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CONTRACTUAL SAFEGUARDS FOR KENYAN MIGRANT DOMESTIC WORKERS TO SAUDI ARABIA

A Comparative Analysis of the Kenya Form of Foreign Contract of Service and the Saudi Arabia MUSANED Standard Employment Contract

Kenya has increasingly become a significant source of migrant workers to the Gulf region, with Saudi Arabia being a primary destination. However, concerns regarding the welfare of these workers continue to surface, particularly around issues of exploitation, abuse, and unfair working conditions. A key element in safeguarding the rights of these workers is the formulation and enforcement of robust contractual frameworks. In this context, the Form of Foreign Contract of Service, as created under Section 83 of the Kenya Employment Act No. 11 of 2007, and the Standard Employment Contract for Domestic Service Workers Bound for the Kingdom of Saudi Arabia, issued under MUSANED system, serve as important legal tools for protecting migrant domestic workers.

The Form of Foreign Contract of Service

The Form of Foreign Contract of Service is designed to protect Kenyan migrant domestic workers by establishing clear terms of employment that both the worker and employer must adhere to before the worker departs for Saudi Arabia. This contract lays out critical provisions such as the wage the worker is entitled to, working hours and the specific duties that the worker is expected to perform. It also outlines the employer's responsibility to provide adequate accommodation, food and access to medical care. These terms are particularly important in mitigating the risks of abuse and exploitation, which have been significant concern for Kenyan domestic workers abroad. By formalizing these expectations, the contract is intended to create a safer and more predictable working environment for the employee.

Additionally, the contract specifies provision regarding the worker's general welfare; mandating that the employer ensures the worker has access to necessary healthcare services and is provided with decent living conditions, including proper accommodation and meals. This is particularly crucial given that many migrant domestic workers live in their employer's home where conditions can vary significantly. By including these clauses, the contract attempts to safeguard the basic rights of the workers, ensuring that they are not subjected to degrading or unsafe environments. However, the effectiveness of these provisions often depends on the willingness of the employer to comply and the ability of the authorities in Saudi Arabia to enforce these standards.

One of the most significant safeguards provided in the contract is the clause on repatriation, which places a legal obligation on the employer to facilitate and bear the cost of returning the worker at the end of the contract or in case of termination. This clause is essential in protecting workers from being stranded in a foreign country, which is a common issue when employers confiscate workers' passports or refuse to pay for their travel home. Despite this provision, enforcement remains a challenge. Workers often find themselves unable to return home due to unpaid wages or withholding of their identification documents, which can prevent them from seeking help or leaving the country. This highlights a critical gap between the contractual terms and their practical application on the ground.

While the Form of Foreign Contract of Service offers comprehensive protections on paper, the absence of effective monitoring and enforcement mechanisms severely limits its ability to protect workers once they are in Saudi Arabia. For instance, there is no systematic follow-up to ensure that employers adhere to the contractual obligations regarding wages, working hours and living conditions. Furthermore, the lack of accessible legal resources for workers in distress exacerbates the problem, as many are unable to seek help when their rights are violated.

Practice and evidence show that the Kenya recruitment agencies are always listed as the employer in the Form of Foreign Contract of Service. This, however, presents several challenges that undermine the protection of Kenyan Migrant Domestic Workers in Saudi Arabia as it dilutes accountability, complicates enforcement, and increases the risk for mistreatment.

First, it creates a significant ambiguity in accountability, as the actual employer, who controls the worker's day-to-day employment conditions such as wages, working hours and living arrangements, is not the one formally listed in the contract. This blurring of responsibility makes it difficult for workers to hold the true employer accountable when issues such as abuse, or non-payment of wages arise. Secondly, recruitment agents which function as intermediaries have limited oversight once the worker is in Saudi Arabia and often lack the capacity to enforce the contract terms or intervene when violations occur. As a result, when a worker faces exploitation or mistreatment, they are caught in a bureaucratic limbo, as the recruitment agency in Kenya may be unable or unwilling to address grievances effectively, while the actual employer may feel less obligated to adhere to the contract. This arrangement complicates legal recourse for the worker, as they may struggle to identify which party is responsible for their welfare, thereby limiting their ability to seek justice or assistance. Lastly, recruitment agencies may exploit this ambiguity by absolving themselves from further responsibility once the placement is complete, leaving workers vulnerable to exploitation without adequate support.

