

STANDARDISED CONTRACT FOR MIGRANT DOMESTIC WORKERS



BACKGROUND

Migrant Forum in Asia (MFA) has drawn up a Standardised Employment Contract to promote and protect the rights and welfare of migrant domestic workers.

Migrant domestic workers are in a global industry that engages mostly women and consistent with gender discrimination undervalues their work reflected in their exclusion from labour codes and law and their low salary. They are vulnerable in their workplace being located in the insecure environment of an employer's home abroad. Migrant domestic workers require measures that they can use for asserting their rights and demanding protection; a standardised employment contract offers one option.

The primary purpose of a standardised contract for migrant domestic workers is to provide a model contract by drawing upon the provisions of the ILO Convention concerning Decent Work for Domestic Workers (ILO C189, 2011); ILO Convention on Migration for Employment (revised) (ILO C97, 1949); the UN International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (UN MWC, 1990); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and other UN Core Conventions. The content of the standardised contract is also informed by the experience and knowledge of migrant associations and migrants rights advocates through their participation in the MFA consultation process.

Representing an ideal contract it is designed to act as an advocacy tool by setting out the provisions of a contract that are essential to ensure the fundamental rights of domestic workers and meet minimum labour standards. Acting as a reference, the standardised contract could be used by activists and migrants when arguing for the content that should be present in a contract.

The standardised employment contract could also serve as a tool for capacity building for migrant domestic workers by raising awareness of their rights as enshrined in ILO C189.

During a training session the standardised contract could be disseminated alongside a copy of the ILO Convention concerning Decent Work for Domestic Workers in a language familiar to the domestic workers.

It is envisaged that countries of origin could use the model contract as a template during bilateral labour negotiations with destination countries or when writing nationally based contracts.

As a standardised contract it can act as a benchmark by which to assess existing standard working contracts' provisions. Standard employment contracts are currently being used by Hong Kong, Jordan, Lebanon, Malaysia, Singapore and the Philippines. Although encouraging that both countries of origin and destination are motivated to begin to address the plight of domestic workers, there remains substantial room for improvement. Comparison of these contracts with the standardised working contract reveals considerable divergence between countries' terms and conditions and omissions in their provisions and standards, resulting in protection gaps for migrant domestic workers.

ILO Convention no. 189 defines a domestic worker as any person engaged in domestic work within an employment relationship. An employer of the domestic worker may be a member of the household for which the work is performed or a recruitment agency or enterprise that employs them and makes them available to households. Domestic work is defined as worked performed in or for a house or households.

ANALYSIS

Migrant Forum in Asia's (MFA) main goal remains to campaign for the ratification and implementation of the ILO Convention concerning Decent Work for Domestic Workers (C189 2011) and the inclusion of migrant domestic workers in the labour code and law.

A standardised employment contract for migrant domestic workers is one tool for advocating for the protection of the rights and welfare of migrant domestic workers. The need to establish a model contract of employment for domestic work was made explicit in ILO Recommendation 201 concerning Decent Work for Domestic Workers; paragraph 6, no.3, 2011.

The standardised contract is not to be understood as something to be implemented right away.

As an ideal contract it is aspirational, that with its continued application by a growing coalition of migrants, civil society organisations and countries of origin that the reputation for what provisions should be in a contract will develop.

A standardised contract is limited in its ability to protect the rights of migrant workers. Migrant domestic workers face both labour and human rights violations; thus the right to protection against all forms of abuse, harassment and violence cannot be realised solely by reforming labour provisions.

A standardised employment contract can contribute to an improvement in living and working conditions, but does not address the structural constraints of current labour migration systems that foster conditions for abuse and exploitation. MFA will continue to advocate for reform of restrictive and anti-migrant immigration policies that impact negatively on domestic workers seeking employment overseas.

The MFA promotion of a standardised working contract will occur against a background of continued advocacy for legislative change at all levels for equal protection and treatment of migrant domestic workers under national labour laws and international legal regimes. In countries where national legislation allows for stronger provisions for protection of migrant domestic workers relative to the standardised contract; the stronger provisions will be followed.

