



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

# MODULE FIVE

## DEVELOPING LAW AND POLICY PROPOSALS

This module looks in some detail at different issues covered by C177 and R184 that you may want to focus your advocacy and campaigning activities on. It looks at why the issue is important for home-based workers. It provides examples of laws and policies from other countries, as well as ILO Conventions you might find helpful in developing proposals and arguments.



## Module Five

### Developing Law and Policy Proposals



#### *In this module we look at:*

- *Key issues for law or policy change, and why they are important for home-based workers*
- *How the issues are addressed in international standards and national examples*
- *What it means for your advocacy proposals*

#### *Who will find it useful?*

- *Affiliates who need more information to help them develop their proposals for laws, policies or other legal instruments, or develop arguments for negotiations*

This module draws on C177, R184, other international standards and national laws and policies to explore issues you may want to include in your advocacy proposals. They can form part of a proposal or motivation for C177 ratification, law change, a new or improved policy or guidelines. When developing your detailed proposals, it may be advisable to draw in a sympathetic labour lawyer to assist.

The information and examples are most relevant for homeworkers, as C177 and most labour laws apply to employees. However, many of the issues can also form part of policy or guideline proposals, including some that are common to all home-based workers.

R 184 is particularly helpful in giving very practical ideas for developing policy proposals. Keep it by your side when drafting your proposal!

#### **1. Freedom of Association and Collective Bargaining**

##### **Why is the right to organize and bargain collectively important for home-based workers?**

Without the right to freedom of association – to be able to form and join an organization of your choice – it is difficult for home-based workers to achieve improvements in their working lives. Most, if not all our members, have this basic right, because it is protected in the Constitution of the country, and have chosen the type of organization to join – trade unions, cooperatives, associations etc.

But do they enjoy the full right to freedom of association in the workplace? In many countries, home-based workers as self-employed workers face restrictions on organizing, especially into trade unions because the labour law classifies them as an “independent contractor”, and only employees are allowed to register their organizations as trade unions. Homeworkers, too, face similar challenges, as employers often argue that homeworkers are independent contractors and not employees. They may not have the right to collective bargaining: in most countries, only employees have the right to bargain collectively. But where homeworkers are included in labour laws, such as in Philippines, they enjoy the same rights to freedom of association, collective bargaining and protection from unfair dismissal as other employees. In some countries home-based workers have organized into trade unions in order to get full worker rights. In others they have formed different types of organizations, such as cooperatives, but still found ways to negotiate with employers, intermediaries, and governments. You can do the same! Here is an example of organizing into trade unions.

### Registering as a Trade Union in Pakistan

In Pakistan, the Home Based Women Workers Federation (HBWWF) was formed after a long period of organizing among homeworkers in Sindh and other regions. Initially, when homemaker and trade union leaders approached the Labour Department for legislation for homeworkers, they were faced with the question “Where are these workers?”. This led them to organize homeworkers for many years. In the beginning when they wanted to form a union, there was a confusion. Many civil society, trade union and government authorities advised them that they are not legally allowed to form a union. However, the homeworkers persevered, relying on the **constitutional right** that allows anyone to form an association or union. In the beginning, they tried to establish unions where there was a clear employee-employer relationship. This led to the formation of three unions: two from the embroidery sector and one from the glass bangle industry. In 2009 the HBWWF was formed.

### What do C177 and R184 say about organizing and collective bargaining?

C177 says that homeworkers must have the same right as other workers to organize and participate fully in organizations of their choice. R184 says that governments should remove obstacles to homeworkers forming or joining workers’ organizations of their choice and to joining trade union federations. Governments should encourage and support collective bargaining. Both say that homeworkers should be part of the negotiations towards a National Policy for Homeworkers.

### What it Means for Advocacy Proposals

If you want to improve your organizing and collective bargaining rights, even if you are not a trade union:

- Check your country’s **constitution**. Does it guarantee freedom of association? Use this to argue your right to form an organization of your choice without restriction, like other workers.
- Check what opportunities your organization has for collectively bargaining and other forms of engagement.



During efforts to modernize Law 16,744 on occupational accidents in Chile, CONATRADO and other trade union organizations launched a government advocacy action plan to ensure workers' interests are prioritized. Pictured here: Patricia Coñomán, Tatiana Rojas, and Carlos Sánchez from CONATRADO, Chile's Minister of Labor Jeannette Jara Román, and Amalia Pereira from the Central Unitaria de Trabajadores (CUT). Photo credit: CONATRADO.

