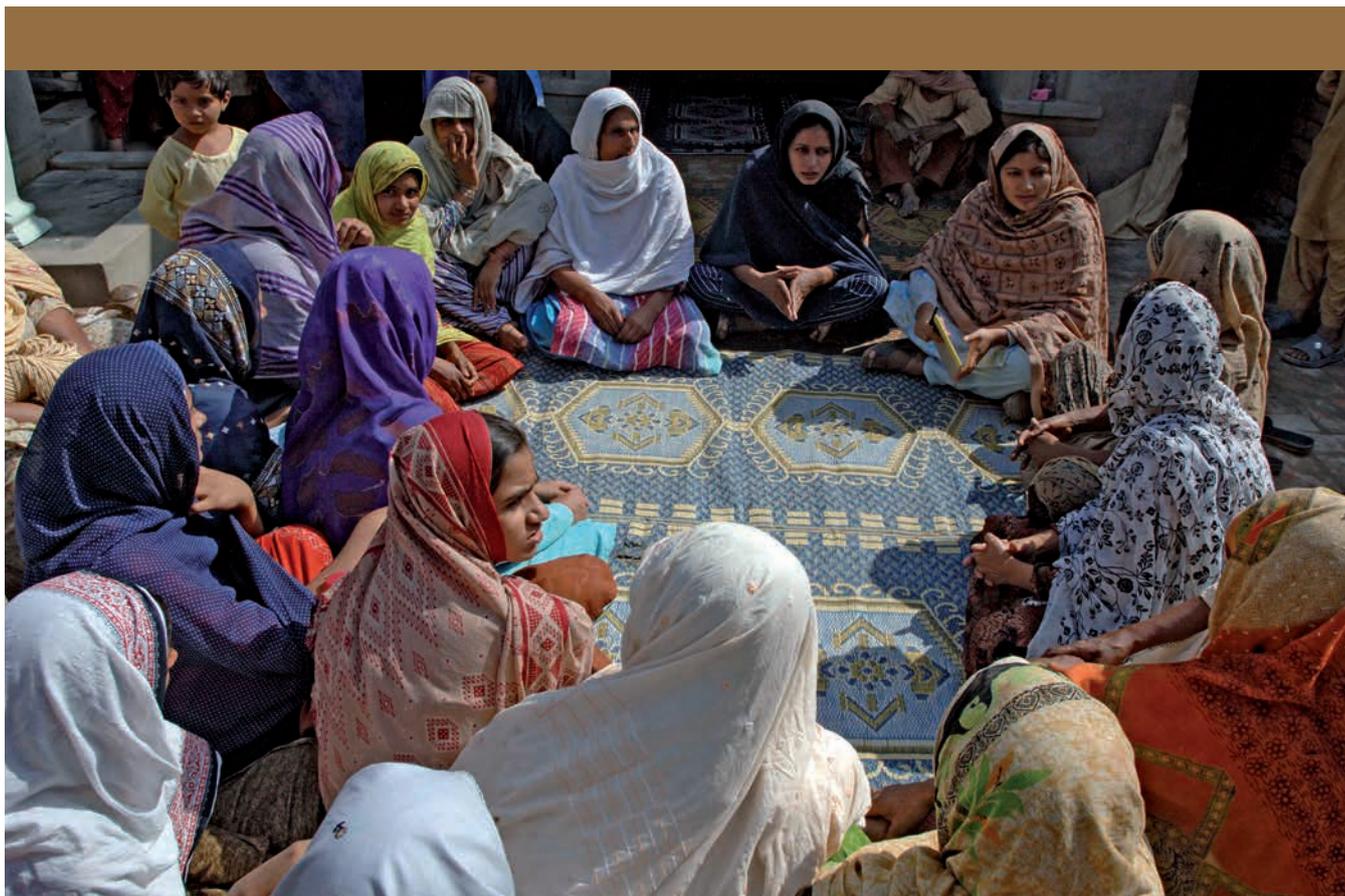




International
Labour
Office
Geneva

The Regulatory Framework and the Informal Economy

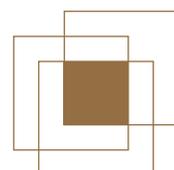


Women producers in a cooperative, Pakistan.