Benefits of a Standardised Contract for Migrant domestic workers

- It enshrines a migrant domestic worker's right to receive a written employment contract that is legally binding and enforceable in the destination country. A standard made explicit under Articles 7 and 8 of ILO Convention 189 and paragraph 3 of ILO Recommendation 201 on Decent Work for Domestic Workers.
- It affirms that domestic workers are employees in an employment relationship and thus entitled to the same rights and labour standards as all other workers. A migrant domestic worker's relationship with her employer is often constructed as informal, with an imbalance of power that favours the employer. This creates the conditions for potential labour and human rights violations that can include: non-payment or underpayment of wages; excessive work hours with no overtime payment; forced confinement, food deprivation, denial of medical care and physical, sexual and verbal abuse. A standardised contract challenges this relationship construction by defining the domestic worker clearly as an employee in an employment relationship and by defining what labour standards must be met. As per the definition of an employment contract, the standardised contract outlines the specific responsibilities of both the domestic worker (employee) and the employer which are often absent in migrant domestic workers contracts. It also enshrines that recruiters and employers should be jointly liable for any breach of the terms and conditions of the contract.
- Introduction of a standardised employment contract would represent progress towards recognition and realisation of the rights of migrant domestic workers. Migrant domestic workers are frequently denied workers' rights due

to contracts that do not state, specify or define minimum labour standards in their provisions. For example: Most contracts contain unregulated working hours leading to frequent accusations that they condone working conditions akin to 'slavery'. The standardised contract includes the basic principle of an 8-hour working day.

- A Standardised contract would reinforce the universal language of domestic worker; challenging the inherent social constructions of other titles that undermine the value of the worker and person. There is diversity in the language used for the employment title of domestic workers in contracts.
- For example: In Hong Kong they are called 'domestic helper' whilst in the Philippines they are entitled 'household service workers'. The label chosen has a direct effect upon how the domestic worker will be treated. A title such as domestic helper lacks recognition of the labour contribution made to the household and ultimately the receiving country. It also subordinates the worker in the relationship facilitating conditions for exploitation and abuse. 'Domestic worker' is important to situate them in an employment relationship. 'Worker' clearly recognises their role and thus their entitlement to labour rights. Casting them as anything else invites recruiters, employers and states to justify all manner of unjust, disrespectful, inhumane and illegal treatment of domestic workers. If all contracts for migrant domestic workers were based on the standardised employment contract it would reinforce the title domestic worker.
- A standardised employment contract is one form of protection for migrant domestic workers excluded from coverage under the destination countries labour law. Most destination countries do not have legislation that protects migrant domestic workers against labour law infringements. with the exception of Hong Kong. Domestic work is not legally recognised as work within the labour code, thereby depriving women of a variety of legal protections.
- They are also not adequately protected under international legal instruments, given several destination countries have not yet ratified ILO Convention No.189 (2011) and the UN International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (1990).

- Enforcement of standardised contracts between the employer and employee, would affect working conditions for migrant domestic workers in ways beyond the reach of current international law. The destination countries' argument against legal reform is often tied to the view that domestic workers are treated as members of the family (rather than employees). Destination countries are reluctant to take an interventionist stance into the private space of their nationals. This position leaves domestic workers vulnerable to abuse and exploitation, as it excludes the protection afforded by rules that would govern a workplace. It also enables governments to shirk their responsibility to prevent and respond to complaints of human and labour rights violations of migrant domestic workers.
- The standardised nature of the contract will promote equal treatment amongst migrant domestic workers of different nationalities. Countries of origin have established different minimum wages and standards (or none) for their overseas workers in bilateral agreements with destination countries. This differentiation based on the nationality of domestic workers has led to inequality with some workers enjoying better living and working conditions than others despite doing the same work. Destination countries are able to exploit this difference and resist granting rights to migrant domestic workers. A standardised employment contract would universalise the right to fair terms and conditions for all migrant domestic workers.
- Promotion of the standardised contract with sending countries could contribute to building a consensus around the standards of the ILO Convention concerning Decent Work for Domestic Workers(C189 2011). If all sending countries argued for similar minimum wages and labour standards, as per the standardized contract, during negotiations of bilateral agreements; this could greatly improve the plight of domestic workers. The development of a consensus around labour standards for migrant domestic workers replacing diverse country specific standards is important.
- A standardised contract is important to workers who have historically been unable to form labour unions to bargain for better contractual terms.

