

Review of Model Contract

Below is a line-by-line critique of the Model Contract. However, I first note the numerous critical omissions in the text of the model contract.

I. Initial Concerns

First, the contract makes no reference to the ILO fundamental rights (Article 3 of C 189), including freedom of association and collective bargaining. This omission is particularly critical, as only Bahrain has domestic labour legislation which extends the right of association to domestic workers. Further, guarantees against discrimination are critical, as domestic workers face discrimination on numerous bases (age, sex, race, nation original, etc).

Second, the contract provides no provision that guarantees workers effective protection against abuse, harassment and violence (Articles 5, 15-17). It is obvious that the current legal systems are currently ill-equipped to address such violations. Article 7 of Recommendation 201 calls on governments to ensure that there are accessible complaint mechanisms, and that complaints are investigated and prosecuted. We know that this is not now the case anywhere in the GCC. In addition to including language prohibiting, abuse, harassment and violence, the contract should make clear the right of the worker to remove themselves from the workplace in such cases and that doing so not constitute a breach of the contract by the worker. Indeed, abuse, harassment and violence should be clearly stated as grounds for the worker to terminate the contract (and having the employer pay for repatriation if the worker decides to return home).

Third, the model contract does not contain all of the terms and conditions of employment spelled out at Article 7 of Convention 189. Further, the model contract does not appear written in an “appropriate, verifiable and understandable” manner. Missing from the contract is a description of the work to be performed (currently “the agreed upon work) and a description of normal hours of work (instead referring to the provisions of national law, which the worker may not have on hand).

Fourth, the contract is unclear whether the worker has a choice to live in the household (Article 9). Further, it provides no provision regarding the freedom of movement of those workers living in the household during periods of daily and weekly rest or annual leave.

Fifth, the contract contains no provisions guaranteeing equality of treatment among workers related to hours of work, overtime compensation and rest/leave (Article 10). The agreement also does not specify that idle time where the worker is nevertheless on call (cannot freely dispose of their time) should be considered work time. See also Recommendation 201, Article 9.

Sixth, the contract makes no reference to social security or maternity protection (Convention 189 Article 14 and Recommendation 201, Article 20).

A related point, this contract should be signed prior to departure. This is perhaps a practical matter rather than a criticism of the contract itself. But it is essential that workers know and agree to the terms and conditions prior to departure.

Further, in many cases the worker will be hired through an employment agency. Article 15 of Convention 189 provides additional protections in such circumstances. If the contract is to be used by employment agencies, it will be important that appropriate language as to employment agencies is included in the contract – e.g., that fees charged by a private employment agency shall not be deducted from wages.

II. Line by Line Critique

- I. The Second Party shall work for the First Party as a (name of occupation), and the Second Party shall perform the agreed upon work at the First Party's house and/or any of its premises.
- II. The First Party shall undertake to pay the Second Party a monthly wage of (.....) paid to her on monthly basis according to the Gregorian calendar.

ITUC Comments: See comment on minimum wages in Section III

- III. The term of this contract is (one year/two years), starting from the date of commencement of the work by the Second Party. The term shall be renewed automatically for a similar period, unless one of the Parties notifies the other Party of otherwise thirty (30) days before the expiry date of the contract period.
- IV. The Second Party shall be subject to a probation period of not less than three months and not more than six months, to verify her working efficiency and the soundness of her personal conduct.

The First Party may terminate the contract during the probation period, without prior notice to the Second Party, if he deems that she was not fit to work; in this case, the First Party shall repatriate the Second Party to her country or to the recruitment office as per a prior agreement signed to this effect.

ITUC Comment: The 6 month probation period is unreasonably long and should be no more than 3 months. If the contract is terminated during the probationary period, the contract is unclear whether the employer will cover the cost of repatriation. Article V, below, only refers to covering costs upon death or expiration of the contract.

- V. The First Party shall be committed to provide the Second Party with:

- a. A decent accommodation equipped with the necessary means of life in a manner that respects her privacy.

ITUC Comment: C189 refers to “decent living conditions that respect their privacy”. It is unclear what is deemed “necessary” here. Likely, this will be left solely to the employer’s discretion. ILO Recommendation 201 also provides that when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker. This section should make clear that these provisions are provided at the employer’s expense.

- b. Food and clothing to ensure appropriate life for her.

ITUC Comment: Recommendation 201 provides that “When provided, accommodation and food should include, taking into account national conditions, the following: (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker; (b) access to suitable sanitary facilities, shared or private; ((c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned. These concepts should be incorporated into the model contract.

- c. The visa and all government fees and expenses for the issuance, renewal and cancellation of the work permit, exit and return visas.
- d. Regular monthly salary. The First Party shall only have clearance from the wage when the Second Party signs a receipt certifying that she has fully received her wage.