Specific Groups

4.b2 HOMEWORKERS: REDUCING VULNERABILITIES THROUGH EXTENDING AND APPLYING THE LAW

■ Like domestic workers, home workers are amongst the most marginalized categories of workers in the informal economy. Regulating home work is certainly challenging - the complications that may surround the identification of the employer, the fact that homeworking may be at the bottom of a complex supply chain; that it is not carried out on employers' premises; that it is difficult to inspect; and that it is often carried out by vulnerable migrant workers, are part of the difficulties faced by policy makers. The good practices described here show how various countries are finding solutions, tailored to their context, to improve the situation work amongst home workers.



KEY CHALLENGES

- Home work and informality
- Poor regulation
- Identifying the employment relationship
- Understanding the particularities of home work
- Transposing ILO Convention on Homework, 1996 (No.177) into domestic law
- Adopting codes of practice

■ **Home work and informality.** Along with domestic work, home work is one of the most vulnerable and lowest paid types of work, with some of the poorest working conditions within the informal economy. The majority of these home workers are women¹ – including female migrants² – often helped by children³. They may sometimes be undeclared migrants and can be vulnerable to abuse (see brief on Undeclared Work). These home workers absorb many of the production costs and risks normally assumed by the employer. They are often paid a piecework rate and their work is irregular which means that they may not have any income stability. As home work takes place in the private domestic sphere, it is invisible and difficult to access. As a result, home workers have little access to unions – and/or no legal rights to form part of a union –, they may be the victims of fraud, of bad safety and health conditions, and labour inspection, when applicable, is difficult (see brief on Labour Inspection). The fact that homeworkers are confined to their homes, and because of their lack of access to resources (such as training, education, credit) and information, their situation is difficult to improve.⁴

■ **Poor regulation.** Home work is either explicitly or implicitly included in general national labour laws, although it may be excluded from certain provisions or covered by a specific law. Only a few countries do not regard homeworkers as employees and classify them as self-employed.⁵ In general, it has been noted that the problem is not that home work is unregulated or under-regulated – indeed, in some instances, it is highly regulated – but rather the fact that *legislation is not applied in practice*,⁶ which is what makes home work informal. Efforts to implement the law have been put in place and the problem has been tackled by new laws, information campaign and trade unions' action, although their impact has been limited so far.⁷

Many of the challenges observed with regards to domestic workers, for example, are also observable in relation to homeworkers, as both types of workers work within the house: they are difficult to access, their working conditions are often considered poor, unionism is low and labour inspection is very difficult (See brief on Domestic Workers).

What is Home Work?

Home work⁸ can take a number of forms. It can encompass highly-skilled and highly-paid professionals employed formally through to casual vulnerable informal workers who work in poor conditions, although it should be noted that there exist various degrees of homeworkers vulnerability.⁹ Home work generally distinguishes itself from other types of work by the fact that work is not carried out on employers' premises but in a home, or a place that the worker chooses. It is not directly supervised but there is a relationship of paid employment between the worker and the employer, subcontractor, or intermediary.¹⁰ Although home work has always existed, it decreased

8 Also referred to as outwork or home-based work.

9 See Doane, 2007, pp.4-5. This stems from the fact that, for example, some are organised, others are not, some are able to change their products upon demand, others are not.

10 Huws, U.; S. Podro 1995, p.5.

1 See ILO, 2002, p.12, p.48 and Chen, Sebstad and O'Connell, 1999, p.606.

2 See Nossar, Johnstone and Quinlan, 2004, p.143, for the case of Australia.

3 For more information see Resources section to access: ETI, Homeworker Guidelines

4 Doane, 2007, p.5 and 9.

5 Vega Ruiz, 1992, p.199 and 1996, p.32.

6 Ibid. p.214.

7 Ibid.

● Identifying the employment relationship can be very difficult in home work, particularly since homeworkers may be part of a hierarchically organised industry and can find themselves at the very end of the supply chain

in industrialised countries during the 20th century. While the exact number of home workers is of course difficult to determine, home working is nowadays said to be on the increase all over the world and is predominant in key industries. This can be explained by a combination of shrinking formal employment opportunities attributed to deregulation, the restructuring of production, competitive pressures leading to increased outsourcing and subcontracting, and the spread of information technology that allows e-working or teleworking.¹¹

