

Fall December 3, 2013

Good practices in standard setting for domestic worker contracts

PIYASIRI WICKRAMASEKARA

Good practices in standard setting for domestic worker contracts

Presentation at the Asia –Gulf States Regional Dialogue on Standard Terms of Employment for Migrant Domestic Workers, 3-4 December 2013, Cinnamon Grand Hotel, Colombo, Sri Lanka.

By

Piyasiri Wickramasekara

Global Migration Policy Associates (GMPA), Geneva

piyasiriw@globalmigrationpolicy.org

Visiting Professor, School of Social and Political Sciences, University of Sydney, Australia

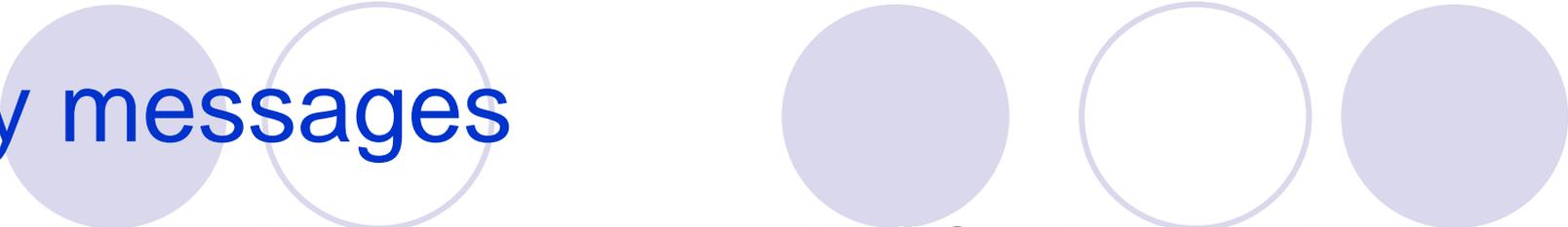
piyasiri.wickramasekara@sydney.edu.au



Structure of the presentation

- Key messages
- Normative framework & standard setting
- C189 and R201 provisions
- Good practices in instruments
- Observations on Asian contracts
- Supplementary measures
- Conclusions

Key messages



- International instruments negotiated by ILO and UN constituents are the best sources of good practices.
- A standard contract is a crucial first step for protection of domestic workers.
- For maximum effectiveness, the model/standard contracts should be mutually recognized by countries of origin and destination, and duly enforced to ensure compliance by employers, and supplemented by other measures.
- Sharing good practices alone is not enough; ratifying Conventions – C189- by both origin and destination countries, and revising national laws accordingly and enforcing provisions with mechanisms for complaints and redress are all essential parts of the package.
- Respect, Promote and Realize principles in relevant Conventions, especially C.189, even when not ratified.

Why regulation & standard setting for domestic work is important

- **MFA Policy Brief No.1 and ILO Designing Labour Laws have comprehensive explanations of this.**
- Highly particular nature of domestic work –performed in the home of a private individual, often in the absence of co-workers, and frequently without written contract of employment or any external monitoring.
- Often excluded from labour and employment legislation
- Essential tools for eliminating the negative aspects of informality in the domestic work sector
- Ensuring that opportunities for decent work and employment are offered by domestic work
- The requirement of a written contract especially important for for migrant domestic workers because: a) most vulnerable of the world's domestic worker population; b) provides specific guidance on work expected to perform in the country of employment and the applicable terms and conditions of employment.
- Most of the general bilateral MOUs/Agreements signed by Asian origin and their destination countries do not cover domestic workers.

Model or standard contracts

- Recognized as a good practice in international instruments (R86; R201).
 - Templates that assist domestic workers and their employers in formalizing their employment relationships through a written agreement.
 - Set out standard clauses regarding the terms and conditions of employment and other matters to be included in the contract of employment.
 - Help employers to comply with statutory requirements regarding working conditions and entitlements of domestic workers, which they may incorporate.
 - Help draw the worker's attention to his or her rights under the legislation.
- A number of origin countries have been promoting model contracts for all migrant workers, but effectiveness limited. E.g. Philippines, Sri Lanka, India-Qatar bilateral agreement has an annex of a model contract. Domestic worker specific standard contracts more recent development.

