flexibility in the employment relationship and corresponding rights. As a result, the question of flexibility assumed an important position in the debate on labour law. The Government bill, which revolved around the concept of flexibility, opened the way for certain outcomes, including:

- a) the prevalence of the fixed-term contract which became the rule rather than the exception;
- b) elimination of the maximum weekly limit for time worked and the introduction of the maximum annual limit;
- c) possibility of wage reduction through collective agreements;
- d) non-payment of overtime to be compensated in the annual calculation of hours worked;
- e) non-payment of prior notice and a fine in the event of dismissal without just cause in the light of the nature of fixed-term contracts; and
- f) treatment in specific legislation of women workers' rights not incorporated in the bill on new labour law.

In short, the bill submitted by the present Government, at the beginning of its term, served to encourage new forms of contract between employers and employees. First, the Labour Minister's proposals submitted in the early 1990's called for a reduction of the CLT of Labour Legislation (currently 800 articles) to be replaced by a "leaner" version with no more than 400 articles. The justification given by the Labour Minister's advisers revolved around the fact that "the CLT was established in 1943, during the New State dictatorship, and was therefore not suited to current economic reality and labour relations...".<sup>25</sup> Although it is unlikely that the bill will be passed in its entirety by the National Congress, it is clear that it gives a strong momentum for change in labour legislation. There may be different reasons for this, including the need to deal with new developments in the national economy and to respond to changes that have occurred in the production process with the introduction of new technology and forms of organization.

Reference may in addition be made to the interests of employers in reducing labour costs and social contributions resulting from hiring under the CLT provisions, in order to make themselves more

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<sup>24</sup> In this regard see "Bases do Programa de Governo do PT: Uma revolução democrática no Brasil" e "Mãos à Obra Brasil: Proposta de Governo Fernando Henrique".

<sup>25</sup> Ref. *Jornal do Brasil*, 6 November 1994.

competitive as the national market is opened up to international trade. Even before this debate became explicit, labour relations had long been deregulated in Brazil. In other words, since it was passed, the CLT of Labour Legislation was driven by a formal model of labour relations, and did not incorporate any other labour market organization modalities. It defines who is covered and who is not covered. Among those who are not covered are those who engage in an activity that is in the so-called “informal” sector of the economy.

The CLT of Labour Legislation did not deal with subcontracted work, except to say that, where appropriate, it was to be considered as a disguised employment relationship. This meant that, in theory, the worker might go to court in order to have his/her labour relation recognized, under article 447 of that instrument. As previously stated, the CLT does not distinguish between work carried out under the employer’s roof and that carried out in the employee’s home in a situation of subordination to the employer. In other words, a large proportion of what might be considered to be the informal labour market, particularly home work, would in fact constitute a disguised employee status that is not recognized by the employer, but which could, in theory, be formally recognized as such by the court. Historically, in Brazil, women and men have been subject to disguised employment relationships, both in the more traditional branches of the economy as well as in the advanced sectors. Ribeiro (1982) draws attention to this phenomenon in the context of female work in the textile and garment industries.<sup>26</sup> Interviews with women trade union leaders in the metallurgical industries and data processing sectors<sup>27</sup> reveal how disguised wage employment, with service-providing companies frequently acting as intermediaries, has been carried out in the form of home work by women and men. This practice usually resulted in a substantial increase in production combined with an absence of legal protection, including in the areas of safety and health in the work place. Thus, side by side with legislation that protects formal employment, customary standards exist which encourage non-legal contractual arrangements.

In addition, many wage-earners are not covered by the CLT but by specific legislation, including domestic workers, rural workers, civil servants, para-state authority employees, among others. In theory, with the exception of restrictions relating to domestic workers, all workers are covered by the constitutional rights set down in the thirty-four paragraphs of article 7 of the Federal Constitution of 1988.

It should also be noted that it is not the CLT, but specific labour legislation, which provides for constitutional protection, civil law provisions and even commercial law provisions for temporary, independent, and fixed-term workers and contractors, among others.

Moreover, the disparity between law and social practice allows for the emergence of an immense mass of workers without any protection whatsoever, who today account for a large proportion of labour in Brazil. Thus, the scope of protection is further reduced, being confined to those who are hired on the basis of formal employment relationships or who, after dismissal, are able to enforce their rights through the labour court. The protection provided by the CLT is increasingly limited to a “ghetto” of situations that can be taken to court.

This being so, the debate on deregulation of labour relations and on new forms of contract should seek to incorporate the reality of sectors of workers who have long been deprived of any form of legal

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<sup>26</sup> Ref. Ribeiro, Ana Clara Torres, Teixeira, Amélia, Chinelli, S. e Elias, R., “O trabalho e a Trabalhadora Fabril a Domicílio”, in *Mulher, Mulheres*, (or. Barroso, Carmem e Costa, Albertina), Ed.Cortez/Fundação Carlos Chagas, SP, 1983.

<sup>27</sup> Interviews were carried out with women trade union leaders in the metallurgic and data processing sectors, and with the Coordinator (female) of the Labour Commission of the State Council of Women’s Rights (CEDIM) whom we thank for their contributions.

protection and/or acceptable minimum ethical standards in pursuit of their production activities. The phenomenon of the notable growth of the informal labour market in recent years calls for an in-depth and topical discussion of this ethical and legal deficit in terms of labour relations that are not protected by labour legislation. The emergence, particularly in Brazil at the beginning of the century, of standards regulating labour relationships reflected not only pressure by the working class but also a recognition of the almost “scientific” need to place a limit on hours of work, and on the minimum age of employment, and the need for granting holidays as well as rights to safe health conditions in the work place, among other considerations.

Evaristo de Moraes<sup>28</sup>, a prominent Brazilian jurist who has influenced an entire generation of lawyers, judges and lawmakers, spoke of the peculiar nature of labour law and drew attention, in a paper published in the 1960s, to “the fundamental elements of labour law”:

- a) It is a right *in fieri, um werdendes Recht*<sup>29</sup>, which is becoming increasingly widespread; it has to do with a class demand or class right;
- b) It is interventionist in nature, against the liberal economic dogma and is therefore cogent, binding and cannot be renounced;
- c) It is of a clearly cosmopolitan, international or universal nature;
- d) Its most typical institutions are of a collective or socializing nature;
- e) It is a means of transition towards a society undergoing change.

Almost four decades later, although standards relating to labour law are acknowledged, expanded upon and consolidated in the most recent Federal Constitution of 1988, the fact is that less than 50% of the economically active population (EAP) is covered. All over the world, and also in Brazil, such standards have been strongly resisted by new liberal thinking which advocates that the scope of such standards should be limited, thus challenging many of its principles, including the “flexibility-enhancing” clauses or out-and-out deregulation. In addition, economic restructuring and technological advances are tending to replace, at different paces, the fordist model of production, in the context of which labour legislation had emerged. The new forms of organization of production and the reduction in the number of workers needed in industrial production curtail the pressure that workers can exert with a view to moving towards legislation that is described by Evaristo de Moraes as a “class right”. Meanwhile, the scope of labour legislation has always been limited in a society in which compliance with laws, particularly in regard to social rights, has been far from a historical fact. The pressure brought by wage earners, particularly in the low-income bracket, and State action through its supervisory and inspecting bodies, have never been sufficiently strong to do away with disguised wage employment, which prevailed, for instance, in the clothing and footwear industry, in the form of home work.

At those times in history when the trade movement was at its strongest, putting pressure on the State to introduce a welfare state, the struggle to extend the coverage of labour legislation was a prominent rallying point. However, in situations in which the informal labour market overtakes occupations in the formal labour market, and the bargaining power of the trade union movement is eroded by changes in the production process, two strategies should be considered. These comprise the extension of labour legislation coverage to all workers and the adoption of legal measures to ensure that persons in the informal market, whether by choice or otherwise, enjoy minimum guarantees in respect of rights ensuing from their employment activity. The objective is to guarantee a framework of social rights for the working population as a whole. The floor and the ceiling of such a framework would be determined by the reality of the social struggle in the country today. An attempt to identify ways of

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<sup>28</sup> Moraes, Evaristo, *Tratado Elementar de Direito do Trabalho*, 2a Edição, RJ:Livraria Freitas Bastos, 1965.

<sup>29</sup> Expression meaning “law in coming-to-be” according to a note by Evaristo de Moraes, op. cit., p. 32.

protecting the EAP in the informal sector was made in an earlier work.<sup>30</sup> The importance of extending labour legislation to this large segment of the working population and the need to reject flexibility-driven formulas which result in greater precariousness of working conditions, were emphasized.

In this research, attention is paid not only to labour and constitutional law, but also to civil law as a possible channel for providing some form of protection to workers in the informal market, particularly those engaged in home-based work.

## 2.3 The regulation of work in civil legislation

Our initial hypothesis is that the Brazilian civil legislation, in particular the Civil Code, may be suited to regulate the new labour relationships that so far have not been subject to any regulation. Regardless of whether the market grows or shrinks, or of its future prospects, it is important that those who are engaged in atypical forms of employment receive the benefits of legal protection. To this end, provisions in the Civil Code and in complementary legislation on non-wage-earning labour relationships have been analysed (since these are defined by labour legislation) and interviews have been conducted with civil and labour lawyers and women trade unionists, and additional information was sought in the Brazilian specialized literature.

### 2.3.1 Work contracts in the Brazilian Civil Code

The Civil Code, which was drawn up in 1916 when no labour standards existed yet in Brazil to reflect social rights had begun to be recognized in Europe, regulates a series of activities relating to the execution of work from the angle of the liberal paradigm of contracts between free and equal individuals. Volume III of the Civil Code's Law of Obligations devotes several chapters to contracts. On the specific subject of work contracts, it refers to:

- a) Employment or services contract (art. 1216 to 1236);
- b) Contract (art. 1237 to 1247);
- c) Business management contract (art. 1331 to 1345);
- d) Rural partnership contract (art. 1410 to 1423) subdivided between contract of agricultural partnership and contract of animal rearing partnership.

The rights and duties of the contracting parties are defined for each type of contract. The General Section of the Civil Code deals with work; art. 178, paragraph 10, item V "sets down at five years action of service providers, workers and day labourers, for payment of their wages". This provision was amended by the CLT and, subsequently, by the Constitution of 1988. Art. 1216 and 1219 B dealing with provision of services B specify that "all types of lawful material or non-material service or work may be contracted in return for payment" and that "payment will be made once the service has been provided, if agreement or custom does not require that it should be paid in advance, or paid in instalments". Still on the subject of provision of services, art. 1220 states that "the provision of services cannot be agreed for more than four years...". Almost all articles dealing with this type of contract were reflected in articles of the CLT in that they involved situations closely resembling that of wage-earners.