The Standard Employment Contract for Domestic Service Workers (DSW) Bound for the Kingdom of Saudi Arabia (MUSANED Standard Employment

Saudi Arabia has established the MUSANED system, a comprehensive electronic platform designed to streamline and regulate the recruitment and employment of domestic workers. This system requires employers and workers to sign standardized contracts that govern the terms of employment. The MUSANED Standard Employment Contract for Kenyan migrant workers, which underwent heavy model review in 2022, outlines key protections for domestic workers, covering areas like wages, living conditions, healthcare and dispute resolution. One of its core mechanisms is the requirement that the employer provides a fair and clearly stated wage, as agreed upon by both parties before the worker travels to Saudi Arabia. Additionally, the contract states that the employer ensures suitable accommodation and meals for the worker, which addresses concerns about poor living conditions often faced by domestic workers.

While the Ministry of Human Resources and Social Development of Saudi Arabia announced and enforced new regulations and reforms through the Labour Reform Initiative to be affected from 1st July 2024, it remains unclear whether the Kenya and the Saudi Joint Technical Committee are amending the MUSANED Standard Employment Contract for Kenyan domestic workers in Saudi Arabia.
Healthcare is another critical component safeguarded under the MUSANED system. The contract obliges the employer to provide access to medical care, ensuring the worker receives necessary treatment in case of illness or injury. Moreover, the MUSANED platform includes a dispute resolution process that allows workers to file complaints if there are violations of contract terms, such as non-payment of wages or overwork. This mechanism aims to offer formal channel for addressing grievances and ensuring that workers' rights are protected.

Termination provisions are also outlined, detailing the conditions under which either party can terminate the contract, including early termination due to abuse or violation of the contract terms. This offers a form of legal protection for workers who may face exploitation or mistreatment during their employment.

Comparative Analysis of the Form of Foreign Contract of Service and the MUSANED Standard Employment Contract

Contractual safeguarding mechanisms for Kenyan Migrant Domestic Workers to Saudi Arabia are presented in a dual framework which gives the worker greater legal security, reduces the risk of exploitation, and provides clearer channels for recourse in case of violations. Having both the Form of Foreign Contract of Service and the MUSANED Standard Employment Contract offers a layered and more comprehensive level of protection of rights prior to departure, during the term of employment and post return to Kenya. As mentioned above, the reform implemented by the Ministry of Human Resources and Social Development of Saudi Arabia in July 2024 should reflect in amendments to the MUSANED Standard Employment Contract for Kenyan migrant workers, but the amendments have not yet been implemented and the 2022 version of the contract is the one still in use up to date. Therefore, the 2022 version of the MUSANED Standard Employment Contract for Kenyan migrant workers is the object of this analysis, which will be duly updated upon effectuation of the expected amendments.

PROVISION	FORM OF FOREIGN CONTRACT OF SERVICE	MUSANED STANDARD EMPLOYMENT CONTRACT
Parties to the Contract	• Employer – Kenya recruiting agency • Employee – List of domestic workers under each recruitment cohort	• Employer – Saudi national procuring domestic work • Employer's representative – Saudi recruiting agency • Employee – Individual domestic worker • Employee's representatives – Kenya recruiting agency
Party Details	• Employer – Agency name and Physical address • Employee – Full name, Gender, ID no, Passport no, Occupation, Rate of Pay, Contract duration, Country of destination, Level of Education and Next of kin contacts.	• Employer – Full name, National ID no, Address (street & city), Mobile and telephone numbers • Employer's representative – Agency name, License number, Telephone number, Address (street & city) and Email address • Employee – Name, Position, Address, Civil Status, Contact Number, Passport details (Number, Place of Issue and Date of Issue), Next of kin details (name, relationship, contact number and address). • Employee's representatives – Name, License No, Address (street and city), Contact No and Email Address.
Date of Contract	• Clearly spelled out	• No date • Unique contract identification number.
Nature of Work	• Blank space – often filled in as House Maid.	• Position – often filled in as House Maid.