Gaps in legal protection- Domestic workers (% of domestic workers (both national & migrant))

	Asia and the Pacific	Middle East
No limitation of normal weekly hours	99%	100%
No entitlement to weekly rest for domestic workers	97%	100%
Domestic workers are excluded by the country's labour laws	61%	99%
No statutory minimum wage applicable to domestic workers	88%	99%
Excluded from entitlement to annual leave for domestic workers under national legislation, 2010	97%	99%

Source: Compiled from information given in ILO, Domestic workers across the world: global and regional statistics and the extent of legal protection , International Labour Office , Geneva: 2013

ILO's work on standard setting for domestic workers dates back to the 1930s

- **1936:** -an ILO Committee Resolution called the Governing Body to place the question of employment of domestic workers on the Conference agenda.
- **1948:** Resolution adopted by the International labour Conference requested the Governing Body to consider the advisability of placing the question of the status and employment of domestic workers on the Conference agenda
- **1951:** Conclusions of the Meeting of Experts on the Status and Conditions of Employment of Domestic workers, 2-6 July 1951
- **1965:** Resolution concerning the Conditions of Employment of Domestic Workers, adopted on June 23, 1965, 49th Session, International labour Conference, Geneva.
- **1970:** Report of the General Survey of the Employment and Conditions of Domestic Workers in Private Households.
- **2011:** after decades of effort, landmark ILO Convention on Domestic Work, 2011 (No.189) and the related Recommendation, 2011 (R201).

C.189 - Key standards and approaches

- Measures for ensuring **fair terms of employment and decent working conditions** for domestic workers, on par with other workers
- Promoting **formalization** of the employment relationship (written contracts, pay slips, time records, etc.)
- Developing of measures for ensuring **compliance** with laws and regulations protecting domestic workers

ILO Convention on Domestic Workers, 2011 (No.189): A landmark

- . The Convention gives rights to domestic workers such as:

Decent working hours

Decent Pay

Time off for rest and holidays

A contract

Inspection of homes where domestic workers work

The right to join a trade union

Ratifications of C.189

Country	Date	Status
Bolivia, Plurinational State of	15 Apr 2013	Not in force
Germany	20 Sep 2013	Not in force
Guyana	09 Aug 2013	Not in force
Italy	22 Jan 2013	Not in force
Mauritius	13 Sep 2012	In Force
Nicaragua	10 Jan 2013	Not in force
Paraguay	07 May 2013	Not in force
Philippines	05 Sep 2012	In Force
South Africa	20 Jun 2013	Not in force
Uruguay	14 Jun 2012	In Force

As of October 2013: Source: ILO labour standards database

C189 – Art. 7 on employment contract for domestic workers

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

- (a) the name and address of the employer and of the worker;
- (b) the address of the usual workplace or workplaces;
- (c) the starting date and, where the contract is for a specified period of time, its duration;
- (d) the type of work to be performed;
- (e) the remuneration, method of calculation and periodicity of payments;

C.189 (Art.7) contd.

- (f) the normal hours of work;
- (g) paid annual leave, and daily and weekly rest periods;
- (h) the provision of food and accommodation, if applicable;
- (i) the period of probation or trial period, if applicable;
- (j) the terms of repatriation, if applicable; and
- (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

C.189 (Art. 8) on migrant domestic workers

1. National laws and regulations shall require **that migrant domestic workers** who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.
3. **Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.**
4. Each Member shall specify, by means of laws, regulations or other measures, the **conditions under which migrant domestic workers are entitled to repatriation** on the expiry or termination of the employment contract for which they were recruited.

ILO Recommendation No. 201: additional provisions on contract

- Para 6 (1) Members should provide **appropriate assistance**, when necessary, **to ensure that domestic workers understand their terms and conditions of employment.**
- Para 6 (2) Further to the particulars listed in Article 7 of the Convention, the terms and conditions of employment should also include:
 - (a) a job description;
 - (b) sick leave and, if applicable, any other personal leave;
 - (c) the rate of pay or compensation for overtime and standby consistent with Article 10 (3) of the Convention;
 - (d) any other payments to which the domestic worker is entitled;
 - (e) any payments in kind and their monetary value;
 - (f) details of any accommodation provided; and
 - (g) any authorized deductions from the worker's remuneration

R201 on Model contracts



- Para 6 (3) Members should consider establishing a model contract of employment for domestic work, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.
- Para 6 (4) The model contract should at all times be made available free of charge to domestic workers, employers, representative organizations and the general public.