The subcontract work contract, relating to the construction of a house or building, covered by art. 1237 and following, provides that "the contractor of a work may provide either only his work or both

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<sup>30</sup> See Barsted, Leila Linhares, "Gênero, Trabalho e Legislação Trabalhista no Brasil", in *Revista Estudos Feministas*, vol. 4, n 2, RJ, 1996. See also, Barsted, Leila Linhares and Lavinias, Lena, "Mulheres e Trabalho: Lei e Mercado", in *Revista Proposta*, n 72, FASE, RJ., 1997.

his work and materials”. Articles relating to this type of contract are reflected in articles of the Commercial Code. From 1964 onwards, the rural partnership contract, covered by art. 1410 and following came to be governed by special legislation - the Earth Statute. Hence, the service provision contract resembles a work contract. Based on the premise of equality and freedom between contractors and contractees, the Code abides by the general principles of the law and does not accept unilateral obligations which may constitute abusive clauses by one party against the other. Moreover, given that the Code is not intended to serve as the legal reflection of a social right, it does not deal with the social inequalities between contractors and contractees, giving no role to the State other than that of settling disputes, through the civil judge, when contracts are breached. The Civil Code’s service provision contracts have traditionally been used to regulate the delivery of services between independent professionals and a given contractor. Contracts provided for in civil law do not necessarily need to be formalized through written documents. Under art. 1079 of the Brazilian Civil Code, the “expression of will, in contracts, may be tacit, when the law does not require that it should be explicit”. Verbal contracts may give rise to rights or duties, provided that other evidence exists, for example the evidence of witnesses.

Hence, the idea of contract is closely linked to the notion of trust, based on a free interplay of pressures between the parties, which should not be confused with that arising from the practice of “favour”. On the other hand, civil law contracts do not bind the contractors to any previously defined or agreed obligation. In other words, if there is no clause protecting or insuring the person who executes the work, in the event of an accident, where there is no blame attached to the contractor, then the latter has no obligation to comply, given the non-existence of responsibility on the part of the contractor. Consequently, contrary to labour law which is based on a social protection approach set down in the CLT in 1943, contracts relating to the provision of work in the civil code transfer responsibility for risk in carrying out work to the contractee. Such contracts may contain a clause giving responsibility to the contractor for the various risks relating to the execution of the work, including personal risks. Whether or not this occurs depends, basically, on the power of the contractee. Thus, for example, a highly successful musician may demand insurance from the recording company to cover eventual risks during travel, loss of musical ability, etc. It is unlikely that a young or unknown musician would be granted such a demand. In other words, the extent of the guarantees and benefits provided for in contracts depends on the bargaining power of the contractees, which is of a strictly personal nature. This will have no collective repercussions, since it will not apply for other individuals with similar competence or profile. Everything is of a personal, exclusive nature. Instead of giving rise to the establishment of general standards of recognition and legitimacy for the bearers of a qualification or certificate, skills continue to be seen as individual attributes which cannot therefore be embodied in standards.

### 2.3.2 Legality in ambiguity

The sociological and legal conceptualization of home work is hampered by its inherent ambiguities. Since, for labour law, this form of employment is an explicit or implicit form of wage-earning, the contract relationship is in most cases required only when the employment relationship is broken. Thus, paradoxically, this group of workers does not enjoy any right, either in terms of the fixing of hours of work, or of any of the other 34 rights recognized in article 7 of the Constitution, as long as the relationship lasts.

It remains to be seen how efficient this relationship would be if civil law standards were applied, particularly to low-skilled female workers with small children, earning a low income and with little bargaining power vis-à-vis the employer. For instance, how could they obtain clauses, in law or in fact, covering personal risk in the execution of the contract? In the absence of such clauses, any consequences of personal risk, namely an accident or occupational disease, must be borne by the contractee or by the Single Health System, that is, the State, which does not necessarily receive taxes

in connection with this economic activity. The interviews with civil and labour lawyers drew attention to these and other matters when the hypothesis of applying the legislation pertaining to civil contracts to economic activities in which labour relations are not protected by the labour law. Meanwhile, many interviewees considered that such a hypothesis could, theoretically, point the way to new forms of employment to fill the legal void that exists in the informal work market, particularly in the case of homeworkers.

The interviews conducted with judges and lawyers raised other questions. Labour legislation not only fails to cover the entire EAP, because of its restrictive scope, but also due to enforcement problems. In other words, work papers do not guarantee the enjoyment of the rights embodied in the law. This means that, aside from those who are “unprotected in law”, there are those who are “unprotected in fact”.

The interviewees also agreed on the need to implement public policies satisfying the basic needs implicit in a welfare state. It was pointed out that if a fiscal reform were to be carried out, it could produce the resources for health, education and housing, which would significantly improve the quality of life of the population as a whole, including the EAP. Both labour and civil lawyers agreed on the need for a job creation policy, not only for the benefit of those who have been pushed out of the labour market, but also for those who have never had the opportunity to enter it (such as young people). It is the general view that increased flexibility of work cannot be considered in isolation from interventions in other domains.

A third area of consensus relates to the need to extend labour law and the jurisdiction of the Labour Court to areas that are not covered by the CLT. This means that the scope of the labour law should be broadened and new forms of contract that are not provided for in current labour laws, but which have come into existence, should be incorporated.

This proposal implies accepting increased flexibility, through collective agreements, in working hours and wages, as provided for in the Federal Constitution of 1988, art. 7, paras XIII and VI, respectively. This article must be regulated and the extent of such increased flexibility defined. The need to set down basic parameters suggests that remuneration increases for work undertaken in adverse conditions should be maintained, as should obligatory weekly rest and holiday regime. Provision should also be made for guaranteed prior notice in the event of dismissal, enhanced guarantee of work or indemnities and, most importantly, the establishment of a minimum wage level which covers the investments necessary to renew the labour supply, as laid down in art. 7, para. IV of the Federal Constitution.<sup>31</sup>

Some lawyers consider that a dignified minimum wage would rule out mechanisms that have been criticized, such as transport vouchers or meals vouchers, which are merely a manifestation of the wage containment policy. A dignified wage would allow the worker to meet such costs.

## **2.4. Summary**

The literature review and the interviews with lawyers and judges reveal that home work has received little attention in the Brazilian law. Neither lawyers nor academics have any structured thoughts on the matter.

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<sup>31</sup> This paragraph defines the minimum wage to meet the basic vital needs of a worker and of his family in terms of “housing, food, education, health, leisure, clothing, hygiene, transport and social security, with periodic adjustments to maintain purchasing power”.

Interviewees agreed that a range of forms of employment should respond to the range of forms of work organization, and that it is not a matter of drawing up a single form of employment, as identified by the ILO. Interviewees agreed that home work is not always easy to define. In addition to situations of concealed wage-earning, other modalities of home work exist that have not yet been examined and defined and therefore cannot be categorized as such. In this connection, they referred to the discussion on atypical forms of employment which allow for greater freedom in hiring. They constitute a form of “neocontractualism” driven by the concept of social stability rather than that of employment stability.

Authors like Robortella draw attention to the fact that “the increased importance of atypical contracts is based on three considerations: a) the growth of precarious employment, within the traditional structural regimes; b) increased flexibility in precarious employment in certain circumstances, to boost job creation; and c) increased prevalence of part-time contracts”.<sup>32</sup>

The possibility of applying civil legislation in the framework of atypical contracts is accepted, either with reservations or as an alternative, particularly in activities which call for the hiring of skilled labour to carry out specific services, provided it is not unlawful. In other words, spurious contracting justified by new job creation cannot be accepted. Consequently, civil law, which is based on equality between the contracting parties, would need mechanisms to prevent fraud arising out of the balance of power between the parties. Robortella<sup>33</sup> also draws attention to this aspect, which he describes as a *Anew dialogue with Civil Law@*. In this connection, he stresses the way in which the institutions and methods relating to the Consumer Protection Code have been used in labour law. A classical example, which is mentioned by interviewees, is the use of Public Civil Proceedings to which Trade Unions and the Office of the Labour Prosecutor may be parties.<sup>34</sup>

Analysts and interviewees also acknowledge that atypical contracts override the notion of total subordination of the worker to the entrepreneur. The so-called “broader” forms of home work reveal how difficult it is to define as disguised salaried employment those work contract modalities in which independence exists side by side with indirect subordination.

The need to act as guardian, as a protection measure, does not necessarily mean that the monopoly of the State must be maintained. The forms of collective contract established by trade unions and representative associations could play a part in fulfilling the guardianship function. In the case of home work, regulatory clauses could be negotiated in collective agreements between worker and employer organizations.

Two matters emerge in the context of the legal difficulties surrounding home work. On the one hand, as previously stated, it is apparent that Brazilian lawmakers do not keep up with changes in the world of work, particularly where homeworkers are concerned, giving rise to gaps. This is problematic in the sense that these gaps occur in conjunction with an absence of social policies, including the rights to welfare and employment. On the other hand, difficulties entailed by the legal regulation of new forms of employment, without eroding the basic principles of worker protection, are not an exclusively theoretical matter. It is known that, in Brazil, legal standards with a social dimension are, by tradition, extremely ineffectual, either on account of the influence of power relationships based both on memory

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<sup>32</sup> Robortella, Luiz Carlos, *O Moderno Direito do Trabalho*, SP:L Tr, 1994.

<sup>33</sup> Robortella, op. cit., considers that the increase in the number of atypical contracts, the increase in part-time work and the increased acceptance of independent work are symptoms “which reveal a new approach to employment which resides to some extent on values inherent in civil law”.

<sup>34</sup> Public civil proceedings should be instituted whenever there is a complaint or report of damage to collective interests in connection with social rights or the general interests of society in connection with work relationships.

and repressive practices or on personalities or “favour”, or on account of indecisiveness of the State and of society in exercising its oversight powers. In other words, an extremely sophisticated legacy in standard-setting coexists with the absence of a social and political tradition of respect and enforcement of the law. Impunity is in effect one facet of this phenomenon. Interviewees noted that the illegal dismissal of workers hired under the CLT costs the employer nothing. If taken to court, the latter will pay only what he failed to pay, without fines or any penalty that would encourage him to respect contracts in the future. In fact, the major challenge facing labour law or civil forms of regulating labour relations is to maintain basic labour standards that are effectively complied with.