- Propose inclusion in an existing negotiating forum, for example a tripartite forum with the assistance of the formal trade unions. Or suggest the creation of new negotiating forums for issues affecting home-based workers. Self-employed workers could also join negotiating forums for issues like social protection, access to credit or training programmes.
- Use the clauses in C177 and R184 that state that homeworkers should be represented or consulted during the development of a “National Policy on Home Work” to support your call for representation in any discussions relating to legislation or policy.
- In addition to C177 and R184, use other ILO instruments to strengthen your proposal/arguments, e.g. **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87)**; **Collective Bargaining Convention, 1981 (No. 154)**; **Employment Policy Convention, 1964 (No 122)**; **Recommendation Concerning the Transition from the Informal to the Formal Economy, 2015 (No 204)**.

## 2. Defining Employment Relationships

### Why is defining employment relationships important for homeworkers?



This is often the biggest stumbling block to your attempts to change law and policy in favour of home-based workers, in particular for homeworkers. In labour law, all workers are classified either as employees or independent contractors. Employers often argue that homeworkers are not employees and that they are independent contractors. This disguises the employment relationship and leaves out homeworkers from labour rights and protections applicable to employees.

### How are employment relationships defined?

**C177** presumes that there is an employment relationship between homeworkers and the person or entity contracting them. It defines **homework** as work:

- done anywhere other than the workplace of the employer
- for remuneration
- that results in a product or service as specified by the employer

Who provides the equipment, materials or other inputs does not affect the employment relationship.

It defines an **employer** as a person or business entity who “gives out homework” for a business purpose, whether they give out work directly or indirectly through an intermediary. It categorizes those who have “sufficient autonomy and economic independence” as **independent contractors**.

**ILO Employment Relationship Recommendation, 2006 (No. 198)** urges countries to promote clear methods for determining if an employment relationship exists.

## What it Means for Advocacy Proposals

If you go the route of proposing an amendment to general labour law, then ensuring homeworkers are included as employees is necessary. You could:

- Propose changes in the law to ensure homeworkers fall into the definition of employee. Also look at other sections of the labour law that may need to change. For example, the criteria for registering a trade union, or the kinds of trade union/organizing rights granted to unions, or the criteria for being recognized as a bargaining party by an employer.
- Define the place of work as broadly as possible: either exclude the employer's place of work or mention different places that a homemaker typically uses.
- Use C177 to clarify that a person or business entity is still an employer when they work through intermediaries.
- Ensure the law defines employers as contractors and intermediaries as well as firms higher up in a supply chain. The law should state that they are "jointly and severally liable", meaning that they are all employers, and homeworkers can choose who to hold responsible.
- Change strategy! If you know you have strong opposition from employers and/or government, then including homeworkers in general labour law may not be the right strategy. Rather, start more modestly with a policy proposal that is broad in its coverage.

## 3. Written Contracts/Agreements

### Why are written contracts/agreements important?

Homeworkers should have a written contract or agreement with their intermediary or employer. However, written contracts are often missing. This makes it difficult to prove an employment relationship or have evidence to support claims against the employer. Contracts are also important for self-employed home-based workers when taking on orders.

### What do different legal frameworks say about written contracts/agreements?

R184 and some national laws/policies give details of what written contracts/agreements should include. In some countries, such as Belgium, Bulgaria and Australia, the law says that the agreement must be drafted clearly and simply in a language the worker understands. In others, such as, Mauritius, North Macedonia, and Peru, a copy of the agreement should be registered with authorities.

## What it Means for Advocacy Proposals

- In your law or policy proposals, make sure you include that homeworkers should have a written contract that includes the details of the employer, the intermediaries and, if possible, the brand for which the work is produced.
- The contract should, as a minimum, include details of the employer and intermediary, the nature of the work that is being performed, number of items, the piece-rate and how it is calculated (R184).
- Contracts should be written in a worker-friendly manner and in the home language of the homemaker. The hirer should keep records. These should be accessible for inspection by the homemaker organizations, trade unions, state inspectorate.

(Attached you will find a sample agreement between homemaker, company, intermediary or brand.)

