

# Take Your Rights Seriously

A practical manual for learning about the legal rights,  
obligations and politics of migrant workers in Hong Kong



Jim Rice

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*About the Author*

Jim Rice was educated at the University of Wisconsin-Milwaukee and the University of Cambridge. Mr. Rice has lived in Hong Kong since 1992 and has worked at the law firm of *Pam Baker & Company* where he did *pro bono* work on behalf of refugees and migrant workers. He is currently an Assistant Professor in Philosophy at Lingnan University.

## *Foreword*

As the world economy becomes ever more integrated, we can at the same time witness changes in the way in which particular economies are ordered. For people in developing nations these recent changes have had a huge impact. “*Nasa abroad*” is a phrase that has been used to describe the millions of individuals who have left their homes in the towns and villages of the Philippines in order to work overseas. It is now apparent then, that the phenomenon of migrant workers is the flip-side of the globalization of labour. Across the cities of Europe, in rural America and the financial centres of Asia, the issues surrounding the legal and moral rights of migrant workers is currently being debated.

By 2006 there were an estimated 800,000 people generally known as Overseas Contract Workers from the Philippines alone. The Philippine economy has by now become dependant on the remittances of these workers. It is thought that this money sent to that country amounts to some 12 billion US dollars per year. In Indonesia, the fallout from the Asian currency crisis in 1997 has caused a growing number of workers to leave their homes to work abroad, mostly as “domestic helpers.”

Currently there are approximately 119,670 Overseas Contract Workers living in Hong Kong. In addition, there are also approximately 100,000 Indonesian workers with that number expected to rise in future. This book then has been written and published expressly for this group of individuals. It is intended to provide them with useful information about both their rights, and responsibilities under the law. But in addition, the author has also intended it for a wider readership. *Take your Rights Seriously* is intended to convey both to migrants and the public at large, some of the economic, legal and administrative inequities that are unique to Hong Kong’s migrant workers. Its underlying message then proclaims the urgency for a wider social justice – one in which upon reflection recognizes that Hong Kong society (as indeed any society) is best judged by the way in which it treats its most vulnerable members.

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## *Introduction*

This book has been written and published for all people that live and earn a living in Hong Kong as migrant workers. It is designed to provide them with relevant and useful information about the law and their legal rights, as well as their responsibilities under the law. But more than that, this book is written to provide important information about not just legal rights and duties but also the many other serious issues that migrant workers must deal with, such as successfully coping with a difficult employer or even managing money wisely.

As a migrant worker, one of the most practical ways in which you can help yourself is that you first realise that in dealings with people and organizations that have the power to affect your life (employment agencies, loan companies, government officials or employers) your own best interests are very different from theirs. In many cases, while in finding oneself in a situation of conflicting interests, the best way to survive is to get as much information as possible and then become determined to use that information to your greatest advantage.

Why is getting this information so important? To state once again, this is simply because employment agencies, loan companies, employers and even the government have interests which are very different from your own. The agencies and loan companies want your money and they want to get as much of it from as many migrant workers as they possibly can. What employers want from you is your work. And they want as much of your work as they can possibly get for as little money as possible. That is why they are hiring workers from countries that are poorer than Hong Kong. They do so because the labour cost of migrants is considerably cheaper than the workers that they can hire locally.

Finally, you should realise that the interests of the government and government agencies such as the police and the Immigration Department are not the same as yours either. The government wants to restrict you in terms of your stay and your conditions of stay. While there may be individual officials who may possibly be trying to be helpful to you, this book has been written to provide information that could help you survive should you ever get into trouble and find yourself in the hands of those officials who are not sympathetic to you.

One of the first things to do should you ever get into trouble with the law is to realise this aspect of conflicting interests. In fact, in reading the law, you will find that this idea of the individual and the government being adversaries is actually built into the system in terms of the rights and duties that individuals have in relation to the state.

You on the other hand, most likely want several specific things from your time spent as a migrant worker in Hong Kong. For one thing, you want your time working as an overseas domestic helper to be as profitable as possible. You ought to realise when you arrive, that you are here primarily for the money. As such, you ought to make sure that you are able to leave Hong Kong with as much in your savings account as possible.