### **3. The share of home work in the Brazilian labour market**

The Brazilian labour market has undergone far-reaching changes over the past 20 years. These changes have resulted in a growth in urban employment and in outsourcing practices; increased levels of economic activity, particularly among women; more precarious labour relationships with reductions in levels of social coverage and/or lower levels of remuneration, as revealed by Souto, Porcaro, Jorge (1993).<sup>35</sup> Nonetheless, the greatest changes have occurred in the urban areas of the country and affect workers in non-agricultural activities first and foremost.

A move away from the full employment model was becoming apparent from the 1980s onwards and became more marked during the 1990s, featuring an increase in atypical forms of employment. The traditional type of employment, originating in large industries, entails the execution of work for a third party, in exchange for a wage. Work is carried out for a single employer, in the employer’s premises, on a full-time basis, for an unspecified period of time, and embraces a series of social rights and benefits for the worker and of obligations for the employer and the State.

Available employment statistics serve to identify some of these forms, particularly self-employment and salaried employment without formal links to an employer, and without social protection.

While independent workers accounted in 1981 for 18.9% of persons engaged in non-agricultural activities, their share rose to 20.1% in 1990 and 21.8% in 1995.<sup>36</sup> The employer category, accounting for 3.2% in 1981 and rising to 4.3% at the end of the period, also deserves note, since 87% had at least 5 employees in 1995, although most in establishments with up to 3 workers. In these circumstances, it may be supposed that a substantial share of these employers engaged in an activity closely resembled that of independent workers. Subsequently, it may be concluded that the increase in the employer category is part of the increase in atypical forms of work.

The participation of workers in non-agricultural activities with no social protection - for example, those who do not contribute to social security - fell from 67.5% in 1981 to 62.8% in 1990.<sup>37</sup>

The inclusion, in 1989 and 1990, of the PNAD Employment Supplement, which included key questions such as “place of work” and “number of persons occupied in the firm or business”, permitted

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<sup>35</sup> Souto, J.; Porcaro, R. e Jorge, A. “Mudanças no Perfil de Trabalho e Rendimento no Brasil” in IBGE B *Indicadores Sociais B Uma Análise da Década de 1980*, Rio de Janeiro: IBGE, 1995.

<sup>36</sup> Data from the National Survey by Samples of Households, carried out annually by IBGE B Brazilian Geographical and Statistical Institute.

<sup>37</sup> Since, until 1990, the employee-without-papers category included a group of civil servants, it is possible only from that year onwards clearly to identify the share of employees without formal work contracts. In 1995, they accounted for 15.4% of those occupied in non-agricultural activities.

a secondary analysis of atypical forms of work. In 1992, the survey methodology was extensively revised, and these questions were included in the survey.

Despite methodological improvements in the employment statistics system, it is not possible to hazard anything more than an approximate estimate of the number of homeworkers in Brazil. It should be noted here that, in a previously mentioned article, Carnoy, Castells and Benner refer to similar problems in ascertaining the extent of home-based work in the United States: it is known to be increasing, but not by how much since there is no way of measuring the increase. In Brazil, it is possible to identify the group of workers who carry out their activities in their own home or those who work in the home of their employer or of a client. Meanwhile, an analysis of the instructions contained in the IBGE Interviewers Manual reveals that persons occupied in established undertakings, even though performing outside functions, should be considered as working in the company (shop, workshop, factory, office, etc.) since the survey refers to the premises in which the business with which the worker is connected, operates. In the light of this operational definition, the employees of established companies working at home are probably classified as working in the company or firm "premises". Direct classification exists only for independent workers or employers.

Despite the limitations of available data, estimates are extremely useful in ascertaining the nature of working conditions for this group of workers in comparison to others.

The special PNAD tables, which identify the group of persons who work in their place of residence, broken down by gender, race and age group, allow an approximation of their share of the total of workers in non-agricultural activities. For purposes of identifying which groups are most affected by the growth in this type of work - young people versus older people, men versus women, white versus non-whites - it is possible to ascertain how changes in the economy or labour market affect each particular group. The PNAD tables also provide information on the level of formal education, activities pursued, position in the occupation and earnings from the main occupation of this type of urban employment. Information as to whether links exist with the social security system reveals to what extent these occupations are precarious. The position of the worker in his/her family (head, spouse, son/daughter, etc.) also constitutes an important variable, particularly for the purpose of interpreting female work.

A study by Paiva Abreu, Jorge and Sorj<sup>38</sup> shows that, in 1990, almost 10% of persons in Brazil who had been working in non-agricultural activities for 10 years or more, worked at home. Indeed, the place of work is an important factor in understanding the differences between male and female work, since most women in non-agricultural activities carry out their gainful occupations at home.

In 1995, of the 51 million urban workers in Brazil, some 3.3 million worked in their own homes (if we exclude the 750,000 domestic workers in this situation), of which 23.8% were men and 76.2% women. Almost 20% of this total was composed of young people between the ages of 10 and 24 years (some six thousand individuals).

For the purpose of this study, it was decided to focus on the data concerning the population between 25 and 75 years of age, which is the group that exercises greatest pressure on the formal labour market. These are men and women who must ensure a livelihood for themselves and their families. Subsequently, the main characteristics of these 2.7 million workers were examined and compared with

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<sup>38</sup> Paiva, Abreu, A ; Jorge, A e Sorj, B "Desigualdade de Gênero e Raça: o Informal no Brasil em 1990" in *Estudos Feministas* B Rio de Janeiro: CIEC/ECO/UFRJ, special issue, 2nd quarter of 1994.

those of the population occupied in non-agricultural activities, in the same age bracket<sup>39</sup> (Tables 1 and 2).

The share of home-based workers remained approximately constant between 1992 and 1995. It accounted for 8.1% of urban workers in 1995, a large proportion of which were women (78.5% compared to 21.5% men), see Table 3.

**Table 1**  
**Relative share of homeworkers in the population employed in non-agricultural activities between 25 and 27 years of age (percentage)**

	<b>Total</b>	<b>Men</b>	<b>Women</b>
Total	8.1	2.9	14.4
Whites	7.6	2.7	13.1
Non-whites	8.8	3.2	16.4

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<sup>39</sup> Analysis is confined to non-agricultural activities because, in the sphere of labour relations, these are fairly clearly differentiated from those encountered in cities, with 75% of the Brazilian population being urban.

**Table 2**  
**Percentage distribution of homeworkers by race**

	<b>Total</b>	<b>Men</b>	<b>Women</b>
Total	100.0	100.0	100.0
Whites	58.3	56.5	58.7
Non-whites	41.7	43.5	41.5

**Table 3**  
**Percentage distribution of homeworkers by sex**

	<b>Total</b>	<b>Whites</b>	<b>Non-Whites</b>
Total	100.0	100.0	100.0
Men	21.5	20.8	22.4
Women	78.5	79.2	77.6

An analysis of the age of this group of workers reveals that they are older than the average population occupied in non-agricultural activities: 3.9% are over 65 years (against 1.7% of the total) and 11.6% are between 56 and 65 years. This situation is more marked among men, of whom 6.3% are over 65 years (Table 4).

**Table 4**  
**Age distribution of the population employed in non-agricultural activities and of homeworkers (percentage)**

<b>Categories of activity</b>	<b>Total</b>			<b>Homeworkers</b>		
	Total	Men	Women	Total	Men	Women
Total	1000	1000	1000	1000	1000	1000
25-35 years	428	421	438	315	300	319
36-45 years	316	307	330	310	279	318
46-55 years	171	175	166	221	215	223
56-65 years	67	77	54	116	144	108
66-75 years	17	21	11	39	63	32

A second difference between this and other groups of workers relates to their level of formal education which can give an approximation of their level of qualifications.

The level of schooling of homeworkers is markedly **lower** than that of the average for workers in non-agricultural activities, particularly for women, where 68.6% have not completed the first grade (that is, up to 7 years of schooling) and among non-whites (35.6% have up to 3 years schooling and 40.3% between 4 and 7 years of schooling), see Table 5.

**Table 5**  
**Distribution of the population employed in non-agricultural activities and of homeworkers,**  
**by years of schooling**

Years of schooling	total			Homeworkers		
	Total	Men	Women	Total	Men	Women
total	1000	1000	1000	1000	1000	1000
1-3 years	167	171	161	250	260	247
4-7 years	351	368	327	420	351	439
8-11 years	178	191	162	162	133	171
12 years or over	304	270	350	167	255	143

While 65.9% of urban workers contribute to social security and therefore have some guarantee of payment of the 13<sup>th</sup> month, housing and unemployment benefit, the situation is reversed for home-based workers. Since the large majority are self-employed or small employers, 86.6% are not covered (Table 6). This situation is yet more precarious for women, of whom only 10.9% are insured. At 5.4%, the coverage for non-white women is still lower.

**Table 6**  
**Proportion paying social security contribution**

	Total	Men	Women
Total	659	658	541
Homeworkers	132	212	109
Whites	173	270	147
Non-whites	75	147	54

The analysis of activities carried out by home-based workers shows that 50% work in the areas of repairs and personal services, home services or entertainment. Approximately 12% are engaged in the traditional processing industry (wood, furnishings, leather, perfume, clothing, footwear and foodstuffs) and only 1% in more modern industries (household appliances, chemicals, publishing and graphics, etc.). Some 3% are engaged in activities relating to education and health (included in the group of social activities) and a further 3% in technical and auxiliary services. In regard to gender distribution, women are concentrated in the services sub-sector which requires a lower level of skills. The presence of men in this sector of activity is also substantial, although lower than women's. A significant proportion of men are engaged in technical and auxiliary services and in housing services and foodstuffs. A considerably higher proportion of men than women are engaged in an industrial activity (17.7% against 12.9%), see Table 7.

**Table 7**  
**Distribution of the population employed in non-agricultural activities and  
of homeworkers by categories of activity**

	Total	Men	Women
Total	1000	1000	1000
Industrial Processing 1 *	122	138	124
Industrial Processing 2**	12	39	5
Retail	14	37	9
Services: Housing/Foodstuffs	59	92	53
Services: Repairs/Personal/Home/Leisure	501	249	597
Social Activities	32	31	33
Services Financial/Adm. Property	5	19	1
Services: Technical/Auxiliary	32	100	14
Other Activities	223	295	164

\* Including traditional activities in the industrial processing: wood, leather, garments, food, etc.

\*\* Including more modern and dynamic activities in industrial processing: chemicals, electronics, editorial and graphics.

