

Home-Based Workers Regional Meeting

Santiago, Chile – May 2017



A. Introduction

This document is a compilation of laws and policies protecting home-based workers (wage-employed and self-employed). Women in Informal Employment: Globalizing and Organizing (WIEGO) assembled this compilation over a period of five years with the help of several organizations¹ from six countries in Latin America. The information was gathered from the following documents:

- Morillo Santa Cruz, Laura. 2012. *Reporte del mapeo-visita de campo de organizaciones de trabajadores a domicilio y colaboradores en Latinoamérica*.
- Blancas Chauca, Óscar Rafael. 2014. *Trabajadores a domicilio en el Perú*.
- Observatorio Social/Agência de Desenvolvimento Solidário da Central Única dos Trabalhadores (IOS e ADS/CUT) e Instituto de Estudos Brasileiros/Universidade de São Paulo (IEB/USP). (Redacción de Adriana Lopes y Luciana Itikawa).

¹ This compilation was possible thanks to the collaboration of several organizations: in Buenos Aires, Argentina: Confederación de Trabajadores de la Economía Popular (CTEP), Asociación Lola Mora and La Alameda; in São Paulo, Brazil: NGO Agência de Desenvolvimento Solidário da Central Única dos Trabalhadores ADS/CUT and NGO Centro Gaspar García; in Montevideo, Uruguay: Sindicato de la Aguja; in Santiago de Chile: Sindicato de Trabajadoras y Trabajadores Textiles de sus Domicilios (SINTRATEDO), Sindicato de Mujeres Textiles en sus Domicilios de Coquimbo — Cuarta Región de Chile — (SIMUTED), Trabajadoras Construyendo Futuro y Dignidad Laboral en Viña del Mar (TRACONFULAB), and Confederación Nacional de Federaciones y Sindicatos de Trabajadores y Trabajadoras Textiles Manufacturas, Servicios, Subcontrato y Domicilio de Chile (CONTEXTIL); in Managua, Nicaragua: Confederación de Trabajadores por Cuenta Propia (CTCP); and in Lima, Perú: Red Nacional de Trabajadores y Trabajadoras Autoempleados (RENATTA) and Asociación de Desarrollo Comunal.

2014. *Políticas públicas sobre trabajo a domicilio y mapeo de redes de diálogo social en Brasil y la Región Metropolitana de Sao Paulo.*

- Morillo Santa Cruz, Laura. 2015. *Reporte de la visita de campo a organizaciones de trabajadores a domicilio y colaboradores en Montevideo y Santiago de Chile.*
- Asociación Lola Mora. 2015. *Legislación sobre trabajo domiciliario en Argentina.*

According to these documents, organizations that organize home-based workers (wage-employed and self-employed) in the six countries face the following challenges:

- Wage and self-employed home-based workers: lack of recognition of property and socio-economic rights (such as access to water and sanitation), limited right to organize and collective bargaining.
- Wage-employed home-based workers: lack of ratification of Convention 177 (hereinafter C177) and incorporation of international standards, the adoption of national laws that recognize that wage-employed home-based workers should enjoy the same rights as factory workers. These rights include minimum wages, secure contracts, occupational health and safety, collective bargaining, etc., as well as the design of public policies focused on the implementation of these laws.
- Self-employed home-based workers: access to finance, training, procurement opportunities, marketing, etc.

This document was prepared for discussion at the Home-based Workers Regional Meeting to be held in Santiago, Chile, from 23th-25th May 2017 so that organizations are made aware of their rights in their respective countries and are able to discuss collective strategies to promote and defend their rights.

B. About Home-based workers

Home-based workers are workers who work from their homes, or in places such as workshops near their homes, and can be:

- Wage-employed home-based workers**, who are contracted by an individual entrepreneur or a firm, directly or through an intermediary. They are usually given the raw materials and paid per piece. They typically do not sell the finished goods. They do, however, cover many costs of production: workplace, equipment, supplies, utilities, and transport.
- Self-employed home-based workers**, who assume all the risks of being independent operators. They buy their own raw materials, supplies, equipment, and pay utility and transport costs. They sell their own finished goods, mainly to local customers and firms, but sometimes to international markets. Most do not hire others but some have unpaid employees and/or unpaid family members working with them.