The standardised contract acknowledges the importance of the right to unionise by not prohibiting it, unlike other contracts. Migrant domestic workers right to unionise and bargain collectively remains a separate advocacy issue for assertion under state law.

- Standardised contracts can contribute to combating exploitive recruitment practices. Recruitment agencies often decide the terms of the contract and employers can make arbitrary decisions about the living and working conditions for migrant workers. Some of the unscrupulous practices during the contracting process include: the absence of a contract; the worker not being given a copy; the contract not provided in a language that they can understand; contract terms are often misrepresented to the worker; contract substitution is rife, where upon arrival in the destination country terms and conditions of employment change from the contract originally signed. A standardised contract would enable all stakeholders to be clear about the terms and conditions a migrant domestic worker is entitled to at work. It empowers migrant domestic workers by providing an accessible tool to know their rights and enhance their ability to judge a 'better' employer.
- As contracts are often the main reference point to resolve labor disputes, a standardised contract would improve this process. A standardised working contract would serve as a basis for legal recognition in destination countries. It could help towards improving workers' bargaining power, allow workers to bring complaints to a judicial authority, provide for fairer and more efficient judicial proceedings, and encourage domestic and international monitoring of the enforcement of judgments. It would enable both sending and receiving countries to enforce contracts more easily.
- A contract offers limited protection for a domestic worker who is unable to read and understand it in the language it is written. Often they are vulnerable to deception being reliant on verbal information from recruiters and employers as to the particular terms and conditions of their contract. A standardised contract offers the opportunity for migrant domestic workers to learn and recall the terms and conditions that should be present in their contract as the reputation of the content develops over time.

- Employer and employee roles and responsibilities are absent from the standard contract or defined in a separate document making it legally non-binding.
- Provisions that rely on negotiation between employer and employee present a significant problem. The migrant domestic worker lacks bargaining power to make an informed choice or decision; given the relationship has an inherent imbalance of power in the employer's favour.
- Poorly defined provisions leave many domestic workers at the mercy of the subjective decision making power of the employer to determine terms and conditions of employment.
- All contracts do not allow for a right to organise or freedom to form associations preventing domestic workers representing themselves and bargaining collectively for improved living and working conditions.
- There is no standardised reference to the amount of remuneration they should receive in existing contracts and without a written contract it is left to the arbitrary decision of the employer.
- Almost all contracts state that the domestic worker requires the employer's permission to leave the house restricting their basic human right to freedom of movement. This often creates conditions for potential exploitation and abuse.
- An emergency contact person is absent in the majority of existing standard contracts. Given possible health problems and the well-documented cases of injury and abuse this is of serious concern.
- Contracts are not written in a language that a domestic worker can read and understand easily. Jordan's standard contract only appears in English and Arabic. However the Ministry of Labour (MOL) in 2006 created a guide for migrant domestic workers translated into the languages of origin countries (Sinhalese, Tagalog, and Indonesian, as well as English and Arabic). The MOL has made it a requirement that all recruitment agencies distribute the guide to the newly arrived migrant workers.

A critique of existing standard contracts through comparison with the standardised working contract

Countries that have introduced a standard employment contract for migrant domestic workers irrespective of nationality include Malaysia, Singapore, Hong Kong, Lebanon and Jordan. This development was in response to the escalating number of abuses committed against migrant domestic workers as well as to regulate terms and regulations of employment. These reforms typically take the form of a standard employment contract that outlines the monthly wage and arrangements over repatriation costs, but falls short of providing the comprehensive protections provided under national labor laws, such as limits to hours of work, overtime pay, benefits including maternity leave, and social security. While such standard contracts are usually legally binding, measures to publicise the requirements or enforce the provisions often remain limited. The standard contracts have been welcomed as an improvement over having no formalised work agreement or minimum standards, but have remain flawed having weaker protections than most labour laws.

General weaknesses in the protection of rights within existing standard contracts:

- The employer's details can be absent from contracts. The full legal name of the employer, the employer's address and contact details must be included to: clearly situate the domestic worker in an employment relationship; to facilitate a registration process of domestic workers and employers to promote transparency and accountability and to ensure the domestic workers family is informed about their whereabouts.