This distribution of activities is also reflected in the listing of the ten occupations most frequently performed by homeworkers . The figures show that 722,000 workers are women sewers (26% of the total) working in the garment industry or in garment repair services. Table 8 reveals that homeworkers are concentrated in few occupations, with the ten most frequent occupations accounting for three-quarters of women who work at home and almost half of male workers. Overall, men occupy more specialized (or technical) jobs than women. The latter carry out tasks for which the level of formal training required is very low. Such activities generally involve skills that are learned at home, from their parents, or in carrying out household chores.

**Table 8**  
**Most frequent home work by gender**

Men	%	Women	%
Self-employed retailer	29.6	Sewer	33.7
Woodworker	3.7	Self-employed retail	6.2
Radio and TV technician	3.4	Embroiderer	7.5
Lawyer	1.9	Laundry worker/presser	9.5
Commercial representative	1.7	Hairdresser	4.0
Ill-defined occupations	3.0	Manicurist	4.0
Self-employed in services	1.6	Salesperson	3.9
Machines technician	2.1	Baker	1.2
Sewer	1.2	Ill-defined occupations	0.9
Mechanic	1.1	Confectioner	1.7
Subtotal	49.3	Subtotal	72.6

The position of such workers within their families reflects that the responsibility for domestic tasks and the care of children or parents have a strong influence on the “choice” to work at home. This

is clear from the fact that 37.8% are heads of household and 54.7% are spouses, or indeed wives in the majority of cases (Table 9).

**Table 9**  
**Position in the family by gender**

	Total	Men	Women
Total	100.0	100.0	100.0
Heads	37.8	86.8	23.8
Spouses	54.7	0.8	68.7
Children	6.1	10.5	4.8
Others	2.5	1.8	2.7

A comparison of the average earnings of home-based workers and the average earnings of urban workers in the same economical activities reveals that the former are consistently lower (the sole exception being technical and auxiliary services activities). Earnings are consistent with the average earning pattern in Brazil according to which the income of people contributing to social security is higher than that of non-contributors; men consistently earning more than women, and whites more than non-whites (Table 10).

The earnings disparities observed reflect the branch of activity or occupation in which homeworkers are engaged.

**Table 10**  
**Average earnings (R\$ of September 1995) by selected variables for homeworkers**

	All		Home	
	Pay social security contributions	Do not pay social security contributions	pay social security contributions	do not pay social security contributions
Total	673.24	308.71	449.38	211.03
Men	789.59	424.19	723.24	403.46
Women	480.63	184.49	325.96	166.58
Whites	789.56	374.42	518.56	254.83
Non-whites	452.71	237.21	296.35	159.86
Activity total	543.10	277.41	569.73	186.02
Ind.Processing 1*	807.79	408.90	735.99	328.29
Ind. Processing 2**	928.51	371.45	448.49	279.20
Retail	556.08	264.60	328.23	192.86
Services: Housing/Foodstuffs	497.69	252.53	277.86	158.44
Services: Repairs/ Personal/Home/ leisure	784.72	416.06	916.44	263.90
Social Activities	1298.83	847.92	1005.45	673.11
Services: Financial/ Adm. Property	1219.24	844.77	1447.00	1200.48

\* Including traditional activities in the industrial processing: wood, leather, garments, food, etc.

\*\* Including more modern and dynamic activities in industrial processing: chemicals, electronics, editorial and graphics.

An effort was also made to ascertain whether the geographical distribution of homeworkers differs from that of the non-agricultural EAP in Brazil. Table 11 shows that the South and South-Eastern regions account for the majority of labour in non-agricultural activities (67.2%), with a diversified and modern industrial stock, which is consistent with the fact that they account for over half of homeworkers (56.8%). These are mainly women, spouses or heads of family. Meanwhile, the greatest difference in EAP distribution and that of homeworkers was encountered in the North-Eastern region where the difference was of 10 percentage points. In this region, job opportunities are fewer, particularly for women who, for the most part, engage in craft activities to meet tourist demand.

**Table 11**  
**Regional distribution of non-agricultural EAP and homeworkers**

<b>Regions in Brazil</b>	<b>total</b>	<b>Homeworkers</b>
Total	100.0	100.0
North	4.5	5.8
North-Eastern	21.5	31.2
South-Eastern	50.9	44.2
South	16.3	12.6
Central-Eastern	6.7	6.3

### 3.1. Summary

The statistics that are currently available in Brazil display only one facet of the situation of homeworkers. However, they probably reflect a representative portion of this group of workers featuring a predominance of women, with low levels of schooling, in an older age bracket, practically without social protection, engaging in service provision activities which require low skills and commanding earnings that are lower than the average earnings of the population engaging in urban activities.

Considerable progress will need to be made in compiling statistics to build a more accurate picture of homeworkers and their growing diversity. This may happen either through household surveys enquiring into the nature of the labour force or through surveys of small enterprises.

For household surveys, it is necessary to establish whether the persons working for a company carry out their activity in the company's premises or outside. It might also be proposed that more detailed research be conducted on the share and characteristics of secondary workers, in order to assess to what extent workers who are employees in their principal occupation, also engage in homeworking to complement family income (and to establish whether any relationship of complementarity exists between these two occupations).

A broad and representative statistical analysis has not yet been made of subcontracting relationships, which are of fundamental importance in studying home work, mainly because there is no clear conceptual basis for defining subcontracting. The question of whether the goods and services produced are sold directly on the market or to other production units would provide considerable insight into the real degree of independence of these workers, especially as the latter is one of the key elements in defining this category of workers. However, this issue is completely ignored in the present employment statistics in Brazil.

Similarly, questions on the magnitude and characteristics of homeworkers could be introduced in enterprise registry surveys, such as the RAIS in Brazil, which covers the formal labour market. This would serve to identify what tasks are performed "outside" the enterprise, the corresponding level of remuneration and the status of the worker. Industrial censuses could also incorporate the same question in terms of total spending in connection with homeworkers.<sup>40</sup>

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<sup>40</sup> The most recent information available in Brazil is contained in the Industrial Census of 1995, which enquired only into the sum of spending. For other branches of economic activity, no such information is available.

Case studies should also be conducted with a view to gathering more qualitative data which would help prepare statistical surveys and suggest new areas of research.

#### **4. Home work case studies**

Three case studies were carried out in order to ascertain the profile of the new homeworkers, the nature of the labour relations they are engaged in, their degree of independence, and their differences vis-à-vis the more traditional types of homeworkers. Three cases were selected: a software-producing micro-enterprise which chose to become a *virtual firm*, sent all its employees home, and closed the company's premises; a large electrical gauge factory; and garment-producing cooperatives, the number of which has increased sharply in several regions of Brazil. Although the latter case is not representative of home work *strictu sensu*, it is in fact an alternative to this type of employment and mobilizes the labour factor in a fairly similar manner. Each study was based in a different geographical region: the first in Rio de Janeiro; the second in Paraná, and the third in North Eastern Brazil.

##### **4.1 Almost equal: Employer and employees in an informatics enterprise**

Our first case study focuses on a micro-enterprise that provides specialized informatics services. It engages in activities with a large technological content, with highly educated employees who are trained in occupations of increasing prestige and social recognition. The company develops fairly sophisticated software for reorganizing the systems of large and medium enterprises. The software serves to computerize methods and processes. Its comparative advantage vis-à-vis similar software developed abroad lies in the peculiarities of the Brazilian economy, and its institutional procedures and practices.<sup>41</sup> It is often difficult for multinational companies to adapt more generic systems to the national market. Although the software developed in Brazil has certain particular features - which constitute an asset for Brazilian informatics services providers - this area of activity is becoming more globalized.<sup>42</sup> The main clients of the company are luxury hotels and multinational enterprises (services).

The enterprise has six employees, four men and two women, who fall within the 25-35 year age bracket, most of whom are married. They are all trained in informatics and five have master's degrees. They received three months training when they were hired, in order to acquaint them with the work of the company and its procedural standards (type of systems developed by the firm). The owner of the enterprise is an engineer of approximately 35 years of age who has a master's degree.

The novel feature of this micro-enterprise is that its employees now work at home, where they are responsible for the day-to-day organization of their activity and for completing their tasks. However, things were not always organized in this manner. When our micro-entrepreneur established his firm in 1994, he opened a company headquarters where his employees worked under his coordination. Gradually, given the nature of the work and the need to reduce costs, and in the light of pressure by employees to improve office and working conditions (individual parking spaces in the garage, flexible working hours to cut down time wasted in commuting and family demands,<sup>43</sup> more

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<sup>41</sup> For example, incorporating indices of deflation, monetary adjustment or incorporating the constituent elements of national pay sheets etc.

<sup>42</sup> Large enterprises contract software firms in other countries and outside their area of influence, for instance in India, on the basis of the good quality of services offered and of extremely competitive prices.

<sup>43</sup> Our micro-entrepreneur is divorced and has custody of his daughter who is 5 years old and lives permanently with him. Family demands and having home-time was a priority not only for his employees, but also for this employer.

space and comfort in the office, lunch vouchers, etc.), prompted the idea of radically changing the workplace, with the employees working from home rather than in the office. As the office was dismantled and partially moved to the employees' homes, the head office has become merely a postal address,<sup>44</sup> which has no link with the multiple workplaces. Currently, therefore, the six IT specialists live in the neighbourhoods<sup>45</sup> of their choice, which are fairly scattered but do not entail any additional expenditure.

The company (as we will continue to call it, despite the fact that it is virtual) meanwhile requires that each employee has a space within the home entirely devoted to work purposes. With a view to meeting this requirement, the entrepreneur temporarily subsidized a change of residence for some of his employees (to a larger house with a workspace). The entrepreneur also provides his employees with the essential tools for carrying out their activity, including 1) a pentium computer 166 with all the necessary accessories, 2) a micro-computer (palm pilot), equipped also with a modem in order to facilitate the transmission of data in transit, from anywhere in the city, only requiring access to a telephone line, 3) financing the purchase of a telephone line for office use (although the employee is responsible for paying the bill).

Four of the company's employees are registered and have signed work papers (paid holidays and 13<sup>th</sup> month). The average salary ranges from between R\$2,500 and R\$3,000 per month (40 hours a week), with a productivity bonus (based on profits), that is not part of the base salary. Once his employees were based at home, the employer was able to establish productivity criteria, on the basis of each employee's characteristics. Moreover, such criteria are not universal in nature.

The other two employees are now micro-entrepreneurs who have set up a two-man company, which is regularly subcontracted by the micro-enterprise to carry out tasks.