The Second Party may request the First Party to deposit her wage in a bank account. The First Party shall have clearance once he deposits the wage in the account specified by the Second Party.

In all cases, the burden of proof shall be the First Party's responsibility to prove that the wage was duly paid to the Second Party in accordance with the provisions of this contract.

ITUC Comment: The contract should include a provision which guarantees the worker an easily understandable written account of the total remuneration due to them and the specific amount and purpose of any deductions which may have been made at the time of each payment, Pursuant to recommendation 201, Article 15.

- e. Medical care in case of disease, work related injury, unless the injury/harm was deliberately self-inflicted by the worker.

ITUC Comment: As it is often the case that in these situations the employer will claim injuries are self-inflicted, the employer should have the burden of proof to establish that such injuries were in fact self-inflicted. Otherwise, the assumption should be that they are work related. Further, injuries which occur at the workplace but are not the result of a workplace hazard (a burn or cut during food preparation) should also be covered – i.e. a slip and fall in the home. Also, Article 13 of Convention 13 provides that domestic workers are entitled to a safe and health working environment. The contract contains no language regarding occupational safety and health, not even referring to the protections available to other workers under domestic law. The worker has a right to know his/her rights as to workplace safety and the procedures that a worker can take if injured on the job.

- f. Compensation in case of death, total or partial invalidity caused by a work injury in accordance with the provisions set forth in the applicable national legislations in this regard.

ITUC Comment: As with the previous section, the burden should be on the employer to demonstrate that the injury was not work-related (unless, for example, the injury occurred during annual enjoyed away from the workplace).

- g. The expenses of repatriating the corpse of the Second Party to her respective country in the event of her death.
- h. The expenses of repatriating the Second Party to her respective country upon the expiration of the work contract.

ITUC Comment: This clause should also include where the contract was terminated (not just expired) for a breach committed by the employer.

- i. Enable the Second Party to regularly communicate with her family.

ITUC Comment: It is unclear at whose expense is the regular communication. We would recommend that the employer cover the expenses for reasonable levels of communications with the family and to ensure that the worker have privacy respected when making these communications.

- j. Upon the end of the employment contract, the Second Party shall be entitled to an end of service benefit that is calculated in accordance with the provisions set forth in the applicable national legislations in this regard.

VI. The Second Party shall be committed to undertake the following:

- a. Honestly and duly perform the work as agreed upon, showing the usual cautiousness of an ordinary person.

ITUC Comment: Again, the duties should be clearly set forth in the contract to avoid any confusion and to limit abuse by the employer by requiring the worker to perform work not expressly provided for in the contract.

- b. Adhere to the work instructions of the First Party and his family members, provided that such instructions do not endanger the safety of the Second Party or harm his human dignity.

ITUC Comment: This provision is unnecessary as the previous clause already established that the worker will honestly and duly perform the work. This clause could be interpreted to give family members wide latitude to instruct the worker to do anything, so long as it is not dangerous or demeaning. A definition of family members is also needed, and should be limited to the immediate family.

- c. Protecting the confidentiality of the secrets of the First Party and his family members, as well as the individuals at his house for any reason, that the Second Party becomes familiar with by virtue of his work, and he must not disclose them to third Parties.
- d. Maintain the property of the First Party and his family members, and the Second Party shall compensate for any damages she may inflict on to such property, arising from her mistake, in accordance with the provisions set forth in the applicable national legislation in this regard.

ITUC Comment: There should be some degree of reasonableness, as household objects are likely to break from time to time. Also, the worker runs the risk of having the breaking of any object being ascribed to her. Thus, the burden of proof must be on the employer. Only if it is demonstrated that the worker broke an object through some degree of fault (i.e. recklessness) should the employer be allowed to request the replacement value.

- e. Refrain from performing work for others, with or without pay

ITUC Comment: While there is a ban on workers accepting work for others, there should also be a parallel prohibition on the employer from demanding the worker perform work for another.

- f. Comply with laws, regulations and customs prevailing in the First Party's country of residence.

ITUC Comment: Such laws, regulations and particularly customs must be clearly explained in an easy to understand manner in the language of the worker. Indeed, under recommendation 201, the government should be “providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require.” Such materials should be provided with any contract.

- g. Prove medical fitness for the job subject of the contract, and that she is free from any contagious diseases

ITUC Comment: This clause could easily lead to employment discrimination on the basis of HIV status. As provided for in Article 3 of Recommendation 201. “In taking measures for the elimination of discrimination in respect of employment and occupation, Members should, consistent with international labour standards, among other things: (a) make sure that arrangements for work-related medical testing respect the principle of the confidentiality of personal data and the privacy of domestic workers, and are consistent with the ILO code of practice “Protection of workers' personal data” (1997), and other relevant international data protection standards; (b) prevent any discrimination related to such testing; and (c) ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status.” Thus, the contract should make clear that workers shall not be required to submit to testing for pregnancy or HIV to demonstrate fitness for the job. Further, the contract should guarantee that the employer keeps all medical information in strict confidence.