It is important to point out that C177 and its corresponding Recommendation (R184) apply to wage-employed home-based workers. Furthermore, as we will see later, there are laws in Argentina, Peru, and Uruguay that regulate wage-employed home-based work.

On the other hand, there are organizations that organize (mainly, mostly, or in part) self-employed home-based workers who are using C177 to draw attention to wage home-based work and then also to add to the discussion on the protection of self-employed home-based workers.

C. ILO Convention 177 and Recommendation 184 on Home Work

In 1996, the International Labour Conference in Geneva, Switzerland, adopted C177 and R184 on Home Work. C177 is part of the international legal framework and is a mandatory norm for those countries that decide to ratify. Countries that have ratified C177 include Albania, Argentina, Belgium, Bosnia and Herzegovina, Bulgaria, Former Yugoslav Republic of Macedonia, Finland, Ireland, the Netherlands, and Tajikistan. In Latin America, only Argentina has ratified C177.

R184 is not an instrument that is subject to ratification, nor is it mandatory. It is a guide for governments to improve wage-employed home-based workers' rights.

Through C177, the rights of wage-employed home-based workers and the contributions they make as workers, are recognized internationally. It is therefore an instrument that allows wage-employed home-based workers and their organizations to demand recognition of their rights in their respective countries. The whole of C177 is of great importance; however, it is worth highlighting the following:

- In article 1, the Convention defines home work as “work carried out by a person, to be referred to as a homeworker, i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in a product or service as specified by the employer“. Here, Article 1 also says that this is still the case

regardless of whether the worker or someone else equips the worker with the supplies (tools, product components, etc.) necessary to complete the project or service. The exception to this, however, is if, “under national laws, regulations or court decisions“ the worker is considered to have “the degree of autonomy and of economic independence necessary to be considered an independent worker“;

- According to article 1 (c), an employer is an individual entrepreneur or a firm, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work as part of his/her business activities.
- In regard to intermediaries (also known as middlemen or a go-between), article 8 notes that, in countries where they are allowed to operate, “the responsibilities of both employer and intermediaries is determined by laws and regulations or by court decisions, in accordance with national practice.”
- Article 4 states that where a country has ratified C177, the policy adopted at the national level “shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise“. This means that the same conditions that apply to other wage earners also apply to homeworkers: the right to organize, non-discrimination in employment and occupation, occupational safety and health protection, remuneration, social security coverage, access to training, minimum age for admission to employment, and maternity protection.
- Article 5 states that “national policy on home work shall be put into effect through laws and regulations, collective agreements, arbitration awards, or in any other appropriate manner consistent with national practice.”
- Article 6 states that “appropriate actions shall be taken so that labour statistics include, to the extent possible, home work.”
- Article 7 points out that “National laws and regulations on safety and health at work shall apply to home work, taking into account its special characteristics and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in home work for reasons of safety and health.”

D. Map of Laws and Public Policies related to Home-based Work (Wage-employed and Self-employed) in Argentina, Brazil, Chile, Nicaragua, Peru and Uruguay

The gathered information is as follows:

Country	Ratification of C177	Law that regulates Wage-employed Home-based work	Public Policies or other related laws with impact on Home-based Work (Wage-employed and/or self-employed)
Argentina ⁽¹⁾	Yes	Yes, there is a specific law that regulates wage-employed home-based work. Law No. 12.713 and its Regulatory Decree No. 118.755, which establish the work regime of wage-employed home-based workers.	There is no specific public policy for wage-employed home-based workers. However, some programmes and policies that impact on home-based workers (wage-employed and/or self-employed) are: <ul style="list-style-type: none"> a) Government programmes directed at cooperatives, b) Social Monotax, c) Collective Bargaining Agreements (CTC), between the employer and unions. For example, Federación Obrera Nacional de la Industria del Vestido y Afines (FONIVA) participates in the Sewing Sector. The most recent CTC in this sector is 626/11, which lays down agreements on working conditions in workshops and factories and introduces some provisions on piecework at the national level. d) The Law on the Promotion of Registered Work and Prevention of Labour Fraud (26.940) has actions and instruments aimed at stimulating labour formalization and strengthening state capacities to prevent and punish non-compliance with labour and social security standards.