Since labour legislation does not provide for employees working in their own homes, the employer could be taken to court by his employees - who might claim payment of overtime (since there is no timesheet, or any type of attendance control stipulating time worked), non-payment of reimbursement for rent in connection with the use of infrastructure (room, telephone and electricity charges) or payment of royalties on systems developed. This consideration demonstrates that the trust between the employees and the employer is an important factor in the viability of this form of work (which maintains the labour relation, although it is organized in a new manner). It is not entirely random, in that some of the employees are friends and one is a relative, which implies a loyalty and respect for tacit agreement, over and above interests inherent in the job itself. In the view of the employer, since intellectual work is erratic and cannot be measured using traditional criteria, trust becomes an essential element in the smooth operation of the company.

Although employees are working alone at home, they are linked on a network that allows them to interact constantly. While the micro-entrepreneur owns the company, he also carries out the broader

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<sup>44</sup> Recent trends in connection with domicile explain why many informatics service provider firms have their legal domicile in cities where they are not in fact active, and where they do not have a physical office. Florianópolis is a case in point, offering tax advantages for such micro-enterprises. This initiative on the part of the local authorities led to the establishment and consolidation of a local informatics "center" despite the fact that many of the micro-enterprises located there for formal purposes in fact operate in other states of the federation. The micro-entrepreneur interviewed also intends to leave the state of Rio de Janeiro, since the governor failed to follow the example of other states in exempting enterprises in the sector from payment of ISS (a tax on services) and other taxes.

<sup>45</sup> Two live in Barra, one in Jacrepaguá, the employer in Botafogo and four in Ilha do Governador.

design of systems production, prospects for clients (he deals with requests, makes personal visits, bids for tenders) and administers the firm with the outside assistance of a freelance accountant.

Productivity is very difficult to monitor for work that is intellectual in nature: the creation process is not carried out in units of time that can be rigidly measured. The employer has an approximate notion of the time it takes to carry out a task or activity, but there is a high margin of variation.

The advantages of home work listed by the employer include: 1) reduction in operating costs - expenses relating to infrastructure, labour (secretary) among others; 2) better quality of life since daily commuting has been eliminated, which saves time and energy, and means that more can be invested in home comforts; and 3) reduced individual expenditure on clothing.

However, overlaps exist between professional and family life, which have contradictory effects: risk of loss of privacy and increase in time devoted to work, which may reduce time for leisure; risk of distraction when working and reduced productivity; etc. Also, productivity cannot be appropriately measured since, although there are ways of monitoring computer time and nature of use (programmes which time the periods spent at sites, files, number of visits to these sites, number of interruptions), they are not compatible with the nature and dynamics of intellectual work.

## **Observations**

This case study reveals the importance of diversifying studies of home work in sectors employing highly qualified labour. This differentiates home work from *home-based work* since they effectively involve different work relationships. In contrast to the more traditional sectors, where increased flexibility of work and home work are synonymous with precarious employment (disguised employee status) and a failure to fulfil basic rights, the more contemporary and innovative forms of working at home (the case study in question) also offers benefits for the employees, not only in working conditions and quality of life, but also in terms of access to new employment possibilities. This is borne out by the fact that two of the micro-enterprise's former employees have already set up their own firm and now work with their former employer as micro-entrepreneurs in a relationship of exchange between equals, or almost equals.

## 4.2. “Family partnership”: Combining formal wage-earning status and subcontracting by task

INEPAR S.A. Eletrônica moved to the industrial region of Curitiba in 1992, after 25 years of activity in Rio de Janeiro, in the area of telecommunications, services and engineering, in a joint venture with General Electric (GE).<sup>46</sup> The recent relocation was in line with the decision by Landis & Gyr<sup>47</sup> to set up a unit exclusively devoted to products in the power gauge sector, which is rapidly expanding and changing. Previously, INEPAR had been active in many other areas, such as power generation, transmission and distribution. By specializing in the manufacture of electro-electronic power gauges<sup>48</sup> in anticipation of major changes in the nature of the market, where 90% of invoices still correspond to products belonging to an old range of electromechanical gauges (monophase and polyphase), INEPAR seeks to increase its current 45% of the national market.<sup>49</sup> In other words, it seeks to dominate the gauge market, which has been redefined with the rationalization of power consumption, by catering for new tariffs per hour and by type of power consumption.

The company's activities relate to three specific areas of electro-electronic measurement, electronic products and automation. The coordination of management is carried out by three directors and seven managers. These activities are carried out in the industrial plant established in Curitiba, prompted by tax incentives, loans from the BNDES (National Bank for Social and Economic Development) and the fact that it met the criteria sought in selecting a new premises which combined security, credibility regarding the continuation of tax incentive policies, good relations with the public sector (State and municipal Government) and an improvement in the environment and quality of life of all those working for the company. Therefore, not only is INEPAR introducing new criteria and quality control processes, but it is also innovating in its implementation of organizational practices, which accord prime importance to working conditions, with an emphasis on hygiene and cleanliness. One of the firm's objectives, which features among the main principles of the group philosophy, is to be “the cleanest factory in the world”. This principle applies not only for in-factory and homeworkers, but also suppliers, through total quality programmes. Environment is one of the company's main concerns in its production restructuring process.

In introducing a Total Quality Management system, INEPAR also set up a Quality Committee which boosted the participation of all employees, regardless of their level of qualifications or role in the production process, in defining the changes to be made. In the view of staff, the greatest improvement achieved through this process is that dialogue is more direct and transparent between

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<sup>46</sup> Until 1992, the joint venture with GE consisted of a department of which INEPAR held 80% of shares in the company which was responsible for producing electrical gauges. In February 1992, after acquiring the entire company capital, INEPAR concentrated on introducing innovations in the electromechanical power gauge branch, realizing that the technology it had previously shared with GE was being overtaken. The Brazilian market for electromechanical gauges totaled some 1 million units/year. In Europe, this product has already been replaced by improved electronic gauges which allow differentiated consumption tariffs to be applied, the equipment for which is more sophisticated and consequently more expensive. To date, in Brazil, only industries have such gauges. Privatization of the electricity market has increased differentiated consumption of residential power.

<sup>47</sup> Swiss group of companies holding 51% of shares in INEPAR, which is part of a financial-industrial conglomerate in the United States, Europe and Latin America. It holds some 12 world companies. INEPAR S.A. Eletroeletrônica is one of the three best performers in recent years.

<sup>48</sup> The basic difference of this new type of project is that, unlike the earlier mechanical versions, there is no need to consult a clock in charging for consumption since the information is directly transmitted, by electronic means, to the power distribution company.

<sup>49</sup> Five major companies control the national power gauge market. The market share of the other competitors is 25% for ABB and 40% for the three remaining groups. Approximately 15% of INEPAR's domestic production is exported to Argentina, Venezuela and Columbia, in particular.

engineers at the management level and shop floor workers, bypassing the middle-management level responsible for supervision and oversight of work at the lower level. As stated by a representative of management, the quest for quality becomes a shared commitment and, most of all, a consensus. The efforts made were vindicated when the company obtained an ABS<sup>50</sup> ISO 9000 certification.

An initial, environment-related change that was introduced in the Curitiba factory related to the way in which the workspace was divided. The walls separating the departments were removed and demarcation lines painted on the floor - or open boundaries - suggesting movement between sections. The idea is to bring together people who are involved in the same activity and who had previously been separated in accordance with the division of work. Engineering and the supplies department now work side by side. Some sectors continue to be relatively isolated, such as the accountancy/finance department which nonetheless today has open-plan spaces with glass divisions and bays for employee comfort. Again, the practice of transparency is promoted as a mechanism for ensuring interaction and involvement. Individual rooms or offices are the exception. Even the foreman's department is entirely open and freely accessible, without entrance barriers, doors or walls; an employee continues to record on the computer changes in the stock of materials and parts, in response to requests.

The intention, therefore, is to engender a feeling of trust, encouraging the idea that everyone knows each other and knows what everyone does. In fact, this is a system in which everybody supervises everybody else, which obviously considerably reduces the level of direct supervision of each individual. And this, in a climate of "trust, participation and collective responsibility", as stated by a company source. Employees are no longer required even to clock in, although this decision is not in conformity with labour legislation. A preliminary form of punctuality control is, however, maintained by the fact that a bus picks up most employees.

In the centre of the factory, which is an immense space without interior walls, a rest area has been set up, with a patio, bandstand, televisions, aquarium, bar tables, magazines (though specialized), post-box, garden benches, dried plants and flowers, with a view to enhancing the quality of life of workers.

The new spatial distribution of the factory, where all spaces are conducive to movement, permitted considerable human resource savings. There was no longer any need for office boys, and employees became more adaptable, carrying out one or more tasks. The middle-management level was most affected by the changes (staff cutbacks) since the objective of the restructuring was to reduce hierarchies and facilitate and encourage exchange between different points. These changes led to the elimination of INEPAR staff career plans, under a new approach to careers as an individual choice and, therefore, a matter of personal character.

With a view to enhancing performance, the company has introduced new programmes to boost staff productivity. One of the most successful is the "Quero-Quero" (I want, I want) programme where the administration's approach of "I want more technology" is reflected on the labour side by the demand for "I want more training". In 1997, company employees underwent 17.715 hours of training.

Today, the company has 450 employees - 70% men and 30% women, including homeworkers, as compared to a total of 956 in 1995. All the employees (including shop floor workers) must have completed primary education. It may be noted that, according to the personnel department, 90% of employees are members of Seletroar, the trade union of workers in the electro-electronic and refrigeration industries, founded in 1991.

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<sup>50</sup> The ABS analyses changes in the process and in the product, looking also at home work, carried out by the company.

The company provides its employees with a series of direct benefits - canteen, with prices staggered in accordance with wage level, health insurance (agreement between the company and certain doctors and hospitals, also paid), and transport. Nothing is free and no food baskets are distributed. Through its Foundation, it also guarantees two extremely important forms of support for all employees, including those who work at home: the school grant (or PROBEM) and crèche subsidy, the value of which is highest for the lowest-paid workers. The foundation has also introduced employee training initiatives.<sup>51</sup>

PROBEM has been in existence since 1992. Its purpose is to encourage the attendance and performance of school age children - or of adult dependants - through the regular submission of their school reports, either in the public or private education system, each employee receiving the monthly financial contribution per dependant enrolled in primary, secondary or tertiary education ranging between R\$ 120 and R\$ 50 per month.<sup>52</sup> The crèche subsidy is paid only to mothers employed by INEPAR. It amounts on average to R\$ 80 per month.