Location of Employment	• Blank space to fill out Country and town or area – only country is ever filled out.	• Written in Arabic and may differ from the location of the employer from time to time.
Duration of Contract	• Two years • Commencing from date employee leaves Kenya	• Two years • Commencing on the date the employee arrives in KSA
Salary/ Wages	• Amount set out in a list attached to the contract • Employer to pay not less than a third of wages into a local bank account nominated by employee or the employee's nominated person	• Amount set out in the contract • Directed to make monthly payments • Employer to help domestic workers to open KSA bank account. • Wages are paid in the above account • Employer to support employee to remit funds.
Rest periods	Not provided in contract.	• Continuous undisturbed rest for at least 9 hours. • One day of rest per week.
Transportation & Repatriation	• Employer to provide transportation from and to place of work. • Employer to repatriate employee on termination of period of service. • Government of Kenya to claim incurred costs of repatriation from employer	• Employer pay for transportation from point of origin to area of employment and back to point of origin in Kenya at expiry of contract. • Employee to be repatriated on time. • Employers to repatriate at their own cost in the event of war, civil disturbance, major natural calamity or serious illness/ work injury.
Living Conditions	• Employer to provide reasonable accommodation • In lieu of which; to provide enough for employee to obtain reasonable accommodation.	• Employer to provide sanitary living quarters, adequate food, clothing and daily usable.

Medical Attention	• Employers provide adequate free medical attention and hospital accommodation as required.	• Employer to bear all employee's medical expenses • Employee entitled to paid sick leave.
Extension of Contract	• Employee must have prior consent of labour officer	• Upon mutual consent of employee and employer • Employee entitled to 30 days paid vacation leave after two years of service before resuming work & employers provide round trip economy ticket.
Death	• Employer to report every death, desertion or serious injury to labour officer. Employers remit money and property of deceased to labour officer who will in turn remit to entitled persons.	• Saudi Recruitment Agency to inform Kenyan authorities and next of kin. • Employer responsible for repatriating Domestic worker's remains and personal belongings. • If repatriation of remains is not possible, employer to obtain approval of Employee's family for suitable burial. • Employer through the Saudi Recruitment Agency to make necessary procedure to pursue compensation for domestic worker's next of kin.
Dispute Resolution	• Not provided in contract.	• Through the Saudi Ministry of Labour Appeal to the Saudi authorities for conciliation and/or resolution
Leave with Pay	• 21 days annual leave with full pay	• Weekly off day • At end of service contract

Receipt of Employee	• Not provided in contract.	• Saudi Recruitment Agency to inform employer on departure and arrival of employee.
In eventuality of runaway	• Not provided in contract.	• Run-away cases or refusal to work with valid cause shall accrue responsibility to the Kenya Recruiting agency to either have DSW replaced or return accrued recruitment cost to the employer.
Scope of Work	• Not provided in contract for the employee Relatives accompanying employee not required to work for the employer unless they have a separate contract.	• Employee to work solely for employer and immediate household Except for employees recruited by a Mega Recruitment Company
Other Employer Obligations	• Not provided in contract.	• Not deducting any amount from employee's salary. • Lawful deductions must be indicated in an employee's pay slip. • Cater to costs of employee's residence permit (Iqama), exit/ re-entry visa and renewals/ penalties resulting from delays. • Explain to household members the contract's provisions and ensure they are observed. • Ensure welfare and rights of Employee are promoted and protected in accordance with KSA laws.
Other Employee Rights	• Not provided in contract.	• To remain in possession of their passport and work permit (Iqama) • Free communication with their family, the Kenya Embassy/ Consulate at employee's own cost.