11 Burchielli, Buttigieg and Delaney, 2008, p.168. Teleworking will not be dealt with here.

● Policies and laws need to take into account the particularities of home work

■ **Identifying the employment relationship.** A particular difficulty associated with homeworking concerns identifying the employment relationship (see also the brief on the Employment Relationship). In many cases, homeworkers are part of a hierarchically organised industry and can find themselves at the very end of the supply chain. Small operators can disguise an employment relationship in order to designate home work as independent work, while enterprises at the top of the supply chain may do so in order to limit their responsibility.¹²

More generally:

- The *employer is often not easy to identify* as he or she may be hidden in a complex web of contracting and subcontracting, or there may very well be various employers.
- Many situations are *ambiguous* and home workers are not always easily distinguishable from other categories of workers: a homeworker who may hand out work to other homeworkers and is at the same time a homeworker and a subcontractor, for example, while an unpaid family member who helps the homeworker may not have any relationship with the employer.¹³
- Most of the time, homeworkers are *not in a continuous employment relationship* which may make the identification of the relationship more difficult.
- Homeworkers often find themselves in a *disguised employment relationship* – they are considered self-employed when in fact they are dependant workers, or their dependant status is not recorded. In order to bear minimum costs, the employer is sometimes purposely not identifiable, or the worker is “forced” into declaring him or herself as self-employed in order to obtain work. This adds a clear challenge when tackling legislation concerning home work.

Because home workers are numerous in certain industries and work is limited, they generally have very little bargaining power. The intermediary sets their working conditions, but as they suffer themselves from strong competition and their sole comparative advantage is often based on being able to offer the lowest price, these conditions tend to be inadequate.¹⁴ Many self-help or government led initiatives help attenuate the consequences of this state of affairs, and are thus necessary, but efforts need to be made to make employers at the top end of production chains responsible for the social protection and working conditions of the workers involved in the products or services that they are offering. *Homework Recommendation 1996 (No. 184)* incorporates this principle: it is not only the contractor but also the lead firm that is responsible for protecting the rights of homeworkers. Implementing this is obviously not an easy task, however, especially considering the particularities of home work.

■ **Understanding the particularities of home work.** It is important to consider and define homeworkers as workers but to recognise as well the particularities of their work. When countries do consider home workers just like any other employee, it can create legal vacuums which then need to be dealt with in courts.¹⁵ This is more often than not time consuming, expensive, intimidating, and uncertain. It is advisable to deal with some aspects of home work that may give rise to problem in practice in separate legislative provisions.

12 See for example Rawling, 2006, p.523.

13 Huws, U.; S. Podro, 1995, p.6.

14 Rawling, 2006, p.525.

15 Vega Ruiz, 1996, p.6.

ILO Home Work Convention, 1996, (No. 177) :

Many ILO conventions apply to all workers and are therefore applicable to home workers as well.¹⁶ Specific instruments were adopted in 1996, however, when the ILC adopted the Home work Convention (No. 177), and its accompanying recommendation (No. 184). This convention is particularly significant as it is seen by many as the first ILO Convention specifically targeting a group within the informal economy (see Box 1). Convention No. 177 was adopted with difficulty, however,¹⁷ and very few States have ratified it (only 6 in August 2009 – 5 European States and one Latin American State).

Convention No. 177 calls for a national policy to promote equality of treatment between homeworkers and other wage earners “taking into account the special characteristics of homework”. It defines home work as work carried out for remuneration by a person, the homemaker, in his or her home or in other premises of his or her choice, other than the workplace of the employer which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used. The term employer means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity. When the use of an intermediary is allowed, the respective responsibilities of employers and intermediaries must be determined by laws and regulations or by court decisions.

*For the full text of the convention see Home Work Convention, 1996 (no.177)
<http://www.ilo.org/ilolex/english/convdisp2.htm>*

■ **Transposing ILO Convention on Home work, 1996 (No. 177) into domestic law.** The prescriptions of Convention No. 177 are an attempt to suggest broad actions in order to regulate home work, and may serve as an example for non-ratifying States of action to take in this field. Evidently, it is difficult to implement rules concerning working hours to home work, as home work is by definition not supervised. Nevertheless, the Recommendation No. 184 that accompanies Convention 177 states that “a deadline to complete a work assignment should not deprive a homemaker of the possibility to have daily and weekly rest comparable to that enjoyed by other workers” (Paragraph 23). With regards to health and safety, the obligations of the employer are not the same as if workers worked in his or her enterprise as s/he does not have any direct control on the worker’s workplace. However, Convention No. 177 states that general legislation on safety and health at work applies to home work, taking account of its special characteristics, and has to establish conditions under which certain types of work and the use of certain substances are prohibited in home work for reasons of safety and health. Finally, as regard to remuneration, homeworkers often earn less than the minimum wage, partly because much of their work is piece work.