The move from Rio to Curitiba provided an opportunity to increase productivity (by reducing the company's payroll) and to institute a new form of organization of production. INEPAR made the electronics division its guinea pig in expanding home work in the form of family partnership, based on female labour, with a view to saving space and reducing spending, in preparation for the launch by the electronics department of a new electronic gauge. Innovation was therefore introduced on two fronts: that of organization of work and that of generating a new product.

Home work was already used by one of the INEPAR GE supplier companies. The gauge factory (INEPAR Registradores e Bobinas), which also moved from Rio to Curitiba, provided (and continues to provide) the electronics division with the components it needs - in the case in question, a register, the small parts of which are purchased from other outside suppliers and then assembled in this small factory. Home work was confined primarily to manual tasks of assembling components for final manufacture of the register. Not included were tasks requiring use of a press or other heavy machinery and which had, therefore, to be carried out in the factory since it could not be outsourced. This factory continues to be part of the mother company, but now has only 22 employees, of which 10 work at home - all women - as compared to 72 employees when the company was operating in Rio. After restructuring, the number of pieces/day rose from 4500 to 6000.

From the outset, INEPAR S.A. Eletroeletrônica concentrated on introducing changes in the gauge production line. For instance, the process for producing the protection devices for electrical systems was generally carried out by a group of 8 people. All were women, given their greater manual dexterity in manufacturing and assembling small parts, as stated by members of management. Each employee was responsible for assembling a single piece of the final product. On average, 8 protection devices were produced by 8 people during the course of an 8-hour working day. However, numerous problems failed to be detected on the moving production line, causing frequent failures in the operation of the product and giving rise to disputes among workers. It was therefore decided that a change would be introduced in the production line. Instead of always carrying out the same part of the production process, in a fragmented manner, workers would be responsible at different times for different parts of the process. This move to restore the production process as a whole to the workers involved was one

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<sup>51</sup> The INEPAR Foundation works jointly with the community, in coordinating social projects such as the Vó Durvian which has made improvements to a children's home in the suburbs.

<sup>52</sup> Employees who earn the base wage of 3.2 times the minimum wage (approx. R\$ 450) and who have 3 or 4 children receive an individual monthly contribution for each child of R\$ 125, which more than doubles these employees' remuneration.

of the first attempts by the company to raise productivity within the electronics division. This was made possible by a change in the assembly process which was achieved through close collaboration between the technical specialists and the assembly workers. However, the attempt served only to encourage some workers to demand that they manufacture the entire device alone, rather than in a team, and conflicts continued. As a result, at the suggestion of the company, two workers left the group and started to work at home, carrying out tasks that had previously been the responsibility of a group of 8 people.

One of them has young children<sup>53</sup> and considers it more convenient to remain at home to do what she previously did in the factory during the working day. Another, although not married and without children, wished to use her time at home to care for her mother who was elderly and ill, and relieve her sisters of some of the burden. Today, 9 of the electronics division's workers work at home, of the total of 13 employees. Their ages range between 25 and 50 years.

How does the system work? First, all the employees, called "family partners" - in effect, production assistants at levels 1, 2 or 3, as recorded in their working papers - are permanent INEPAR employees, with a work contract, labour rights and a fixed monthly wage, which is competitive in terms of the local market, ranging between 3.2 and 4.5 times the minimum wage. Only one man works at home: a former member of the army who today assembles cases since his previous tasks were superseded.

The wage of these workers is established on the basis of regular delivery of a given number of pieces assembled at home, in the order of 2,400-3,000 per week (depending on level). This is the average volume of production for a worker in the factory. The pattern of production required of workers is the same, irrespective of whether they work in the factory or at home. The wage is the same. Only indirect benefits are deducted, namely transport voucher. Although the majority requested to work at home, some still remain in the factory since they use solder or equipment that cannot be removed from the factory. Other workers prefer to remain in the factory rather than at home because they have young children who would not permit them to produce the necessary number of pieces stipulated in the informal home contracts.

Whenever a client increases demand, calling for an increase in production, INEPAR calls a meeting of its homeworkers in the company, negotiates the deadline for meeting the client's extra demand (just in time) and pays on the basis of the pre-established principle: if each component is paid on the basis of the average level of productivity and the average wage,<sup>54</sup> then the value of each additional piece will be paid with a 50% supplement. When this happens, the workers bring in members of the family, neighbours and friends to help and may work up to 12 hours per day. Such collaboration is sporadic and could not be described as serving as an intermediary. These occasional helpers are generally housewives or young members of the family or children.

Wages are paid regularly from the company payroll, while work outside the factory is paid outside, through the RPA system (independent payment receipt) in the name of another person who is not an employee, so as not to give rise to payment at overtime rates which would sharply increase the company's costs. Indeed, home work is justified by the huge saving in overtime during periods of peak demand.

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<sup>53</sup> This worker continues to enjoy the same rights as her colleagues working in the factory, and receives a school grant for her three children.

<sup>54</sup> The number of pieces is divided by base wage.

As is customary under this form of work organization, the pieces to be assembled are delivered to the workers at home by a company vehicle which returns at the end of the week to collect the product. In addition to assembly, the worker may carry out preliminary tests in her home, using a computer that is installed for that purpose. This reduces faults which would be detected only when the product is delivered to the factory. This is viewed by workers as increasing their skills (since it reveals that they understand how the product works and that they are able to operate the computer equipment).

The organization of work at home is currently the exclusive responsibility of the worker, who chooses his/her working hours, the way in which he/she assembles the kit and how he/she structures the tasks involved in the process. This freedom, which did not previously exist, has been translated into a significant improvement in the product, reduced work time and a closer collaboration between engineers and workers in seeking to improve productivity. For this reason, whenever the product is modified - as in the case of the transition from an electro-mechanical gauge to an electronic gauge or the design of new prototypes<sup>55</sup> - the workers return to the factory for a few weeks, not only for training but also to discuss modifications in the production process *strictu sensu* with the engineering department, with a view to facilitating mass assembly. Once the workers have been trained and are familiar with the new product, they return to work at home. During this period, which may range from a week to a little over a month, they continue to be paid on a monthly basis in line with the wage level stipulated. The priority is to facilitate the process and ensure utmost flexibility in meeting demand. INEPAR's success lies in the fact that it can ensure such flexibility, involving all workers in a synergy.

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<sup>55</sup> Although the product cycle is becoming considerably shorter, it is still some 5 years in this sector (electro-mechanical gauges). During this period certain improvements and fine tuning are introduced.

## Observations

The second case study reveals that a positive influence may be exerted by the labour relations system based on Total Quality Management between the company and homeworkers. Seeking to boost the participation and responsibility of homeworkers, which has repercussions on the general level of training, led to the creation of a home work management model based on the same principles. It may, therefore, be inferred that, when companies reassess their entire production chain with a view to obtaining ISO 9000 certification, the conditions for homeworkers are also improved. A second point is that with the dismissal of a large number of workers under the restructuring process, the staff who remain with the company are upgraded. The home work system serves first and foremost to reduce overtime costs and to adapt the production system to deal with erratic demand, which can consequently be met in a more flexible manner, as well as ensuring that contracts with clients are fulfilled. Homeworkers do not lose any rights or earn any less. Their status is similar to that of their colleagues working in the factory, they are wage-earning employees, with the sole difference that they carry out the overtime required to meet fluctuations in the level of demand in their homes.

### 4.3. Regional disparities and new subcontracting modalities:

#### **The cooperatives of the North East<sup>56</sup> replace traditional home work**

The industrialization of the North East - the poorest region of Brazil in absolute and relative terms - received a new impetus in the 1990s, in a context of economic globalization, increased international competitiveness and currency stability, which prompted a relatively widespread and diversified relocation of industrial plants, particularly among labour-intensive enterprises based in the most underdeveloped region of the country. They sought to cut back their costs by using cheaper labour. Thus, the North East became an attractive economic and social space for transfer of industrial plants from the South and South East of the country, with average pay levels three times less than in the Centre-South, a supply of workers with little factory work experience and hence, with a very low level of organization, extraordinary tax incentives in the context of a fierce tax war, and other location-related factors that could be extensively negotiated with the public sector at both the state and municipal levels.

Incentives benefited, first and foremost, those industrial sectors which continued to be highly labour-intensive, despite the introduction of some technical-organizational innovations, notably in the textile, clothing and footwear sectors which were the spearhead of this process. With the opening up of the economy, they were in fact exposed to competition from Asian products with considerably lower prices and equivalent or better quality. Hence, their survival depended on rapid and appropriate adaptation to the new realities.

Meanwhile, industrial relocation was also occurring in other sectors such as beverages, iron and steel, processed foodstuffs, bicycles, etc. It is a case not so much of total or partial relocation of an industrial plant, but rather of new establishments for some firms and sectors, attendant risks being greatly reduced by the economic stability achieved and the slight increase in average earnings in the poorest regions, thereby considerably boosting the purchasing power of the popular echelons of society. This strategy is aimed, therefore, to move into new consumer markets.

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<sup>56</sup> This section incorporates field research and observations contained in the paper by Lima, Carlos Jacob, "O Custo Nordeste: flexibilização produtiva e trabalho na indústria do vestuário" presented in the seminar "Produção flexível e novas institucionalidades na América Latina" Rio de Janeiro, 18 - 20 September 1997.

Taking Ceará as an example, the strategy adopted has been to attract an anchor company, that is either capital- or labour-intensive, which will subsequently attract other enterprises involved in the chain. In this manner, the State was able to recover its second place as national textile centre, within the past two years, accounting for 17% of the national industrial stock in textiles, as compared to 6% in 1987. Over the past three years, 81 companies, in addition to a further 49 currently setting up, were attracted to Ceará. The future looks promising, with the imminent signature of 49 agreements between the State of Ceará and other companies from outside the region.

In addition to the manufacturing industries, this increased industrial activity has attracted other firms in sectors that supply the chain: spinning, weaving, industrial dyeing, supplies, packaging, zip production, laundries, etc. This vertical development occurs primarily in connection with national enterprises.

In the North East, side by side with the newly established factories from other regions of the country, are the Taiwanese *maquiladoras* in, for instance, the garment sector, as described by Lima (ibid). These undertakings are seeking new production centres and targeting the North and Latin American markets. It is well known that the garment industry is particularly suited to internationalization, given the low required level of fixed capital immobilization (buildings and equipment) and the low labour skill requirement. Although technological and organizational innovations have substantially reduced the size of the workforce, they have not succeeded in resolving the matter of the finishing of pieces which continues to require a considerable number of workers. The Taiwanese have set up these undertakings in Latin America with the aim of increasing their share of the North American market by benefiting from Latin American export quotas.