Country	Ratification of C177	Law that regulates Wage-employed Home-based work	Public Policies or other related laws with impact on Home-based Work (Wage-employed and/or self-employed)
Brazil ⁽²⁾	No	<p>There is no special law on wage-employed home-based work, but the Labour Code applies when there is subordination to an employer. (Art. 6, 83, 372).</p> <p>Order N° 973 of the Ministry of Labour created a tripartite commission composed of representatives of the Federal Government and representatives of workers and employers with a mandate to examine Convention N° 177 and Recommendation N° 184, and Convention N° 144 on Tripartite Consultation.</p>	<p>There is no specific public policy for wage-employed home-based workers. However, some programmes and policies that impact on home-based workers (wage-employed and/or self-employed) are:</p> <p>a) Bolsa Família Programme which provides monetary benefits to reduce poverty.</p> <p>b) Individual Microentrepreneur Policy (MEI in Portuguese): the Federal Government decided to develop a specific policy for small enterprises, whose focus is the formalization of and inclusion in the social protection system.</p> <p>c) National Policy for Solidarity Economy: National Secretariat for Solidarity Economy (SENAES in Portuguese, 2003), Solidarity Economy Programme, Brazil Legal Programme (2008), Brazilian Fair and Solidarity Trade System (2010), Trade Union Incentives Programme (2014), and Brazil Without Extreme Poverty Plan (2012 – 2015).</p> <p>d) Decent Work Programme (2006): tripartite consultation with the participation of employers, workers, and government (Ministry of Labour and Employment), National Action Plan for Employment and Decent Work.</p> <p>e) Interministerial Programme against Forced Labour; National Plan for the eradication of Forced Labour (2003); Register of Employers who have kept workers in conditions analogous to slavery, the “black list” (2004); National Pact for the eradication of Forced Labour (2005); National Institute for the eradication of Forced Labour (2014).</p> <p>f) Women’s Economic Empowerment Programme: Third National Plan of Policies for Women (2013-2015), “Cooperative of Women“ Project.</p> <p>g) Policy of the Federal Executive on subsidiary contractors’ responsibility for the contract on labour rights for workers in home-based workshops.</p>
Chile ⁽³⁾	No	<p>There is no special law on wage-employed home-based work, , but the Labour Code applies when there is subordination to an employer.</p>	We do not have information.
Nicaragua ⁽⁴⁾	No	<p>There is no special law on wage-employed home-based work, but the Labour Code applies when there is subordination to an employer.</p>	We do not have information.

Country	Ratification of C177	Law that regulates Wage-employed Home-based work	Public Policies or other related laws with impact on Home-based Work (Wage-employed and/or self-employed)
Peru ⁽⁵⁾	No	Wage-employed Home-based work in Peru is regulated by Chapter IV (Articles 87 to 96) of Supreme Decree No. 003, Law of Labour Productivity and Competitiveness. It is important to highlight that this norm includes part of the content of C177 and R184.	There is no specific public policy for wage-employed home-based workers. However, some programmes and policies that impact on home-based workers (wage-employed and/or self-employed) are: a) Programme for the Consolidation of Women's Employment (PROFECE in Spanish, 1997). This programme sought to match the women's labour force from poor neighbourhoods in Lima with enterprises' demand for labour. The main activities of the programme were: handicrafts, clothing, textiles, food processing, and services (cleaning, washing, packaging, door-to-door vendors or fixed-point vendors). Since 2008, this programme has been part of CRECEMYPE, a Programme for Micro and Small Enterprises of the Ministry of Production. b) MIPYME Law, Law N° 30056 (2013), and Texto Único Ordenado de la Ley de Promoción de la Competitividad, Formalización y Desarrollo de la Micro y Pequeña Empresa y del Acceso al Empleo Decente, Ley MYPE, D.S. N° 007-2008-TR. c) Labour Inspection Law, Law N° 28806 (2006), D.S. N° 019-2006-TR (Regulation) and D.S. N° 002-2007-TR (Supplementary measures to strengthen the Labour Inspection System at the national level).
Uruguay ⁽⁶⁾	No	The Clothing Industry Law No. 18.846 has a section for wage-employed home-based workers. It is important to emphasize that this standard includes some of the content of C177 and R184.	We do not have information.