Termination	• In accordance with the laws of the employee's destination country.	• Termination by employer – 30 days' written notice on the employee, if with immediate effect, pay wages of one month. Employer to pay expenses for exit papers and air ticket to Kenya. • Termination by employee – 60 days' written notice to employer and pay an equivalent to 2 months' wages before departure. If with immediate effect, pay 3 months' wages before departure. Employer upon receipt of amounts stated to provide papers to effect exit of DSW from Saudi Arabia. • Upon expiry of contract and employee wishes to return to Kenya, employer to present employee's bank statement/ pay slip to the Saudi Recruitment agency and then both employer and employee to sign a final settlement statement.
Amendment	• N/A	• Alteration, amendment or substation through the Saudi – Kenya Joint Technical Committee
Consent of Employee	• Agreement to serve employer in accordance with contract conditions • Certification that Labour officer has read to and explained the contract to the employee and the employee voluntarily assented to the contract in the presence of the Labour Officer.	• Express desire to work in Saudi Arabia, acknowledge legal capacity for Saudi Authorities and MUSANED operators to use their personal information to be used by the MUSANED program and to be shared with any third parties.
Language	• English	• English and Arabic • Where there is divergence in interpretation, English text prevails

Validity	• Attested by a labour officer upon confirmation that: 1. Consent of employee has been obtained 2. No fraud, coercion or undue influence, or any mistake of fact, or misrepresentation upon employee 3. Contract is in the prescribed form 4. Terms and conditions of employment comply with Employment Act and are understood by employee 5. Employee is medically fit for the performance of his duties under the contract 6. Employee is not bound to serve under any other contract of service during the period provided in the foreign contract.	• Only valid contract. • All subsequent contracts between employer and employee in substitution, invalid
Execution	• Employer to sign in presence of employees in the attached list (often affix rubber stamp) • Employee in the attached list to sign as a witness against employer's signature • Attesting Labour officer to sign and affix rubber stamp • Indicates, place, county and date of attestation	• Signature of Domestic Service Worker (Employee) • Signature of Foreign Recruitment Agency • Signature of Saudi Recruitment agency • Signature of Employer

Gaps in the Implementation of Contractual Safeguards

Despite the existence of these contracts, Kenyan workers in Saudi Arabia continue to face significant challenges, primarily the lack of effective enforcement of the contract terms once the workers arrive in Saudi Arabia. While the Form of Foreign Contract of Service and the MUSANED Standard Employment contracts provide critical protection on paper, their practical application is often inconsistent. Many workers report being forced to work long hours, suffering abuse, or not receiving the wages promised to them.

One of the biggest gaps lies in the weak enforcement of contractual terms; for instance, the MUSANED system does provide a way for workers to file complaints, but many Kenyan domestic workers find it difficult to access this system due to language barriers, a lack of awareness, or fear of retaliation from their employers. Similarly, Kenyan authorities have limited capacity to monitor the treatment of workers once they leave the country. Another critical gap is the lack of comprehensive pre-departure orientation and training for Kenyan workers. While there are some programs in place, many workers leave for Saudi Arabia without a full understanding of their rights, the terms of their contracts, or the avenues for recourse if they face problems abroad. This leaves them vulnerable to exploitation, as they may not know where to turn if their employer breaches the contract. Additionally, there is a lack of consistent monitoring and support for Kenyan workers once they arrive in Saudi Arabia. Unlike in some other countries where labor attachés or dedicated support staff are present in embassies, the Kenyan embassy often lacks the resources to provide comprehensive assistance to workers who face abuse or exploitation.

Recommendations for Improving Contractual Safeguards

To better protect Kenyan migrant domestic workers in Saudi Arabia, several improvements to the current system are necessary.

1. Both Kenyan and Saudi authorities must strengthen enforcement mechanisms to ensure that the terms of the Form of Foreign Contract of Service and MUSANED contracts are respected. This could involve increasing inspections of working conditions, facilitating more accessible complaint mechanisms, and ensuring that employers who violate contract terms face penalties.
2. Kenya should implement more comprehensive pre-departure training programs to ensure that workers understand their rights and are familiar with the MUSANED system. These programs should also educate workers on how to report abuse and seek help while working abroad.
3. Kenya should consider placing labor attachés in Saudi Arabia or expanding the capacity of its consular services to assist workers in distress. A dedicated office within the embassy could be responsible for handling worker complaints, facilitating repatriation, and providing legal assistance when necessary.
4. Kenya and Saudi Arabia should work together to improve coordination on the protection of migrant workers. A review of the Bilateral Labour Agreement that includes joint monitoring of recruitment agencies and employers, as well as better access to legal resources for workers, would help to address many of the current issues.