While the competitive edge of the North East is ensured both by the low wage levels paid in most states and by the active participation of the federal, State and municipal governments and of employer bodies in ensuring the necessary conditions to attract new industries, the creation of a new type of production or organizational unit - the cooperative - appears to be an ideal way of focusing and consolidating such efforts. These cooperatives are set up precisely to cater to the export companies whose activities are limited by international market quotas.

The novelty of cooperatives is that they seek to meet the demands of specific companies that assume responsibility for part of the operations through a series of contracts, even though they retain exclusive control over production and oversight of work organization. Under this arrangement, workers are exempt from labour legislation. It is the choice and responsibility of the cooperative workers to see to their social insurance coverage. Meanwhile, they have no direct link with the contracting companies.

Before a cooperative can be set up, candidates must attend a course on the subject, for a period of 16 hours of classes. Subsequently, those who decide to proceed attend a Training Centre, where for a period of 60 days, with the support of a work-grant<sup>57</sup> funded by the State government, they are given a minimum preparation to meet the new requirements of the activity they are to carry out. Subsequently, the cooperative is formally established, consisting of a minimum of 20 individuals.

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<sup>57</sup> An original initiative by the State has been to introduce a work-grant of R\$ 100 (approximately 80% of the national minimum wage) for all individuals who are from the rural area when they are used as labour in industries migrating to the area; the Government pays a monthly work-grant during the training phase, that is 60 days. Following that period of pre-training, those who are selected a second time will remain as employees of the companies (insofar as a selection is made for participation in initial training, although criteria of sex and age are not considered for selection purposes).

Cooperatives are exempt from payment of ISS (services) tax and are legally constituted, meeting all the basic requirements of an association: an elected board, deliberative assembly, etc. This does not automatically guarantee freedom to choose clients, since they are almost always subcontracted by a single enterprise and operate under its external supervision. In the footwear sector, for example, there are to date two cooperatives of 150 individuals each in Tapipoca, another two in Tapagé, three in Canindé, and another two in Santa Quitéria, which are all towns in the state of Ceará. Some contracting companies offer members of cooperatives literacy classes at night.

Not only are members of cooperatives paid very little (rarely over 1.5 times the minimum wage), but outsourcing to cooperatives allows production costs to be further reduced and makes the unit price of white vests, for example, lower than the Chinese or Asian price, which is held to be the benchmark of international competitiveness in terms of price.

Ceará is gradually taking the lead as regards production and the number of enterprises active in the textile-garment manufacture sector, since the political control of the state has been exercised by a group of entrepreneurs with ideas of economic modernization. Tax incentives, infrastructure, abundant and cheap labour and strategic location for international markets have attracted industries and changed the State's production structure; indeed, this is the only state of the North East to have achieved a consistent growth curve over the last decade.<sup>58</sup>

Production organization strategies have given priority to outsourcing of production through cooperatives. KAO-Lin, a Taiwanese group, which is set up in the garment manufacturing centre of Baturité, is a case in point. The company manufactures jeans for the domestic and foreign market, and constitutes a typical *maquiladora*, importing raw material, assembling the pieces in the country and producing for the domestic and foreign market. This company set up in Acrapé, a municipality of some 10,000 inhabitants, 70 miles from the capital, Fortaleza, where it carries out the administrative and operational organization of the factory, engaging engineers, technical specialists and supervisors. The entire production is outsourced through twenty cooperatives of women sewers who are distributed over thirteen municipalities of the region and together account for some 1,600 workers.

The Banco do Nordeste financed the project of setting up these cooperatives of women sewers, in conjunction with the local authorities (donation of plots) and the State government (which, through the department of labour and with the support of the federal government - FAT and PROGER funds - grants or finances construction of premises). The workers were trained by SENAI, and the factory stands as guarantor for loans to purchase machinery. The equipment was acquired from a supplier of YAMACOM, a firm that is part of the group to which KAO-Lin belongs.

The Acarape Cooperative of Garment Producers Ltd was established in June 1994 and employs mostly female workers - of rural origin, without factory work experience. A training centre was set up, the "Technological Centre for Training of Garment Makers Foundation" with company funds (it also donated equipment for training purposes), and the financial support of the State and the municipality. Up to June 1996, some 1,400 workers had been trained. The thirteen cooperatives in operation are divided into three production units, employing an average of 35 workers and operating in different premises. All units are supervised by company employees, and by machine engineers. Quality control and management is organized by area.

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<sup>58</sup> In this regard see Lavinas, Lena et al, Nordeste: evolução recente de sua economia, relatório de pesquisa, IPEA-DIPES, 127 pages by BNB, under the coordination of Hildete Pereira de Mello.

In contracts between companies and cooperatives, the company commits to transfer and manage the technology employed, to control quality, to purchase all production and to stand guarantor for bank loans to purchase equipment for the cooperatives. Meanwhile, the latter produce according to established technical specifications, and sell all their production to the company for the period of the contract, which is 8 years (period of BNB financing). It is clear that a situation of total dependence exists.

The cooperatives have their own internal statutes and rules “suggested” by the Taiwanese company. The latter establishes the principles and rules regarding management of labour, recruitment, dismissal procedures, discipline, forms of remuneration and holidays. All this is explained to the members of the cooperatives.

Remuneration is based on production. There is a fixed part of some R\$ 40 or 50 (in 1996) and a variable part which depends on orders from the company. The official working day is eight hours, although this depends on the orders and deadlines. The workers must meet demand. One hour for lunch and 10 minutes in the morning and in the afternoon are the only breaks permitted. The basic hours are from 7 am to 5 pm, although this may vary in some units. When production demands so require, the working day may be extended into the evening and on Saturdays. Under normal production conditions, remuneration may total up to R\$ 180. However, no wage level is fixed. Since these workers are not covered by labour legislation (they are not employees) no rights are observed such as absence or maternity leave etc.

Although originally targeted for export, the jeans production of KAO-Lin has been re-channelled to the domestic market, under the Real Plan (over-evaluation of the exchange rate of the national currency). The first crisis experienced by these cooperatives occurred when an attempt was made to redirect production once more to foreign markets, with the result that some units closed in 1995.

According to Lima, the worker’s perception of his/her position is that of a company employee, because the cooperatives are company creations. It is for this reason that the training now given to members of cooperatives includes guidance on the nature and history of cooperatives. Nonetheless, companies must constantly clarify the difference that exists between the cooperative, on one hand, and the company on the other, pointing out that the workers are paying for the sewing machines and that they own the business.

The KAO-Lin company is being investigated by the state prosecutor in response to complaints that it relies on disguised wage work. Nonetheless, it is clear that the company is unlikely to change the way in which it outsources production. It is not alone in the business. Behind it are the federal state and municipal governments which have given their blessing to a model of organization of production and work which was seen as the right response in an era of globalization and growing domestic competition.

## **Observations**

The third case study offers an example of an internationalized model of production (importation of raw material, assembly of pieces in the country in which the company sets up, and export of the finished product) which seeks to increase competitiveness by reducing labour costs. To that end, companies encourage the establishment, in the poorest and most backward states in the country, of cooperatives which come to serve as subcontractors. They run, however, counter to the regulations governing the functioning of cooperatives in Brazil (absence of an employment relationship between

the cooperative and the associate or between associates and the purchaser of services from the cooperative, article 442 of CLT). In so doing, the companies count on the full support of the State and municipal Government. This subcontracting model, which is supported by all levels of government as well as by business associations, is justified by the benefits it brings to a population that has no access to jobs, in an area of extreme poverty and low level of development. In contrast to the first two case studies, this represents a disguised form of subcontracting which damages the principles of worker's protection under law.

#### 4.4. Summary

Table 12 presents a summary of the main features of the three case studies, which are relatively diverse, based on selected variables which reveal the type and quality of the labour relations existing in the economic undertakings examined.

**Table 12**  
**Description of Case Studies**

	INEPAR	INFORMATICA	COOPNORD
Free choice to work at home	Yes	No	No
Family and child labour	Yes	No	No
legal protection	Yes	Yes	No
transfer to technological benefits	Yes	Yes	No
Specific working environment	No	Yes	Yes
Income increase for worker	Yes	Yes	Yes
Trade union presence in the company	Yes	No	No
Training by the company	Yes	Yes	Yes
Gender mix	No	Yes	No
Higher educational requirement for homeworkers	Yes	Yes	No

The *freedom to choose to work at home* is found only in the INEPAR company where workers may decide whether they wish to carry out their work at home or in the company. In the other two cases, this choice does not exist. The item *family and child labour* sought to determine the degree of involvement of the family members in subcontracted production. This occurs only in the case of INEPAR, where family members and neighbours are brought in to meet the client company's surplus demand. Increased flexibility means that non-declared assistants are used, that it is the homeworker who pays his/her occasional helpers himself/ herself. The *legal protection* item for homeworkers involves two companies, INEPAR and the computer company, both of which have clear wage-earning relationships, of an unambiguous nature, while the cooperative members assume the status of independents and must bear all the corresponding costs. Regulation in this connection certainly exists, but does not give the workers the advantages conferred to formal wage-earners who have direct links with the company.

*Transfer of technological benefits* refers to the exposure of homeworkers to equipment with more advanced technological content which would serve to train them for a more demanding job. Despite the immense technological disparity between the equipment used by INEPAR's homeworkers and that used by the computer company's employees, in both instances, the enterprise trained its staff in the use

of computerized equipment. This allows them to remain abreast of developments in the production process, to take an interest in the process and to keep up to date, although the level of training is very different in the two case studies (engineers, on the one hand, and workers with primary education on the other). In the case of COOPNORD, the sewers only used mechanical equipment, under a fairly traditional approach without interaction with other workers.

The *specific working environment* refers to the availability of fairly appropriate working conditions. This is absent only in the case of INEPAR. Nonetheless, from the conditions pertaining to remuneration and the manner in which homeworkers carry out their functions, it is apparent that the spin-off of the total quality programme is felt even in workers' homes, promoting a clean, well cared for and appropriate working environment (while this has previously been the case, such factors are certainly reinforced). The same would not appear to apply in the case of the cooperatives, where the premises are no more than precarious and ill-suited shelters - perhaps as precarious as the homes of the workers engaged.