## 4. Wages and Working Conditions

### Why is it important to regulate wages and working conditions?

Homeworkers are generally paid on a piece rate basis. Most often there are no set standards for calculating this piece rate, for ensuring that they are fair and that there is equal treatment with other workers. There are also no set standards in most countries for ensuring decent working conditions for homeworkers.

### How are Wages and Working Conditions Regulated?

Issue	R184	Examples in country laws
Pay	<p><b>Minimum wages</b> should be fixed, preferably by <b>collective bargaining</b></p> <p><b>Piece rates</b> should be equivalent to that of workers in factory of employer or others in the area</p> <p><b>Costs of production</b> should be compensated</p>	<p><b>Sindh, Pakistan:</b> Homeworkers' pay should not be less than that of the Sindh Minimum Wages Act.</p> <p><b>Thailand:</b> A committee, which includes home-based worker representatives, has the duty to set the pay and piece rates for homework.</p> <p><b>Philippines:</b> Piece rate to be set through time-and-motion studies</p>
Working Time	<p>A homemaker should not be deprived of having <b>daily and weekly rest</b> similar to that of other workers because of a work deadline.</p>	<p><b>Bulgaria:</b> The law says that homeworkers can determine their work schedules, daily and weekly rest periods, within limits set out by law.</p>
Leave	<p>Homeworkers should be entitled to benefit as other workers, from paid public holidays, annual holidays with pay and paid sick leave.</p>	<p><b>Morocco:</b> Homeworkers have a right to paid annual leave.</p> <p><b>Algeria:</b> After 6 months working for one employer homeworkers are entitled to 2 days leave every month.</p>

## What it Means for Advocacy Proposals

- Make sure you highlight that homeworkers should receive treatment equal to other workers as stated in C177 and R184.
- Propose that at least the national or sector minimum wage is applicable to homeworkers.
- Include that there must be a standard wages/piece rate setting process. This must include home-based worker representatives.
- Include working time, rest periods, holidays, leaves including sick leave.
- Use other ILO conventions, such as the **Equal Remuneration Convention, 1951 (No. 100)**, to strengthen your arguments.

## 5. Social Security and Maternity Protection

### Social Security and Social Protection

In labour law, **social security** is often used to refer to work-related social insurance, which guarantees income security for workers in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner.

**Social protection** is a broader category and, together with social security, includes both state-managed and private schemes that people rely on.



### Why is social security important?

As home-based workers – including most homeworkers – are not considered to be employees, they are excluded from contributory workplace-based schemes, including maternity. There are few examples of other contributory social insurance schemes open to home-based workers. Where such schemes exist, home-based workers often cannot afford to pay the required contribution. They are more likely to be covered by social assistance schemes that apply to all citizens. However, they sometimes don't qualify for these schemes, which are only available to low-income households.

### What do ILO instruments say?

**C177** recognizes that homeworkers should have statutory social security protection and maternity protection. **R184** proposes three options: extend existing social security provisions; adapt them to cover homeworkers; or develop special schemes. There are also several other ILO instruments dealing with social protection that you can draw on; some of them apply to self-employed home-based workers.

## What Kind of Social Protection Provisions Exist for Home-based Workers?

Social Protection System	What is it?	Who is it for?	Examples
Social Assistance	<ul style="list-style-type: none"> <li>Financed by government taxes.</li> <li>Includes pensions, child grants etc.</li> </ul>	Citizens: universal or targeted.	<p><b>Bangladesh (targeted):</b> Government makes cash available to widowed and other poor women</p> <p><b>Nepal (universal):</b> pension scheme</p>
Contributory social security systems (social insurance)	<ul style="list-style-type: none"> <li>Government or private schemes with worker, government and/or employer contributions</li> <li>Includes pensions, health, unemployment, maternity</li> </ul>	Employees	<b>Philippines:</b> Employers must pay social security contributions on receipt of finished goods from registered homeworkers.
Welfare Funds	<ul style="list-style-type: none"> <li>Funded by employer, government, other contributions, or a tax on employers</li> <li>Includes loans, health insurance, maternity, livelihood projects</li> </ul>	Homeworkers	<b>India:</b> <i>Bidi</i> manufacturers pay into the welfare fund through a special tax
Social Services	<ul style="list-style-type: none"> <li>Services provided mainly by the government</li> <li>Includes health, child and elder care</li> <li>Financed through general taxation or provided by private institutions</li> </ul>	Citizens	