Example problems with the standards contracts of specific countries:

Jordan

A special working contract, the 'Working Contract for Non-Jordanian Domestic Workers' was drawn up in conjunction with UNIFEM (2003). It is considered the primary document governing the relationship between employer/sponsor, agent, and worker. There are weaknesses and omissions in the provisions that include:

The employer can pay the wage to a third party, such as a family member, with the consent of the domestic worker. However due to the unequal power relations the ability of the domestic worker to decline is questionable. The entitlements for accommodation and food are vaguely described effectively leaving it to the employer to decide what to provide. Working time is not determined thus fostering conditions for exploitation. It is also not clear in terms of the wages, whether food and accommodation will be provided over and above the wages agreed upon. The minimum age is not defined which might open the door for forced labour and human trafficking. It does not oblige the employer to deposit the full wage into the workers bank account every month and does not explicitly stipulate safe and healthy working conditions. A guaranteed day of weekly rest is included, but the domestic worker must seek the employer's permission to leave the house thus the basic human right to freedom of movement is not addressed.

The special working contract is based on civil law and thus contract violations do not carry the same level of consequences or penalties, as would violations of the national labour law. Thus the exclusion of domestic workers in national labour laws and lack of recognition of domestic work as an employment category remains largely unchallenged.

Lebanon

The unified contract in Lebanon was developed by: a Lebanese Steering Committee in cooperation with the Office of the High Commissioner for Human Rights (OHCHR) and the ILO. (2009). Whilst it marked an improvement given that it acknowledged the rights of migrant domestic workers, there remains protection gaps:

- It does recognise the migrant domestic worker's right to a weekly day of rest, as well as annual holidays, however the domestic workers right to leave the house on days off remains subject to the employer's consent.
- The standard unified contract also fails to address the issue of an employer confiscating the domestic workers passport and travel documents. The unified contract is heavily slanted in favor of the employer when it comes to the conditions under which the contract can be terminated.

The United Arab Emirates (UAE)

Given migrant domestic workers' fear of losing their jobs and uneven bargaining power, most are not in position to demand time off. The UAE's standard contract fails to provide for any rest days at all. Established rights to overtime pay or limits to hours of work are also absent creating conditions for exploitation. guarantee a rest day.

Taiwan

There is no provision for the responsibilities of the employer in the contract mirroring the imbalance of power in the employment relationship. It has separate contracts for caretakers and domestic helpers due to differentiation of work tasks. The domestic workers working hours and tasks are not specified, creating the potential for exploitation by the employer. There is a provision for the domestic worker to negotiate about the type of accommodation (whether to live inside or outside the home) however the final decision is that of the employer. As living outside the home would result in additional costs for the employer it is unlikely that it would be granted. The provision for termination of contract reveals discriminatory practices. Failing a medical checkup or suffering from tuberculosis, venereal disease, being HIV positive or having a drug addiction (as evidenced by public hospital assessment) are all grounds for termination of the contract. There are limited grounds for termination of the contract by the domestic worker. The standard contract provides for comprehensive medical care (not just employment related health problems) and does does guarantee a rest day.

Malaysia

This standard contract does not include the employer's details raising serious questions about how the employment relationship is understood and negates any responsibility for the employer to provide minimum labour standards. There here also exists a discriminatory grounds for termination of the contract i.e. Marriage to a Malaysian national. There are no provisions for daily or weekly rest, nor defined entitlements for accommodation and amenities. Even meals are not stipulated as the basic three meals a day.

Singapore

The standard contract has recently included a weekly day off, however it remains negotiable rather than guaranteed as monetary compensation can be given in lieu of the rest day. Holiday leave of 15 days paid leave is awarded only if the contract is extended. Notice of termination is not included in the contract. Though the Ministry of Manpower stipulates one week should be given, this is not legally binding. Singapore is the only country to include schedules of salary payment as a provision in its standard contract.

CRITIQUE

- A standardised employment contract would be most effective if adopted by all sending countries. Is it possible to build a consensus between sending countries so their national contracts reflect the standardised one?
- A standardised contract for domestic workers would provide recourse for workers to domestic courts in receiving countries. Whilst it does not address all, it does provide more transparency. However in seeking redress for violation of the terms and conditions of their contract, there still remains significant practical problems for migrant domestic workers such as: forced confinement in the home and confiscation of mobile phones that prevents them from filing a complaint; finding the money to start proceedings or a lawyer prepared to do pro bono;

and sustaining themselves financially during the legal process. Domestic workers should not be denied the right to justice because they have no money.