Sources: (1) Morillo Santa Cruz, Laura (2012) and Asociación Lola Mora (2015). (2) Observatorio Social/Agência de Desenvolvimento Solidário da Central Única dos Trabalhadores (IOS e ADS/CUT) e Instituto de Estudos Brasileiros/Universidade de São Paulo (IEB/USP (2014). (3) Morillo Santa Cruz, Laura (2015a). (4) Morillo Santa Cruz, Laura (2012). (5) Blancas Chauca, Óscar Rafael (2014). (6) Morillo Santa Cruz, Laura (2015a).

From there we can observe the following:

- a. Argentina is the only country that ratified C177.
- b. The degree of protection for wage-employed home-based workers' rights is different in each country. In the above table we observe that in the analyzed countries there are three different ways protection for these rights is addressed: specific laws, in a special title included in the labour legislation, or in labour codes in cases where there is subordination to an employer.
- c. The legislative protection that each country gives to wage-employed home-based workers does not necessarily depend on the ratification of ILO Convention 177. For example, in the case of Uruguay, Law 18.846 on the Apparel Industry (published on 12 December 2011), includes wage-employed home-based work and incorporates several of the standards of ILO C177 and R184. Likewise, Peru, which has not ratified C177, has included some elements of C177 in its laws, as well as content from R184.
- d. Although there are laws that regulate wage-employed home-based work, there are no public policies designed to implement such laws or specifically to ensure the protection of wage-employed home-based workers' rights.

E. Legislations from Peru and Uruguay on Wage-employed Home-based work and concordance with C177 and R184

Below we provide information on the legislation of Peru and Uruguay on wage-employed home-based work and the concordances with the content of C177 and R184.

E.1. Peru

Topics	Legislative Decree 728, Chapter IV		C177 and R184		Comment
	Art.		Art.		
Employer and control	87	Executed for one or more employers who organize the work to be carried out, without direct supervisión.	C177 Art.1, a lji	Make a product in accordance with employer's specifications.	In both cases, the employer regulates, providing specifications, but does not supervise.
Employment relationship	88	Generates employment relationship, be it with the employer, the producer, the subcontractor or the agent, when they are registered.	C177 Art.1, c	The employer gives out work for his/her company. It does create an employment relationship.	Both the Legislative Decree and the Recommendation require employers to register.
Delimitation	89	Does not include independent work, the work carried out in a family workshop, or family work.	C177 Art.1, a & b	Does not include those who have the degree of autonomy or independence necessary to be considered as an independent worker, or those who occasionally undertake salaried work at home.	The Convention introduces the figure of the degree of autonomy and economic independence and the occasional nature of the work.
Fixing remuneration	90	Should appear in the work contract or collective agreement, based on production remuneration criteria: hourly rate or piece rate.	R184 Art. VI, 13 & 14	Minimum wage rates should be fixed. Rates of remuneration should be decided through collective bargaining or by the authorities after prior consultation.	The Legislative Decree requires a work contract. The Convention does not but advocates for the fixing of minimum wage rates through collective bargaining by authorities after prior consultation.
Contract	91	Written contract in triplicate, "one of the copies to be submitted to the Labour Administration authority for its record".	R184 Art. 5	The workers should be informed in writing or in some other way by his/her employer of his/her remuneration and the type of work.	The Legislative Decree requires a written work contract which must be registered at the Ministry of Labour.
Register	92 & 93	The employer should keep a Home Work Register, with a copy for the worker, recording remuneration and IPSS (Social Security) enrollment number.	R184 Art. 7.2 C177 Art. 6 R184 Art. 6	The employer should keep a register of wage-employed homemaker employees by sex, and indicate remuneration. This should be included in employment statistics where possible. Employers using wage-employed homeworkers must be register.	Both require a register of workers. The Recommendation advocates a register of employers, as does the Legislative Decree (Art. 88).