## What it Means for Advocacy Proposals

You may want to propose inclusion in a broad system. Or, you may want to focus your advocacy on one area of social protection such as universal health care. Here are some ideas:

- Homeworkers to be included in social security schemes where employers contribute, including maternity leave and benefits
- Social assistance and voluntary contribution schemes to be open to all home-based workers. Government should actively support home-based workers by covering contributions, simplified application processes, education and awareness programmes, help for accessing schemes and so on
- **Paid maternity leave** for women home-based workers through a universal benefit or a new contributory scheme
- A special scheme for homeworkers, such as a welfare scheme, focusing on their priority needs, and paid for by a special employer tax or contribution

## 6. Occupational Safety and Health

### Why is it important?

Working at home can contain health and safety hazards. However, with low wages and insecurity, home-based workers find it difficult to prioritize their health and safety. Employers usually do not provide homeworkers with safe equipment or with information about occupational health and safety issues. In case of accidents, injuries or death, there is often no legal duty that makes employers or governments accountable for compensation.

### How is OSH regulated in different legal frameworks?

#### R 184 says:

- **Information:** Employers should give homeworkers information about hazardous substances.
- **Equipment and training:** Employers should give personal protective equipment free of charge, as well as providing training. Machinery, tools or other equipment should be safe.
- **Protection and action:** Employers should be responsible for medical and rehabilitation expenses and any expense related to death due to use of raw materials or equipment used during work.
- **Refusing Work:** Homeworkers should have the right to refuse work if there is a serious threat to their safety or health.
- **Survey:** Government should survey homeworkers' workplaces to identify and remove hazardous conditions.
- **Language:** Guidelines and regulations related to OSH should be translated into languages that homeworkers can understand.

### ILO Conventions on OSH

The **ILO Occupational Safety and Health Convention, 1981 (No 155)** is one of the eight Conventions that are part of the ILO's Declaration on Fundamental Rights at Work. This means all member countries must transpose it into national law, even if they have not ratified it.

#### OSH for Homeworkers in Morocco

Morocco has a specific decree that regulates OSH for homeworkers. Employers have to inform homeworkers of any work-related risks and of precautions to be taken. If needed they must provide safety training. They must ensure that the equipment and work materials they provide cannot cause accidents or affect health and safety. They have to provide personal protective equipment free of charge. Homeworkers have to respect employers' instructions to prevent accidents or damage to their health, make use of safety and personal protective equipment.

## What it Means for Advocacy Proposals

- Demand that employers and intermediaries be obliged to follow the R184 guidelines, including that they provide equipment that ensures safety, and protects hands and eyes.
- Propose that government prohibit dangerous /toxic processes being subcontracted to homeworkers.
- Use the **OSH Conventions** and the inclusion of OSH in ILO's **Declaration on Fundamental Rights at Work** to strengthen your arguments.

## 7. Dispute Procedures

### Why is it important?

It is often very difficult for homeworkers to make complaints or bring cases against intermediaries or employers because of low wages, lack of contracts, close relationships with subcontractors and so on. Self-employed workers also have difficulties bringing cases against suppliers and buyers who cheat them. A simple and strong dispute mechanism is therefore important in making sure legislation or policy can work effectively.

### What Kind of Dispute Resolution Mechanisms Exist?

Mechanism	Examples
Statutory dispute procedures and Labour Courts	In countries where homeworkers are included in labour laws, the regular, or a special, process for labour disputes would be followed. In Thailand and Philippines, disputes can be referred to the Labour Court. In some countries, including Philippines, there is compulsory arbitration.
Claims	In the Australian law, a homeworkeer or the union can make a demand to the person responsible for payment owed. They may start legal proceedings in a court to recover the money owed plus the interest.
Special Dispute Committees	In Sindh, Pakistan, there is a provision for Arbitration Committees for homeworkers to settle disputes between them and employers or intermediaries.

## What it Means for Advocacy Proposals

- Ensure that you include a dispute-resolving mechanism in your proposal. This is especially important for policy proposals falling outside of labour law and existing procedures
- Use the provision in R184 to strengthen your argument. It urges governments to ensure that there are *“mechanisms for the resolution of disputes between a homeworkeer and an employer or any intermediary used by the employer”*.
- Make sure that the right of representation by home-based worker organizations is included in dispute-resolution mechanisms.
- Consider the inclusion of self-employed home-based workers in your proposal. This could be a separate procedure.



