



## HomeNet International's C177 and Decent Work Campaign A Campaign and Advocacy Toolkit

# MODULE FOUR

## LEGAL AND POLICY LANDSCAPE

Different countries have different legal frameworks. This means you have to find out how your own system is structured and how it works if you want change. In this module we look at the different elements of a legal and policy framework you need to consider.



## Module Four

### Legal and Policy Landscape



*In this module we look at:*

- *Contextual factors to think about while advocating for C177, laws and policies*

*Who will find it useful?*

- *Leaders who want a framework to explore how their country's legal system works*

When advocating for laws and policies to gain rights and improve protections for home-based workers in your country, you first need to understand the legal and policy landscape: the systems, labour laws and policies applicable to employees (which should include homeworkers); and those policy areas that could potentially assist self-employed home-based workers not covered by C177 or labour laws. In this module we provide a brief overview of legal systems and laws in different countries.

In Module Two we provide tools to help you do your own research. These include questions to help you understand how your country's labour laws compare with the provisions of C177 and to guide you in developing policy proposals. The tools are reproduced for your convenience at the end of this module.

## 1. International Overview: Laws and Policies

Since the adoption of C177 and R184 by the ILO in 1996, few countries have ratified and translated these ILO instruments into their labour laws. Some countries have extended their labour laws to include homeworkers, or they have enacted laws and policies for homeworkers without ratifying C177.

### Ratifications and Laws for Homeworkers

<p><b>Countries that have ratified C177</b></p>	<p>Albania Belgium Finland Slovenia Tajikistan</p>	<p>Antigua and Barbuda Bosnia and Herzegovina Ireland North Macedonia Argentina</p>	<p>Bulgaria Netherlands Spain</p>
<p><b>Countries that haven't ratified C177 but have some specific law or policy on homework</b></p>	<p>Pakistan Australia</p>	<p>Thailand Morocco</p>	<p>Philippines Italy</p>

## 2. Contextualizing Law and Policy Reform Efforts

It is important that your advocacy responds to the legal and policy context of your country. Below, we discuss some of the legal factors shaping that context and provide examples.

### Which Legal System?

A country's overall legal system provides a framework for adopting, interpreting, and enforcing its laws. Countries have different legal systems. You will need to understand how your legal system works, how laws and policies are made (the processes), who is involved and where power and authority lie.

### What does this Mean for Advocacy?

The legal system will influence whether you propose a new law or propose amendments to an existing one. It will help you decide whether or not it is best to propose a broad national policy for homeworkers or to focus on some limited policy aspects you are more likely to win.

### Which Level?

Some countries, especially those with a federal structure, have decentralized the power to make laws, policies or regulations on different subjects to state, provincial or regional levels.

## What does this Mean for Advocacy?

Knowing which level of government has responsibility for labour or other relevant issues will help identify where your advocacy efforts should be concentrated. For instance, in Pakistan, labour and employment were devolved to provinces in 2010. This meant that home-based workers needed to advocate for policy and laws at the provincial level.

### Lesson: Engage with the right arm and level of government

- **Pakistan:** provincial governments pass labour laws.
- **Bulgaria, Thailand, Argentina, Australia:** labour law is adopted by national legislatures.
- **Argentina:** municipal regulations apply to workplace requirements affecting HBWs

## Which Legal Instrument?

C177 states that a national policy on home work must be implemented through *"laws and regulations, collective agreements, arbitration awards or in any other appropriate manner consistent with national practice"*. There are different types of legal instruments. Each has a different status and a different process for enacting, implementing, and enforcing them.

**Legislation:** Also called statutes, these are laws enacted by elected representatives, for example by parliament. Legislation is one of the strongest forms of legal protection. The state can enforce it and impose sanctions against those who break the law. Homeworkers may be covered by legislation in different ways:

- **Inclusion in general labour laws:** Here homeworkers are classified as employees, entitled to the same individual and collective labour rights as any other worker. Simultaneously, employers include subcontractors and contractors with joint and several liability. The Philippines is a good example of how to do this.
- **Sector or occupation specific laws:** These ensure that sector-specific concerns can be addressed in the legislation, making it possible to extend protections to homeworkers whether or not they are classified as employees.
- **Supply chain-specific laws:** These aim to make all parts of the supply chain transparent for and accountable to homeworkers. This is done by extending responsibilities, and liability, to contractors, employers and brands up the supply chain.

Australia is one of the few countries that has supply chain-specific laws that apply to outworkers (homeworkers). It also includes outworkers in the sector-specific law for Textile, Clothing and Footwear workers.

It is usually a long process to get legislation enacted or reformed. It passes through several steps and needs a majority vote, usually in parliament or equivalent. In some countries, such as the Philippines, it is passed by presidential decree. The process towards ratification of C177 also tends to be lengthy. While there are five common steps, as illustrated in the diagram below, each country follows its own detailed process. Patience and persistent advocacy are needed!