Topics	Legislative Decree 728, Chapter IV		C177 and R184		Comment
Workers' social rights	94 & 95	Paid holidays and compensation for length of service (8.33% of annual remuneration in either case).			Not covered in either the Convention or Recommendation.
Social protection	96	Included in the National System for Pensions (LD 19990) and Health (Law 22482). Includes Maternity and breast-feeding subsidies. Not included in the occupational accident and illnesses regime (LD 18846).	C177 Art. 4 C177 Art. 7 R184 Art. 25 R184 Art. 26	Equal treatment for wage-employed homeworkers and wage-earners should be promoted. National occupational safety and health legislation should be applied with due regard for the workers' circumstances. Social security regimes should be adapted. Maternity protection legislation should be enforced.	The Legislative Decree conforms with the Convention, except in regards to occupational health.

Source: Verdera, Francisco. Trabajadores a domicilio en el Perú. Document 28. Ginebra: OIT, 1998. pp. 5-6.

E.2. Uruguay

Topics	Legislative Decree 728, Chapter IV		C177 and R184		Comment
	Art.		Art.		
Definition of home work	Art. 15	Paid work performed by a person in his/her home or other place chosen by him/her, except the employer's workplace. Production according to the employer's specifications. Work done by the owner of a workshop is also considered when he/she also contributes to the production. Excluded from this definition are people with employee status simply by occasionally performing their work as employees at home, rather than at their usual places of work. It excludes self-employment, family work.	C177 Art. 1 R184 Art. 1	Paid work performed by a person in his/her home or other premises of his/her choice, other than the employer's workplace. Production according to the employer's specifications. Excluded: people with employee status simply by occasionally performing their work as employees at home, rather than at their usual places of work. It excludes self-employment, family work.	In both cases, home work is paid work performed by a person in his/her home or other place chosen by him/her, other than the workplace of the employer and according to the employer's specifications. It should be noted that Article 15 C) of the Law also considers the work done by the owner of a workshop when he/she also contributes to production.
Registration of home-workers	Art. 16 & 17	The employer must maintain a work record of home work, a copy of which will be given to the worker, indicating the name, address, quality and number of pieces, agreed rates, and compensations.	R184 Art. 7.2	The employer must keep a record of home work indicating the worker's gender and salary.	In both cases, the employer must have a register of homeworkers. But Law N° 18.846 does not mention a record indicating gender.

Topics	Legislative Decree 728, Chapter IV		C177 and R184		Comment
Registration of employers	Art. 4, 12 & 13	Employers must be registered and prove compliance with tax and social obligations to obtain a subsidy for companies in the clothing sector.	R 184 Art. 6 A r t . 7.3 a & b	There must be an employer register.	In both cases, there must be a record of the employers. Law N° 18.846 conditions the granting of a clothing sector subsidy to employers that are registered and who also fulfill their obligations.
Security and health at work	Art. 3	Occupational safety and health standards shall apply to home work and the regulations shall lay down the conditions under which, for safety and health reasons, certain types of work and the use of certain substances may be prohibited in home work.	C 177 Art. 7	National legislation on occupational safety and health should apply to home work, taking into account their specific characteristics, and will determine the conditions under which, for safety and health reasons, certain types of work and use of certain substances may be prohibited.	Art. 3 of Law N° 18.846 takes into account Art. 7 of C177.
Liability between employers and intermediaries	Art. 21	In case of non-compliance with the rules of this law, the respective responsibilities of employers and intermediaries in the event of sub-contracting, agency work, and temporary work shall be governed by the provisions of Law N° 18.251 of 6 January 2008.	C 177 Art. 8	When the use of intermediaries is allowed in home work, the respective responsibilities of employers and intermediaries shall be determined by laws and regulations or by judicial decisions, in accordance with the national practice.	Art. 21 of Law N°18.846 mentions, in accordance with Art. 8 of C177, the application of Law N° 18.251 to determine liability between employers and intermediaries.
Equal treatment	Art. 22	It shall be promoted in relation to: A) the right of homeworkers to establish or join organizations of their own choice and participate in the activities of such organizations; B) protection against discrimination in employment and occupation; C) protection in the field of occupational safety and health; D) remuneration; E) social security legal protection; F) access to training; G) minimum age of admission to employment or work; and H) maternity protection.	C 177 Art. 4	It shall be promoted in relation to: A) the right of wage-employed homeworkers to establish or join organizations of their own choice and participate in the activities of such organizations; B) protection against discrimination in employment and occupation; C) protection in the field of occupational safety and health; D) remuneration; E) social security legal protection; F) access to training; G) minimum age of admission to employment or work; and H) maternity protection.	Art. 22 of Law N° 18.846 takes into account the rights mentioned in Art. 4 of C177.