- VII. Ordinary working hours and overtime shall be determined in accordance with the applicable national legislation in this regard. In all cases the Second Party shall be given a night break for at least eight continuous hours.
- VIII. The Second Party shall be entitled to a fully-paid weekly a rest-day (24 consecutive hours), as agreed by both Parties. If there was a need for her to work on her weekly rest-day, she shall be entitled to an alternative rest-day in the next week or to a payment.

ITUC Comment: The contract fails to mention that the worker should be entitled to overtime compensation if working on a day of rest, even if provided an alternative day of rest. There should be language in the contract that explains what is considered overtime and at which rate it should be paid (at least as much as provided under C1 or national law if higher). See Article 6 of Recommendation 201. Preliminary remarks 5 and 6 are also relevant here.

Further, Recommendation 201, Article 8 provides that the hours of work should be accurately recorded and that this information should be freely accessible to the worker. This contract should make clear how the hours are recorded, and a means for the workers to review the records for accuracy and to contest the records if incorrect.

- IX. The Second Party shall be entitled to an annual leave with full pay; the duration of such leave is determined in accordance with the provisions set forth in the applicable national legislation in this regard.

The Second Party has the right to combine his annual vacation for two consecutive years of work together, and is entitled to spend it in his country of origin, and the First Party shall bear the travel costs.

- X. The Second Party shall be entitled to a sick leave with full pay; the duration of such leave is determined in accordance with the provisions set forth in the applicable national legislation in this regard.
- XI. The Second Party's passport is a personal document, and she is entitled to keep it in the way she deems appropriate.
- XII. This contract shall be terminated:
 - a. If it expired, without renewal in accordance with the provisions set forth therein, and taking into account the legal requirements necessary for this renewal.
 - b. If terminated by one of the Parties for a legitimate cause; any breach of the obligations of any Party by virtue of the law and this contract is considered a legitimate cause for the termination.
 - c. The death of the Second Party or his inability to perform the work agreed upon, as a result of illness or injury, proved by a report issued by a competent medical authority.
 - d. The death of the First Party, or his separation from his family, or his absence outside the country for more than six months for any reason, unless a family member requests the transfer of the license to hire the worker for his own interest. In this case, this family member shall replace the First Party in this contract.

ITUC Comment: ILO Recommendation 201, Article 16 provides that “Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers’ claims in the event of the employer’s insolvency or death.” Thus, in the case of death, the contract should make clear that the worker is able to claim all outstanding wages and benefits due.

- e. The First Party is entitled to terminate the contract with the Second Party, if it was proved that the worker sustains contagious, chronic illness, or physical or mental disability; the First Party shall provide for the return of the Second Party to her country of origin.

ITUC Comment: This clause (e) must be substantially revised. There is no reason why the contract should be terminated if a worker contracts a contagious but treatable illness. Otherwise, the contract could be terminated if the worker simply contracted the common cold. Further, employers may not discriminate against workers based on HIV status – and indeed should not be testing for it. It is likely that most workers with certain physical or mental disabilities could perform domestic work satisfactorily. The clause should be reformulated to provide that the contract may be terminated if the worker is unable to perform the work in the contract due to illness or disability of a chronic/permanent nature and which cannot be overcome by reasonable accommodation.

- XIII. The provisions of the law regulating the work of domestic workers No., for the year (or any other law applicable to domestic workers), shall apply to any aspects not

mentioned in this contract; and if there is not any relevant text, the Civil Code provisions shall apply.

XIV. All disputes arising from this contract shall be settled in accordance with the provisions of the law regulating the work of domestic workers No., for the year (or any other law applicable to domestic workers); and if there is not any relevant text, the Civil Code provisions shall apply.

XV. This contract is made in two copies, and each Party shall keep a copy.

The Second Party's copy is attached with a/an () translation of the contract. The Arabic version of the contract shall be accredited as evidence.

III. Additional Concerns

Article 11 of Convention 189 provides that "Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex." Domestic workers often receive extremely low levels of remuneration, and female workers usually receive a lower wage relative to men. The ITUC calls on all GCC countries to adopt an appropriate minimum wage in national legislation, which would serve the floor wage to be paid to any worker hired under the model contract.

Finally, Article 4 of Convention 189 provides that "Each member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally." It also provides that "Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training." See also Recommendation 201, Article 5. We again urge all GCC countries to adopt minimum age laws and regulations in line with the Convention and take measures to ensure that no underage children are hired under this contract.