In this regard, you may be saving for enough money to buy a house. Maybe you are trying to earn enough money to see that your children have a good education. You may be saving for enough money to start up your own business or possibly buy a small farm. But whatever your own specific financial goals, one of the first things that you ought to do as a migrant worker is to focus on one particular goal that you are striving for.

In order to achieve this goal then, you ought to be setting aside a certain amount of money each month in terms of savings. Unfortunately however, all too many workers who come to Hong Kong fail to manage their money carefully. Very often, by the time that they eventually leave they have no more money than when they first arrived. Try not to fall into the trap of spending your money as you earn it. If at all possible, try to save as large a proportion of your earnings as you are able.

To this end, open a savings account in a bank that has a good reputation, and make sure that you deposit as large a proportion of your monthly earnings as you possibly can into that account. The rest of your salary may be used for your personal needs and for the occasional treat. But this idea of building up your savings must be the core of your financial goal.

Remember that all too many migrant workers, who come to Hong Kong, remit most of their earnings to the family back home. This money, while it certainly is welcome to those who are receiving it, is spent very soon after it has been received. The problem however is that in most cases, nothing is saved by the worker for a future goal or for a later date when the contract is over.

What all migrant workers must realise when they first start earning money is that like other workers everywhere the time that they have to earn is limited. But it is important to recognise that for migrant workers, this time limit on earning capacity is further limited by the problems surrounding visas and contracts that this book will attempt to deal with later. In any event, always keep in mind that the time in which you can earn money is finite. So use the time that you have to earn to your own best advantage.

Sooner or later, there will come a time when their capacity to make money is not there anymore. Therefore, it is vitally important, that setting aside money in terms of savings is the central principle of the worker. So even if you do have to remit money to your family on a monthly basis, make sure that you set aside as much of it as possible in terms of savings.

Those ought to be some of your interests and goals. In addition to making and saving money, you want your time in Hong Kong to be as pleasant for you as possible. You want to work for a decent and fair-minded employer. You also likely want to have a reasonably kind person as your boss. Most importantly however, you want to maintain your dignity and personal safety intact at all times. This book will hopefully provide some advice regarding these issues.



## **Have migrant workers done anything to contribute to Hong Kong, in terms of culture or the economy?**

Most of the migrant workers living in Hong Kong have come from countries in Southeast Asia including, Sri Lanka, Indonesia, Thailand and the Philippines. At present, there are some 220,000 migrant workers who live and work in Hong Kong. As such, they offer to the community a unique and valuable contribution in terms of cultural and ethnic diversity. Their presence also serves to provide some degree of credibility to an otherwise largely empty official boast of Hong Kong as being a “cosmopolitan” or “international” city.

Migrant workers have also added much to the richness of Hong Kong’s cultural life in terms of the music and entertainment scene. Musicians and other artists have long come to Hong Kong from places like Thailand, Indonesia or the Philippines. Their music can be enjoyed in numerous hotels, bars and jazz clubs.

The migrant workers who have come from Southeast Asian countries serve to add not only ethnic and cultural diversity, but they also offer a certain unique quality to Hong Kong that may be as subtle as the occasional smiling face in the midst of a busy and anonymous crowd. Their presence also adds a tangible richness to Hong Kong life in terms of the cultural diversity and even the flavour of its cuisine as well.

But in addition to ethnic diversity and cultural enrichment, foreign migrant workers have made a major contribution to Hong Kong in terms of its economic growth. Migrants have long performed vital tasks such as providing personalised child and elder-care services to local wage earners. These valuable services have allowed hundreds of thousands of local families the chance to earn two incomes instead of one. Migrant workers ought to receive proper recognition for allowing local women to pursue their careers while at the same time having children. In so doing, migrant workers have added billions of dollars in terms of growth to the Hong Kong economy.

Their contributions therefore, have been highly significant, in terms of the cultural and economic benefits that they have made. However this has not been acknowledged either through government policies, or the official media. So while the presence of Southeast Asians may be readily seen on the streets of Hong Kong and in hundreds of thousand of households, there will be no Indonesian or Filipino faces seen on Hong Kong television screens. Sadly, their presence is almost totally negated by the mass media and their overall contribution to Hong Kong life remains almost entirely unrecognised. Neither has the government managed to recognise the many contributions by migrant workers.