Topics	Legislative Decree 728, Chapter IV		C177 and R184		Comment
Labour inspection	Art. 24	Non-compliance of prescribed obligations in this Law on traceability and home work will result in sanctions by the competent authority through monitoring, fines, confiscation of goods or closure of premises, as appropriate.	C 1 7 7 Art. 9	An inspection system compatible with national legislation and practice will ensure compliance with the laws and regulations applicable to home work. In the event of a violation of these laws and regulations, appropriate remedies, including sanctions, where appropriate, will be anticipated and effectively implemented.	Art. 24 of Law N° 18.846 takes into account Art. 9 of C177.
Statistics	No	No	C 1 7 7 Art. 6	Wherever possible, labour statistics should be included.	Law N° 18.846 does not mention the possibility of having labour statistics.
Application of the General Labour Law	Art. 23	Homeworkers and workshop workers will be included in the rules of the General Labour Law, with the exceptions provided by law.			Law N° 18.846 provides that the rules of the General Labour Law will apply to home work and workshop workers, with some exceptions provided by law.

Source: Morillo, Laura. Report of Field Visit to Home-based Worker Organizations and supporters in Montevideo and Santiago de Chile. WIEGO, 2015. pp. 7-10.

F. Challenges of home-based workers in the region with respect to legislation

Organizations that organize home-based workers (wage-employed and self-employed) face the following specific and common challenges:

- a. Wage-employed home-based workers:
 - In Argentina: implementation of C177, amendment of Law No. 12.713 and its Regulatory Decree No. 118.755, and enforcement of the law.
 - In Brazil, Chile, and Nicaragua: Ratification of C177 or incorporation of C177 and R184 into legislation. It is recommended that organizations analyze the benefits of ratifying C177 versus the benefits of lobbying for the inclusion of C177 and R184 without prior ratification to improve working conditions for wage-employed home-based workers.
 - In Peru and Uruguay: enforcement of the law, ratification of C177.
 - National Labour inspectorates have limited resources to monitor compliance with legal norms.
 - Adoption of national laws that recognize that wage-employed home-based workers should enjoy the same rights as factory workers. These rights include minimum wage, secure contracts, occupational health and safety, collective bargaining, etc., as well as the design of public policies focused on the implementation of these laws.
- b. Self-employed home-based workers:
 - Recognition of property and socio-economic rights, right to organize and collective bargaining, access to finance, training, procurement opportunities, marketing, etc.
- c. Wage-employed and self-employed home-based workers:
 - Home-based workers do not recognize themselves as home-based workers.
 - Lack of class consciousness or collective interest.
 - Lack of knowledge of the benefits of organizing.
 - Collection of data: statistical data collection, surveys, studies, etc.
 - Several unions concentrate on organizing self-employed workers and workers in the informal economy, but not on organizing home-based workers. The same applies to other organizations that support textile workers, migrant workers, working women, and people living in poverty.

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Verdera, Francisco. 1998. Trabajadores a domicilio en el Perú. Documento 28. Ginebra: OIT

About WIEGO: Women in Informal Employment: Globalizing and Organizing is a global research-policy-action network that seeks to improve the status of the working poor, especially women, in the informal economy. WIEGO builds alliances with, and draws its membership from, three constituencies: membership-based organizations of informal workers, researchers and statisticians working on the informal economy, and professionals from development agencies interested in the informal economy. WIEGO pursues its objectives by helping to build and strengthen networks of informal worker organizations; undertaking policy analysis, statistical research and data analysis on the informal economy; providing policy advice and convening policy dialogues on the informal economy; and documenting and disseminating good practice in support of the informal workforce. For more information visit: www.wiego.org