- 2. Consultation with Representative Organizations** The competent national authority should consult with the most representative organizations of employers and workers on the findings of the gap analysis. This consultation can be done through an existing national tripartite body or a special tripartite body set up. During this consultation, the parties should agree on a roadmap of ratification.
- 3. National Constitutional Requirements** Countries follow their constitutional provisions on ratification dedicated to international treaties. This could be an endorsement by the legislative assembly or parliament followed by authorization by the head of state or government.

- 1. Analysis of national law and practice** Prior to ratification, governments may carry out a gap analysis to compare C177 with the provisions of national laws, regulations and practice. Based on the gap analysis, governments may prepare a work plan or road map of action needed.
- 4. Transmission of instrument of ratification** Once the document is signed, it is communicated to the ILO Director General for registration and to be sent to ILO member states and the UN Secretary General. The ratification comes into force 12 months after the registration.
- 5. Follow-up and reporting** Once the ratification is done, countries should ensure that the Convention is applied in their national laws and practice. Countries also come under the ILO Supervisory system, which sees to it that the Convention is being applied. A report has to be sent to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) a year after the Convention is in force and every six years after that. When writing reports on ratified conventions, governments must consult employers and workers' organizations and include their observations in the report.

**Ratification  
Process for  
C177**

See also Bulgaria, Thailand and Pakistan Case Studies for examples of law and C177 processes.

**Regulations:** These are rules issued by government departments or administrative authorities, authorized by a statute. They give more details for implementing a law or regulating matters in a government department or authority. Regulations are implemented at different levels of government, including at local government level. They usually do not have the status of a law, so they can be changed by an administrator.

**Government Policies:** These are sets of principles or guidelines issued by the government. They are generally not binding and cannot be brought before a court for enforcement. But they guide the work of different levels of government. Policies can also be useful as a starting point for legislation. For instance, in Pakistan, there was a provincial policy for homeworkers before the legislation was enacted.

**Agreements:** These are mutually agreed between two or more parties. They are meant to be binding and legally enforceable through a court. Collective bargaining agreements on wages and working conditions are usually negotiated between trade unions and employers or employers' associations. Trade unions, employers and governments reach agreements in tripartite forums. It is important to note that home-based workers – and other workers in the informal economy who are not employees and who may be organized into associations rather than trade unions – are demanding the right to collective bargaining or collective negotiations with decision makers, most often governments at different levels.

### **What does this Mean for Advocacy?**

Your decision on the type of instrument you want to propose will depend a lot on the legal framework and the political situation in your country. You will need to ask: What is most likely to lead to success? What opportunities and challenges are there for mobilizing support, building alliances and engaging with the different decision makers? Ratification of C177, with related and improved changes to the law, or changes to the law even without C177 ratification, will provide the strongest rights and protections for homeworkers. For self-employed home-based workers, a national policy or a policy on a specific issue may be the best option.



A home-based worker from Laikipia, Kenya, crafting a beaded wristband. Photo credit: Alta Volare.

## Examples of Different Types of Law and Policy Reform

Country	Instrument	Change?	Details
<b>Australia</b>	Legislation	Supply chain-specific amendment to labour law	The Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 amended the Fair Wage Act to include homeworkers.
<b>Pakistan</b>	Policy followed by Legislation	New legislation for homeworkers and subsequent amendments to labour laws	In Pakistan, there are provincial laws for homeworkers. In 2018, Sindh was the first province to pass the Home-Based Workers Act. Three other provinces then enacted similar legislation.
<b>Philippines</b>	Legislation & Regulation	Inclusion in Labour Code (since inception) and new regulation for homeworkers to give effect to the sections on homework in the Labour Code.	Homeworkers were included in the Labour Code 1974. Following advocacy, in 1992, the Department of Labour and Employment issued a regulation that details homeworkers' rights, such as registration requirements and dispute mechanisms.
<b>Thailand</b>	Legislation:	New legislation specific to homeworkers	Home Workers Protection Act B.E.2553 was enacted in 2010 and came into force in 2011.
<b>Bulgaria</b>	Legislation	C177 Ratification Amendment: Labour Code	Labour Code was amended in 2010 to include rights for homeworkers. However, the rights are limited to employees who move to working at home. This was in contravention of the National Agreement on the Regulation of Home-based Work among government, trade unions and homeworkers.
<b>Morocco</b>	Legislation	Existing labour law	Labour Code 2004

We have looked at some of the key elements in the legal and policy landscape that should be taken into account when planning for your campaign and advocacy. There are others such as the organizational environment, relationship of home-based workers with trade unions, the political and governance structure in the country (see Module Two for assessment tools and below for tools for assessing your country legal framework). We have also included some examples for you to draw on in making your arguments. The next module examines important issues that need to change for home-based workers to achieve decent work. It looks at different legal and policy frameworks that you can use when developing advocacy proposals.

### Useful Resources

Von Broembsen, Marlese, and Jenna Harvey. 2019. *Decent work for homeworkers in global supply chains: Existing and potential mechanisms for worker-centred governance*. No. 54. Global Labour University Working Paper.

[https://global-labour-university.org/wp-content/uploads/2022/03/GLU\\_WP\\_No.54.pdf](https://global-labour-university.org/wp-content/uploads/2022/03/GLU_WP_No.54.pdf)



A seamstress from Buenos Aires, Argentina, working at the Sewing And Garment Workers Cooperative Federation's workshop. Photo credit: Eduardo Derrico.