¹⁶ See Servais, 2008, Paras.731-732. See as well the brief on international labour standards and the informal economy.

¹⁷ Indeed, the Director-General pointed out that it was the first time in the history of the ILO that a group (the employers) had decided not to take part in the drafting of an instrument (ILO, 1996, Reply of the Director-General to the discussion of his Report, Record of Proceedings, ILC, p.221).

● Codes of practice which can improve working conditions in the global supply chain are often unable to reach the most casualized workers further down the chain

● Employment in private homes presents particular difficulties for labour inspection

■ **Adopting codes of practice.** Along with legislation, there has been a growing reliance on Codes of practice to influence employers in affording better working conditions to homeworkers in global supply chains. Although an essential part of regulation, it should be pointed out, however, that the impact of Codes of practice is often only partial and while they have some influence with intermediaries and suppliers, it has been noted that they do not necessarily “reach the more casualised sections of the workforce located lower down the value chain”.¹⁸

■ **The difficulties of labour inspection.** A final difficulty regarding the application of the law to homeworkers relates to labour inspection (see brief on labour inspection). Inspection is of course difficult when the private home is concerned. Recommendation No. 184 insists in this regard that labour inspectors should be allowed entry “in so far as it is compatible with national law and practice concerning respect for privacy”. To facilitate inspection, the Recommendation states that employers should keep a register of all homeworkers with details about their work and remuneration. The State cannot easily control home work, however, since it may involve undeclared activities to evade contributions and taxes, or disguised activities.¹⁹

18 See Kabeer, 2008, p.279.

19 Daza, 2005, p.39.



Man making Beedi cigarettes at home, Mangalore, India.

EMERGING APPROACHES AND GOOD PRACTICES

- Establishing in legislation that homeworkers are employees
- Adopting specific legislation on homework
- Providing for situations where the employer is not identifiable
- Adopting codes of practice
- Establishing joint responsibility of the contractor and the principle employer

Homework represents a particularly challenging set of problems for policy makers, because of its diversity, and “because it stands at the intersection of a complex network of social, economic and legal factors”.²⁰ Any attempt to tackle one issue will have repercussions on the other.

It should be noted, however, that homework is certainly not an unregulated domain,²¹ and numerous legislative responses have emerged, or are continuing to emerge, in order to address some of the complexities and ambiguities characteristic of home work. These include:

A number of countries such as Marocco, Chile, Belgium, Finland, France and New Zealand, have developed legislation to establish home workers as employees

■ **Establishing in legislation that homeworkers are employees** In its 2001 reform of the Labour Code, Chile established that home work which is neither discontinuous nor sporadic is presumed to be employment. In Finland the Employment Contracts Act expressly states that its application is not prevented by the fact that work is performed at an employee’s home. Similarly in New Zealand the Employment Relations Act, No. 24 of 2000 specifically includes homeworkers as employees, even if engaged, employed or contracted under a form of contract whereby the parties are technically a vendor and a purchaser.²²

Belgium adopted an Act on Home Work in 1996 which extends the scope of application of the Act on Employment Contracts, 3 July 1978, to include home workers by establishing two criteria to distinguish the employment contract of home workers from a standard employment contract: (i) work is being performed from home or any other place chosen by the worker, and (ii) there is no direct control or supervision of the worker.²³

Through its Labour Code, France has also extended employee status to certain workers who might otherwise be regarded as independent workers because of the condition in which they work. These include homeworker, journalists and performers. In Morocco, the new labour code of 2004 extends its scope to homeworkers, precluding them from being classed as independent workers.

20 Huws and Podro, 1995, p.1.

21 Vega Ruiz, 1996.

22 For more details see Resources section to access: The Employment Relationship: An annotated guide to ILO Recommendation No. 198 See generally, ILO, 2008.