Officially, the Hong Kong Immigration Department classifies most of these people as that of “Foreign Domestic Helpers”. As such, they fall into a group of workers who have been placed under specific legal rules and policies that are set by the Immigration Department and Labour Department regarding conditions of stay, rights of residence, and minimum rate of pay. In this book, these individuals are referred to as “domestic workers” or “migrant workers”.

## *Your money and your rights*

### **What is the current minimum salary for domestic workers?**

As of 2006, the Hong Kong Government has set the minimum monthly rate of pay at HK\$ 3,400 for the issuance of new contracts. There has been a recent \$80 increase in the rate of pay which has been set for new contracts issued. This means that currently, while employers can pay their domestic workers a higher salary if they wish, they must pay them at least \$3,400 per month, at least for new contracts.

The minimum allowable wage for foreign domestic workers was previously set at \$3670, but in 2003, the Hong Kong Government imposed a tax (or “levy” as it is called) on every new employment contract that is filed with the Immigration Department. Although this tax (of \$9,600 for the entire two-year contract) is in theory to be paid by the employer, it came at the same time as a \$400 monthly wage reduction on the part of the domestic workers, which meant that the wage was reduced to \$3,220. Following that reduction, there have been two wage hikes, gradually raising the wage up to its present rate.

The Hong Kong Government has persistently claimed that this tax is actually imposed on the employer, and not on the employee. They have also claimed that the \$400 reduction in the minimum wage of domestic workers was merely a coincidence. They have even tried to argue that in any case, an employer is always free to pay his or her helper any amount greater than the minimum salary set by the government. But these claims that have been made on the part of the government are just simply not true. As anyone looking objectively at the situation can see, the people who actually bear the extra burden of the tax are the migrant workers, and not the employers.

### **Why did the Hong Kong Government impose the levy in the first place?**

At the time that the levy was originally imposed, Hong Kong was in the middle of an economic recession. In addition, because of foolish policies and lavish projects, the government was spending more money than it was taking in through taxes and other revenue. The excuse that the government offered at the time for imposing the levy was that the domestic workers should help to “share” in the burden of the recession. This reason of course runs contrary to the official line that the government has since taken that the tax is being imposed on employers and not on employees. However, even if it bears the characteristic of the Hong Kong government’s own hypocrisy, it was slightly more honest than the claim that the tax is really being imposed on the employer. The fact of the matter is that the pain imposed by the levy is being felt by the migrants

However, since then things have changed. Since 2002, the economic situation in Hong Kong has begun to improve dramatically. At the same time, the revenue situation has also improved and the deficit is no longer a major problem (if indeed it ever was). But nevertheless, the levy that has been imposed on foreign domestic workers still stands. The recent wage increase of \$80 per month (or \$960 per year) is certainly a step in the

right direction but hardly does anything to offset the increase in the cost of living felt by the migrant worker. This government (which it is important to remember is not democratically elected and is not accountable to the people of Hong Kong) won't even bother to talk about the levy anymore.

The stated purpose for the money raised by the levy was to “train local domestic workers.” Due to ongoing legal challenges, this money has not yet been spent. However as of 2008, the amount of money that the government has collected from migrant workers who have been paying this tax was approximately \$HK 4.2 billion dollars. That's a lot of money to be spent on training local people who wish to become domestic helpers. It's also strange because the very fact that there are migrant workers who are domestic helpers would seem to mean that local people are not interested in this kind of job.

Just so that you know this, the reality is that a non-democratic Hong Kong Government sees fit to disproportionately tax some of the lowest paid workers in Hong Kong merely because this segment of the population has no means of either speaking up against this policy or of fighting back. It is important also to understand that this discriminatory tax policy is yet another case of where the interests of the government are working in opposition to those of not only migrant workers but local workers as well.

## *Racial discrimination and the government's levy on migrant workers*

### **Doesn't this tax, imposed as it is on the domestic workers constitute a form of racial discrimination?**

Clearly the levy, imposed against migrant workers does in fact appear to constitute a serious form of racial discrimination against a certain class of people almost all of whom are members of ethnic minorities. Here's why the levy really does constitute a form of racial discrimination. Local workers earning a similar amount of money to domestic helpers would not be subject to any income tax in Hong Kong. Clearly then, this tax is discriminatory as it singles out a certain group of people for worse treatment than others, based not on their level of income, but on their occupation, place of origin and of course, ethnicity.