## Tools for Assessing your Country Legal Framework (reproduced from Module Two)

### Legal & Policy Checklist #1 – C177 and National Laws

Compare the articles in C177 with the legal framework in your country. Then identify the gaps. This is important if your campaign is for ratification of C177 and labour law reform. Use the guiding questions to help your assessment.

Guiding Questions	Article in C177	Provision in your National Laws	Gaps Identified/ Comments
<p><b>1. Definition of homework and employer</b></p> <ul style="list-style-type: none"> <li>Does the definition include home or premises of the homeworke’s choice (other than the workplace of the employer)?</li> <li>Are employers who either directly or indirectly employ homeworkers included as an employer?</li> </ul>			
<p><b>2. Wages &amp; piece rates</b></p> <ul style="list-style-type: none"> <li>Is there equality of treatment between homeworkers and other wage earners?</li> <li>Are piece rates/wages earned by homeworkers equal to other wage earners such as factory workers?</li> </ul>			
<p><b>3. Formation of organization</b></p> <ul style="list-style-type: none"> <li>Can homeworkers form an organization of their choosing?</li> <li>Do they have the right to bargain collectively?</li> </ul>			
<p><b>4. Statutory social protection</b></p> <ul style="list-style-type: none"> <li>Do employers have to contribute to social security?</li> </ul>			
<p><b>5. Maternity protection</b></p> <ul style="list-style-type: none"> <li>Do homeworkers have maternity protection?</li> <li>Is there equality of treatment between homeworkers and others?</li> </ul>			
<p><b>6. Statistics</b></p> <ul style="list-style-type: none"> <li>Are homeworkers included in labour statistics?</li> </ul>			
<p><b>7. Right to inspect</b></p> <ul style="list-style-type: none"> <li>Do labour officers have a right to inspect the workplaces of homeworkers or their employers?</li> </ul>			
<p><b>8. Remedies and penalties</b></p> <ul style="list-style-type: none"> <li>Are there remedies available for homeworkers in case laws and regulations are broken?</li> <li>Does this include penalties?</li> </ul>			

## Legal & Policy Checklist #2 – Developing your National Policy Framework

The guiding questions will help you frame your proposals for policies or guidelines for home-based workers or agreements with employers. These questions draw primarily from Recommendation 184 and national policies.

Theme	Guiding Questions	For
<b>Employer-employee relationship</b>	<ul style="list-style-type: none"> <li>• Are homes or places of homeworkers' choice (other than the employer's workplace) defined as workplaces?</li> <li>• Are homeworkers defined as employees?</li> <li>• Are there any ways to establish an employee-employer relationship?</li> </ul>	Homeworkers
<b>Wages and working conditions</b>	<ul style="list-style-type: none"> <li>• Do homeworkers get paid similar to other workers?</li> <li>• Do homeworkers get paid regularly?</li> <li>• Are there any working time limits?</li> <li>• Are homeworkers entitled to leave provisions?</li> </ul>	Homeworkers
<b>Right to organize and collectively bargain</b>	<ul style="list-style-type: none"> <li>• Can home-based workers form an organization of their choosing?</li> <li>• Are there any obstacles to organizing?</li> <li>• Are home-based worker organizations part of collective bargaining or negotiating processes?</li> </ul>	All HBWs
<b>Occupational health and safety</b>	<ul style="list-style-type: none"> <li>• Are employers obliged to provide safety equipment, information about OSH?</li> <li>• Are employers liable if an OSH or injury problem occurs?</li> <li>• Do homeworkers have the right to withdraw their work in case of a danger?</li> <li>• Are the guidelines, regulations translated?</li> </ul>	Homeworkers  Could be some provision for HBWs in policy
<b>Social security (social protection)</b>	<ul style="list-style-type: none"> <li>• Do employers of homeworkers have to contribute to social security?</li> <li>• Do all home-based workers have access to social protection?</li> <li>• Is social security/protection easy to access?</li> </ul>	Homeworkers and self-employed HBWs
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• Is there a right to inspect workplaces?</li> <li>• Is there a right to call for information and issue summons?</li> </ul>	Homeworkers
<b>Dispute mechanisms</b>	<ul style="list-style-type: none"> <li>• Who can be held liable for grievances, non-payment for homeworkers?</li> <li>• Is it accessible?</li> <li>• Is it expensive?</li> <li>• Who can represent a homeworker?</li> </ul>	All HBWs
<b>Support programmes</b>	<ul style="list-style-type: none"> <li>• Does government facilitate access to credit, housing, training, childcare?</li> <li>• Does it provide networking centres for home-based workers?</li> <li>• Is information available in local languages?</li> </ul>	All HBWs
<b>Records and Statistics</b>	<ul style="list-style-type: none"> <li>• Do employers of homeworkers have to keep records?</li> <li>• Is homework and place of work included in official statistics?</li> </ul>	All HBWs



[www.homenetinternational.org](http://www.homenetinternational.org)