Context for success in standard contract for migrant domestic workers

- Incorporate domestic work as part of labour law in both origin and destination country legislation
- Both origin and destination countries - Ratify and/or respect, promote and realize C189 principles in national law and practice.
- Ensure minimum wage coverage for domestic workers (Art. 11)
- Ensure compliance through enforcement of law including strengthened labour inspection services to inspect home workplaces (Art. 17).
- Effective and accessible complaints mechanisms (Art. 17 (1), justice mechanisms and legal assistance
- Recognize and ensure a safe & healthy working environment (Art. 13)
- Awareness of workers on their rights and contract conditions: contracts in understandable languages, and contracts explained to them.
- Consultation with social partners, NGOs, domestic worker assoc.
- Freedom to join unions, form association.

Examples of standard contracts in Asia with good practice elements

- MFA standard employment contract for domestic workers: draws upon C.189
- Philippines-Saudi Arabia domestic worker contract (in all three languages)
- Philippines-Jordan domestic worker contract
- Jordan model domestic worker agreement
- Lebanon unified contract for domestic workers
- Sri Lanka - Draft Model Standard Employment Contract for Migrant Household Service Worker, December 2013

Some observations on contracts

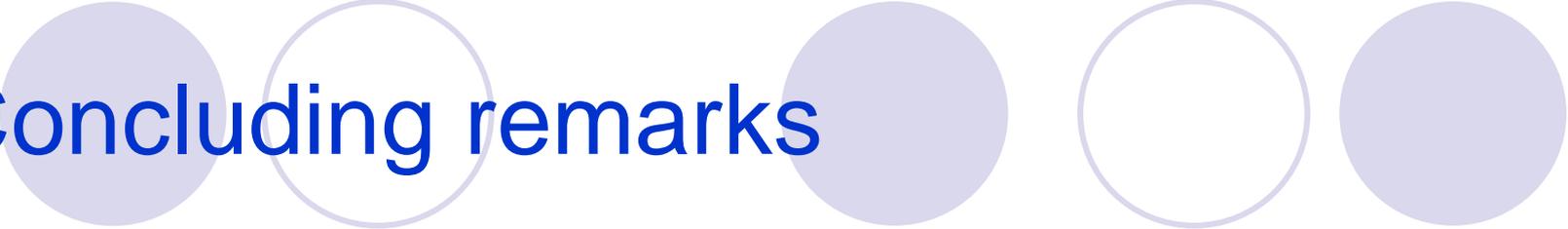
- Provision should be made for the worker as well to terminate the contract in justifiable circumstances.
- The employer must allow the worker to defend herself/himself for premature termination of contract.
- Important to specify that recruitment agency fees not be reduced from wages
- Annual leave does not mean leave to be taken at end of two years
- The domestic worker should also be allowed to terminate contract, and conditions should be spelled out clearly. E.g. Phil-Jordan contract.
- Competent authorities for settlement of disputes should be identified.
- In addition to passport and work permit, all travel documents should be in the possession of the domestic worker.
- Explicit mention of normal working hours and compensation for overtime.
- Specify list of duties or provide job description.
- Adequate pre-departure orientation and training for work abroad
- Jordan – Pil contract: – compensating employer for “all financial liabilities” an unreasonable requirement.
- In case of death, the circumstances of death should be ascertained.
- Contract content to be understood easily by worker – not too legalistic.

Other supplementary options and measures for protection

- Effective regulation of recruitment agencies; Joint liability provisions: local recruiter liable for contract violations by foreign employers (Philippines); Kafala system reform.
- High level missions to and consultations with host countries to look into welfare of migrant workers
- Selective bans to countries violating worker rights & raising of minimum age for female domestic workers
- Ratification of migrant worker instruments, esp. C.189.
- Extend labour law to domestic workers, etc, in destination countries.
- Bilateral MOUs for domestic workers where possible, and inclusion of domestic workers in general MOUs.

Other options and measures -2

- Origin countries define minimum wages unilaterally: Indonesia, Philippines and Sri Lanka.
- MOUs among other actors
 - trade unions in COO and COD; Sri Lanka and unions in Kuwait, Bahrain and Jordan;
 - Bilateral MOUs between human rights bodies: Qatar and Sri Lanka in Dec. 2012
- Initiatives by origin countries in social security/pension schemes , insurance and welfare funds where destination countries do not provide social security.



Concluding remarks

- There is a large unfinished agenda in ensuring decent work for domestic workers.
- Therefore, all stakeholders (origin and destination country governments, unions, employers and NGOs) should join hands to make decent work a reality for millions of migrant domestic workers.
- Model contracts mutually accepted and enforced is a major prerequisite for progress in this area.
- Important to promote genuine domestic worker associations which can promote their own voices.
- Need good coordination among international organizations in programmes to assist domestic workers at national and regional levels.