- Contract compliance is essential for the effectiveness of a standardised employment contract in protecting the rights and welfare of migrant domestic workers. The recruitment industry could undermine the value of standardised contract. There are many abuses committed by recruitment agents and intermediaries during the contracting process. Ensuring employers and recruiters abide by the provisions of the standardised contract requires further exploration of regulatory and monitoring mechanisms in both sending and receiving countries.

The ILO Convention on Private Employment Agencies (C181 1997) can provide the guidelines on the regulation of private recruiting agencies. The countries of origin and destination should have regulation bodies for recruitment agencies to actively monitor and enforce a code of conduct. They could offer incentives to employers and recruiters who comply with regulations, such as charging them lower fees or giving them priority access to government-provided services such as the issuance of work permits. Regulations should have substantial penalties for recruitment agencies committing serious violations. Ultimately there must be accessible, credible dispute resolution mechanisms available to migrant domestic workers.

- The primary responsibility for introducing the contracts must lie with the country where the worker is employed. The destination country should assume some of the responsibility for contract compliance by instituting it under the national labour law. Legislation in the country of destination needs to provide for a judicial body to enforce the terms of the contract. For example: a labour tribunal, to ensure migrant domestic workers have a means of redress for violation of their rights.

RECOMMENDATIONS

- MFA to continue to advocate for the ratification and implementation of ILO C189 and the inclusion of migrant domestic workers in the labour code and law; alongside implementation of the standardised employment contract.
- The standardised employment contract to be used as a capacity building tool for migrant domestic workers to raise awareness of their rights as enshrined in C189 and to increase their bargaining power once they are familiarised with what constitute fair terms of employment.
- The standardised contract could be explained during affordable gender- and rights-based pre employment, pre-departure information and specific training programmes to ensure prospective migrant domestic workers fully understand the contents and implications of the contract. The programmes would be held in decentralised training venues so that they are accessible to women.
- The model contract should at all times be made available free of charge to domestic workers, employers, representative organisations and the general public. (ILO Recommendation 201, paragraph 6 no.4.)

The standardised contract could be available online to enable easy verification of its provisions.

- Promote the concept of a standardised employment contract via outreach to trade unions, academic bodies, media and recruitment agencies.
- Lobby for the adoption of the standardised employment contract by highlighting the specific benefits for countries of origin and destination.
- The standardised working contract should be adopted as a multilateral advocacy tool for sending countries negotiating with destination countries, whilst ensuring any national contracts drawn up mirror the provisions of MFA's model standardised contract.
- Bilateral and multilateral agreements between sending and receiving countries should include the adoption of a standardised contract that is enforceable and recognised in both countries. It should be translated into a language the migrant worker understands and be signed in both the country of origin and destination. It must be accompanied by its implementing guidelines and effective monitoring mechanisms and strict regulations and penalties for not abiding by the provisions contained within.

- The contracting process should entail officials such as the Ministry of Labour (MOL) attesting to the employment position in the destination country, then the contract being signed and a copy provided to the migrant domestic worker and the MOL in the country of origin.
- Countries of origin and destination should monitor recruitment agencies and prosecute them for acts of violence, coercion, deception and exploitation of migrant domestic workers.
- To contribute to the enforcement of the standardised contract] governments in labour sending and receiving countries must strengthen and enforce regulation of recruiters and subagents. This should include both regular and spot inspections and more regular aggressive campaigns against illegal recruitment and other unethical practices. (MFA ,CARAM Asia et al, 2011: 2)
- Countries of origin and destination should create incentive mechanisms for employers and recruitment agencies to ensure the effective implementation of a standardised employment contract.
- Ensure that migrant domestic workers have access to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid.
- Countries of origin should ensure the availability of legal assistance in connection with migration for work. For example, legal reviews should be available to ensure that work contracts are valid and protect women’s rights on a basis of equality with men (Articles 3 and 11, CEDAW)
- Easily accessible dispute resolution mechanisms must be established to protect women migrant workers from discrimination or sex-based exploitation and abuse.
- Provide temporary shelters for migrant domestic workers who wish to leave an abusive employer and have safe accommodation during a trial.
- Countries of origin and destination should ratify all international instruments relevant to the protection of the human and labour rights of migrant domestic workers.

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