Edna Simão, a toy-maker from São Paulo, Brazil. Photo credit: Eduardo Derrico/HNI

## 8. Enforcement Mechanisms

### Why is it important?

Even where homeworkers are included in legislation, there has been very little implementation. Mobilizing from home-based worker organizations needs to be very strong to push for the enforcement of legislation or policy. We see this clearly in Thailand and Bulgaria.

### What enforcement systems are there in different legal frameworks?

**C177** says there should be a provision for inspections to ensure compliance with the law. There should also be penalties for non-compliance. Note that there are other kinds of enforcement that are not always positive. For example, workers' homes may not comply with local by-laws or regulations regarding workplaces, as is the case in Argentina.

In Portugal, labour inspectors can inspect homes that are also the place of work between 9 a.m. and 7 p.m. with the presence of the homeworker or somebody designated by the homeworker. In Australia, the trade union has the right to enter the workplaces where homeworkers are engaged, without notice. In the Thai legislation, the Labour Inspector has the power to issue summons to any person to appear, give statements or send documents to use in its decision making.

### What it Means for Advocacy Proposals

It would be difficult to include self-employed home-based workers as they are not employees. When proposing changes to laws for homeworkers:

- Make sure your proposal includes provisions for inspection, right to information as well as penalties for non-compliance for employers.
- Include the right of homeworker organizations and/or trade unions to be part of the inspection process.
- Be careful to ensure that homeworkers cannot be held liable for non-compliance and that penalties cannot be imposed on homeworkers.

## 9. Other Important Law and Policy Issues

R184 provides guidelines on other important issues that you may want to include in your law and policy proposals. Many can be applied to **all home-based workers**. It recommends that governments, with employers and home-based worker organizations, support programmes for homeworkers. These include, among others:

- recognition of homework as real work
- skills training close to homes of workers
- facilitating access to credit, childcare and improved housing
- information on rights and assistance available in own languages
- creation of centres and networks providing information and services

Finally, C177 recognizes the importance of **record keeping** and obliges employers to keep records of homeworkers, work given, pay etc. It also includes **statistics** and says that, *“Appropriate measures shall be taken so that labour statistics include, to the extent possible, homework”*. We know how important statistics are in raising the visibility of home-based workers and for use in your negotiations. If your government is not collecting such statistics, strongly propose that they do!

#### Lesson: Statistics – a weapon in the hands of the workers

- Using statistics at the ILC helped ensure that C177 was adopted. “The employers had their ideology. The workers had their statistics. The Convention was passed!” Ela Bhatt, SEWA, India
- **Thailand:** HNT demanded that government collects statistics on home-based workers. It now does so.

## Useful Resources

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Appendix One of the complete Campaign and Advocacy Toolkit: Full text of C177

Appendix Two of the complete Campaign and Advocacy Toolkit: Full text of R184

Appendix Three of the complete Campaign and Advocacy Toolkit: Useful ILO Instruments

ILO, 2021, Working from home. From invisibility to decent work, Geneva.

[https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_protect/@protrav/@travail/documents/publication/wcms\\_765806.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_765806.pdf)

Lichtman, S.M., 2018. Fair Wages for Homeworkers in Thailand. YouTube Video. (setting piece rates)

<https://www.youtube.com/watch?v=tuWQwXVsh7I>

## Sample Agreement between Homeworker and Company, Intermediary or Brand

1. Details of the company (or intermediary)
  - a. Name of the company
  - b. Company number
  - c. Company Registration
2. Details of the homeworker
  - a. Name
  - b. Address where the work will be performed
3. Hours of work
  - a. Full-time
  - b. Part-time
  - c. If part-time, agreed hours need to be specified
4. Lists the legal documents that need to be provided to a homeworker on commencement of employment
  - *Must be provided in the language understood by the homeworker*
5. Conditions of employment
  - a. Mandatory rights and entitlements under the country's law. This can include hours of work, leaves, holidays, rest periods and social security provisions.
  - b. Mode of payment
  - c. Dates of work
  - d. Delivery of work
  - e. Notice of termination
6. Date the agreement was provided and appropriate time given for the homeworker to review and seek advice
7. Record keeping
  - *Homeworker and principal employer retains a copy of the written agreement. The agreement must be in a language that the homeworker is familiar with.*
8. Agreement – signed by the company/brand and the Homeworker and date included



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