23 Ibid. pp.6-7.

■ **Adopting specific legislation on home workers.** Some countries have developed particular laws on homework. Austria, Czech Republic and Sweden for example have all adopted legislation regulating the working conditions of homeworkers, which include provisions for occupational safety and health protection.²⁴

■ **Providing for the situation where the employer is not identifiable.** India has made inroads in developing welfare funds for specific categories of informal economy workers. The majority of beedi workers in India work from home. The Beedi Workers Welfare Fund Act, 1976, provides for the imposition of a tax on the end product of homeworking manufacturing, which is then paid to a welfare fund providing health care, life insurance, maternity allowance, loans for housing, education, recreation and family welfare facilities for homeworking bidi workers and their families. The resources are raised by the Government and the delivery of welfare services is not linked to individual worker's contribution. The welfare fund is administered by the Ministry of Labour. Although a good initiative, this Act suffers from lack of implementation partly because many companies have now closed and operate through contractors and worker are not informed of their rights.

India has developed welfare funds through taxation of the sector, where the employer is not readily identifiable

■ **Adopting Codes of practice.** Codes of practice are another avenue for affording better regulation and recognition for homeworkers. In Australia, the Homeworkers' Code of Practice Program aims at raising public awareness and improving the working conditions of the 330,000 homeworkers that are said to be employed in the textile, clothing and footwear industry. Many of these earn less than \$4 an hour and work up to seven days a week, and the Code aims to ensure that minimum legal wages and standards are met for homeworkers. This system ensures that accredited business take responsibility for their own behaviour, but also stay informed of how its sub-contractors operate. According to the Australian Government, this Code provides a monitoring system that records and reports "what is being made, where it is being made, who is making it, and what rates and conditions the workers receive".²⁵

Australia has developed a Code of Practice to improve working conditions and generate better awareness of the specificities of home work

■ **Establishing the joint responsibility of the contractor and the principle employer.** In some cases there have been attempts made to address the difficulties involved in penetrating complex layers of subcontracting which obscure employer responsibility. In India for example the Contract Labour Act, the Bidi and Cigar Workers Act and the Inter-State Migrants Act provide that both the principal employer and contractor who recruits workers or out-source production are "jointly and severally responsible" for complying with labour legislation.²⁶

India has developed legislation which establishes the joint responsibility of the contractor and the principle employer

24 For more details see Resources section to access: ILO, Report III(1B), 2009, Para.40.

25 For more details see: <http://www1.umn.edu/humanrts/links/homeworkers.html>

26 For more details see Resources section to access: ILO, 2002, Report VI, Decent Work and the Informal Economy p.50, footnote 21.



Dressmaker, Chengdu, China.

This section provides a list of resources which can enable the reader to delve deeper into the issue. Details of the good practices cited above can be accessed here. The section comprises international instruments, International Labour Conference conclusions, relevant publications and training tools. A bibliography of references in the text is further below. There may be some overlap between the two.

ILO and UN Instruments and ILC Conference conclusions

Home work Convention, 1996, No. 177

<http://www.ilo.org/ilolex/english/convdisp1.htm>

Home work Recommendation, 1996, No. 184

<http://www.ilo.org/ilolex/english/recdisp1.htm>

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ILO, 2009. Report III(1B), General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, ILC, 98th Session, Geneva.

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Relevant Publications

Chen, M.; J. Sebstad; L. O'Connell. 1999. "Counting the Invisible Workforce: The Case of Homebased Workers", in *World Development*, Vol.27, No.3, pp.603-610.

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ILO 2002. Report VI, Decent Work and the Informal Economy, ILC, 90th Session, (Geneva)

<http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf>

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Tools

Ethical Trading Initiative (ETI). ETI homeworker guidelines: recommendations for working with homeworkers.

<http://www.ethicaltrade.org/sites/default/files/resources/ETI%20Homeworker%20guidelines,%20ENG.pdf>

ILO 2008. The Employment Relationship: An annotated guide to ILO Recommendation No. 198, (Geneva).

<http://www.ilo.org/public/english/dialogue/ifpdial/downloads/guide-rec198.pdf>

For further information see the ILO's International Labour Standards Department's website <http://www.ilo.org/global/standards/lang--en/index.htm>

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