In all three case studies, homeworkers considered that there has been a *wage increase*. In the cases of INEPAR and INFORMÁTICA, the relocation of production is considered to have brought about this improvement, generating benefits both for the company and for its employees. In the case of COOPNORD, this is generally the first manufacturing activity carried out by the members of the cooperative, most of whom are of rural origin. The *trade union presence in the company* exists only in INEPAR, where the nature of the activity and the size of the company are conducive to trade union activity. *Trained by the company* was present in all cases, although at very different levels and with very different ends. The *gender mix* was present only in INFORMÁTICA, suggesting that men are more inclined to engage in home work when highly trained workers are required, which is a novel development. Only in COONORD is the homeworkers' level of education of no consequence to the work process employed.

## 5. Conclusions

The current restructuring of production in Brazil is changing the traditional features of home work. Most striking is the process of segmentation of the home work labour market, reflecting the quest for greater flexibility in terms of hours and wages while reducing fixed costs and mobilizing labour in new ways.

The changes now occurring in home work because of global changes in production techniques will require a different profile for this category of workers. This paper documents the existence of forms of disguised employment with homeworkers subject to the same work relationships as wage-earning employees but without access to social benefits. From this point of view, subcontracted home work constitutes one of the most precarious and unprotected forms of employment in the labour market. Indeed, in many countries, this category is excluded from labour legislation or equivalent regulations. In Brazil, although its legal status is equivalent to that of the employee, in practice the reverse applies.

Two of the case studies described, INEPAR and a software micro-enterprise, demonstrate home work in production cooperatives, where it is not synonymous with precarious employment, spurious subcontracting or outright disregard of the law (as happens when exploitative practices are imposed upon workers). Instead, conditions of work and terms of employment are negotiated between the company and the home-based employee. The cooperatives constitute today's mobilization of labour, comparable to the great industrial revolution of the nineteenth century, with waves of rural workers leaving the countryside to engage in low-skilled factory work, and productivity based on intensified periods of work and the reduction of remuneration to workers without rights.

The link between home work and production cooperatives is that both function in a context of subcontracting and marked subordination to the contracting companies, which do not exercise direct control over workers, but establish deadlines and forms of remuneration.

Many of the footwear factories that moved to the North East and use the local production cooperatives had previously relied on subcontracted home work in their regions of origin. Historically, home work has been an intrinsic feature of production processes which combined agricultural activities with semi-manufacturing work in the Southern areas of the country, and resulted in home-based processing activities, carried out by family production units (peasant work between harvests, when family labour was idle). Conversely, in the North East, the division of work and the immobilization of labour by the large land holdings system hampered the development of small processing industries, downstream from agriculture but integrated in an expanding market. The situation that evolved was far more rudimentary and autarchical in nature because it was divorced from the industrialization process occurring outside the region. The upshot was that rural labour did not make the transition to manufacturing; only those who migrated to the Central-Southern regions of Brazil became part of the rapid urbanization process. Those who remained behind constituted an unfinished class of workers, as suggested by Francisco de Oliverira in *O Elo Perdido* (the lost link) - informal workers who moved between different categories of worker. Now this process is resuming, this time under the influence of global instead of national capitalism.

This new category of workers is emerging for labour-intensive industries but their skills fell short of requirements, even for the least exigent enterprises. Consequently, at the initiative of the public sector, cooperatives to bring workers together have been established. Once they have been selected to become factory workers, and given minimal training by the government, they are organized as independent workers, in premises that are neither their home or a factory.

Why not work at home? Given their inadequate skills, these workers would not meet the conditions required to perform job tasks. Why not work at the factory as an employee? Because paying wages is no longer suited to the new strategies of adding value. Hence, the worker of the North East, whose land was expropriated in the 1960s but who did not become, as a result, a worker for capital is today completing the transition, at a time of renewed capitalist expansion, under the auspices of flexible accumulation. To paraphrase Oliveira, the cooperatives are the missing link in the chain.

The issue is not so much being a home worker as the way home work is being used in bichotomic growth strategies. Home work is present in fact in what is referred to in economic literature (particularly OECD) as the “high road” of growth and development (which is right-thinking in that it boosts productivity on a foundation of better jobs, upgrade of labour, better quality products, thus enhancing the competitiveness not only of the company but also of the producer country), as well as the “low road” of growth (which mobilizes the traditional factors involving low skills and precarious, low-quality jobs to produce uncompetitive goods of which low price is the only positive factor). This divergence in the choice of growth strategy dictates the increasingly polysemic nature of the social standing of the home worker.

Consequently, home work cannot be treated as an employment relationship in itself, as it may assume different forms, including a) salaried employment, b) civil contracts governing subcontracting and c) “borderline” cases which can only be interpreted by a court. Thus, it becomes difficult to regulate because its sole defining characteristic as a social category is the location of production, without any clear reference to an established employment category deserving specific legislation.

The protection of homeworkers should be guaranteed not only through specific legislation but also in the context of collective bargaining, where they would be covered by special productivity clauses relating to job security, etc. In some companies in Brazil, this already applies, for instance, to commercial representatives and salespersons in Dupont,<sup>59</sup> who spend only one-fifth of their working day *in loco* in the company, dividing the four-fifths remaining between the *home office* (2/5 at home or in the car; and 2/5 on client visits). The company installed the equipment necessary, without cost to the sales staff, with the objective of ensuring smooth communication between the firm and its representatives and between representatives and clients.

Special regulations that already exist for particular categories of wage-earners would no doubt have to be taken as a reference and then extended to provide adequate coverage to other types of workers. The easiest way of guaranteeing home workers benefits - if not identical, then at least equivalent to those enjoyed by in-factory employees - would be for trade unions to recognize the category of homeworkers in negotiations with client companies and to give them a stronger position in workers’ organizations.

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<sup>59</sup>Since 1995, Dupont of Brazil has extended debate on home work and its importance for the company. In the sales sector, in particular, much progress has been made. Individual spaces have been replaced by collective spaces providing similarly collective equipment in the form of terminals. These are business units. Personal computers and other communication equipment is confined to the homes of the sales representatives. Such changes occurred after downsizing, which increased the multifunctional approach but without any corresponding pay increase.

A third novel aspect to highlight here is the increase of homeworking in the services sector, utilizing computerized equipment, involving design processes and the planning and installation of sophisticated products, as exemplified by systems programmers. The engagement of highly qualified sectors of labour in homeworking may have two positive repercussions. A rise in the status of this type of work which, in the new context, would become associated with workers whose qualifications are valued on the labour market; it could also be expected that, as a result of the introduction of innovations, the forms and scope of negotiation between clients and suppliers would expand. Such changes in the social status of homeworkers, who have so far been associated solely with the least qualified and most unprotected sectors of the labour market, may have a particularly positive effect on enhancing the social image of this form of employment.

There is no doubt that the positive perception of home work reported by men working in activities connected with computerization of services suggests the existence of an “affinity of choice” in changes in male models, especially among the urban middle-level class in Brazil. Home work emerges as a new, especially highly attractive employment alternative. The rigid separation between the public and private space as one of the pillars in the construction of gender identities has recently been weakened to the extent that men are increasingly prepared to take on work that is home-based. This change in cultural models has altered the traditional perception of home work as “women’s work”, on account of the social and gender division of labour whereby the family morality was safeguarded by confining women to the household. Research has shown that, when undertaken by men, home work acquires a positive image based on the notion of quality of life and response to the stress imposed on citizens by modern and urban life. Other arguments in favour of this modality of work relate to the desire to be closer to the family, which suggests new areas of research on the ensuing effects on the division of domestic chores between the sexes.

In addition, how ISO 9000 considers homeworkers, and subcontracted workers in general as being inherent to the company’s performance, could also entail improvements in their conditions of work, a situation clearly demonstrated by one of the case studies presented.

This research has ascertained that home work is changing substantially. Its elements comprise different labour relations, including salaried employment, wage employment paid on a piece-work basis, civil contracts between firms, etc. It is extending into different sectors of the economy, such as new branches of manufacturing and services; and it displays substantial disparities in earnings in its heterogeneous labour force, ranging from unskilled labourers who have not completed primary education to workers who have post-graduate degrees. The nature of the work carried out also varies widely, as it embraces both the most repetitive tasks, such as assembling parts, as well as creative assignments, such as designing sophisticated software, which affects the degree of workers’ autonomy vis-à-vis the employer. The share of male homeworkers is also increasing with obvious implications for the evolving social status of home work.

Changes in the profile of home work should be viewed in the context of global changes in production systems, in technologies, in international competitiveness, in a growing labour flexibility, and cultural changes in expectations on quality of life, a more critical and selective use of urban space, new attitudes to the family/domestic space and changes in gender relations.

## **6. Recommendations**

### **6.1 Legislation and standards**

The debate on the qualitative changes affecting homeworking within the economic order should be encouraged among lawmakers in Brazil. Discussions should be based on wide-ranging, reliable research and international experiences, both in terms of praxis and of standard-setting.

Support for ILO standards should be clearly stated in situations of disguised wage employment where the most disadvantaged categories of homeworkers are engaged.

- Different forms of employment and contractual arrangements including traditional wage-earning should be recognized and protected as well as other modalities not yet protected by law. This will have positive effects on the situation of homeworkers whose level of protection varies at present.
- In light of the fact that it is in the interests of many companies to locate their activities (through mutual agreement) in the homes of their employees, collective bargaining should include homeworkers and provide for their specific protection, rights and duties, in order to ensure that there is no ambiguity with regard to their status and that no abusive advantage is taken of this relationship.
- The institutionalization of “service contracts” should be encouraged, under civil law as opposed to labour law, with the objective of a fairer distribution of the risks and benefits associated with the exchange between service providers and their clients. As a result, the situation of a sizeable proportion of precarious independent workers would be formalized (and when they consider that a non-formalized relationship is detrimental to them, they can report it *a posteriori*).

### **6.2 A statistical data system**

- Research on the characteristics of the labour force should include questions regarding the premises in which a company’s employees effectively carry out their activities, regardless of the employment relationship in question, with a view to identifying home-based work;
- economic surveys by enterprises should enquire into the sum spent each year on home work, particularly in the industry and services sectors;
- clear methodological criteria should be defined to facilitate research into subcontracting relationships, both in household surveys and in enterprise surveys. In Brazil, these criteria should be agreed between the various departments of the IBGE (different home surveys, national accounts) and other institutions such as the Seade Foundation or Dieese, in order to forestall the appearance of competing methodologies which do more to confuse than to clarify. Since it is almost impossible to gauge the extent of this activity at the present time, household survey questionnaires should include relevant questions to facilitate identification of the different forms of home work;

- sectoral case studies should be encouraged, involving partners such as universities, with a view to ascertaining which parts of the production process are being transferred to the homes of employees.

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