However despite this fact, the Government has repeatedly denied that this tax is in any way discriminatory. The High Court in Hong Kong has also ruled in 2005 that there is no racial or other illegal form of discrimination inherent to the imposition of the levy. It would appear then, that the law of Hong Kong has been used as means of promoting the interests of the government and the rich, at the expense of the poor and ethnic minorities.

In fact when one looks carefully at a whole range of policies that are directed at migrants, it becomes clear that the Hong Kong Government practices the most serious forms of racial discrimination that are to be found in Hong Kong. In addition to the levy, which singles out foreign migrant workers all of whom come from countries in Southeast Asia, the laws of Hong Kong also serve to discriminate against migrant workers in terms of the right to obtain permanent residence.

### **How does the Hong Kong government manage to justify depriving migrant workers of the right to obtain permanent residence status?**

Although the Basic Law of Hong Kong provides that non-Chinese citizens born outside of Hong Kong may obtain a right of permanent residence after seven years of continuous residence in the territory, this right also applies to non-Chinese citizens not born in Hong Kong. But in fact, the way that immigration policy is carried out in Hong Kong, this right does not extend to migrants from countries such as Indonesia or the Philippines.

Yet, there are thousands of migrant workers who have lived in Hong Kong for up to 20 years and even longer. Even so, they cannot get permanent residence status. In fact, there are children who have been born in Hong Kong to mothers who are domestic workers. These children have grown up and lived in Hong Kong all of their lives, yet according to the policies of the Immigration Department, they too cannot as a rule obtain the right of permanent residence.

**That doesn't seem at all fair. How can this situation possibly exist in a place that claims to enjoy the rule of law?**

In order to prevent migrant workers to ever gain permanent residence status, the Immigration Department has constructed a policy, which dictates that following the completion of every two-year contract, the worker is required to return to their original country of residence as a kind of holiday. Then, following a typical break of two or three weeks, she may return to Hong Kong in order to take up her new contract.

However the Immigration Department treats this brief departure from Hong Kong on the part of migrant workers as a fatal break in their continuity of residence. This means that even though any given worker has lived in Hong Kong for as long as twenty years, in the view of the Immigration Department, she has only ever lived in Hong Kong continuously for up to two years.

**Well, don't workers from the United States or Great Britain get to leave Hong Kong on visits to their home countries?**

Of course workers who come here from the US or Britain or Japan leave Hong Kong from time to time. In fact they get to leave Hong Kong on business or for any reason they choose for periods of up to six months without endangering their chances of obtaining permanent residence. Only migrant workers have that special condition attached to their right of stay. What's more, only migrant workers are so prevented from obtaining permanent residence status.

**How can the government argue that this policy is not one of racial discrimination?**

The Immigration Department has consistently argued that this policy does not amount to racial discrimination because they extend this restriction on the right of permanent residence to *all* migrant workers. And they add that they do not impose this restriction to those Filipinos or Indonesians for example, who are here on different kinds of work visas. So while it may be a practice that restricts the right of foreign migrant workers, it does not discriminate according to race *per se*.

**Yes but all migrant workers are nationals of Indonesia, the Philippines, Sri Lanka or Thailand.**

This policy on the part of the Immigration Department appears to be yet another example of where the law of Hong Kong is being used as a tool to promote the interests of the wealthy over those of the poor. But more than that, the government appears to be attempting to show the local working class people that there is a class of persons that are even worse off than they are.

The government gets to import workers who are willing to do jobs that local people are not interested in, at a cheaper than market wage. But at the same time, they don't have to offer them similar rights as those that are given to professional foreign workers who

just happen to be for the most part, of European or North American origin. While the government denies it, their policies have the effect of denying permanent residence to the vast majority of persons of colour who live in Hong Kong.

In addition, the fact that foreign migrant workers can never obtain permanent residence also keeps them in positions of permanent weakness. Let's face it. The reality is that these people can be dismissed and sent home at any time for practically any reason at all. Their visa status keeps them in a permanent position of dependence and vulnerability. They can never look their employers in the eye and demand anything from them on anything like an equal status. And the fact that they all are people of colour only confirms that this policy is at the very least, one of constructive racial discrimination.

**Do all countries such as the UK, the United States or Canada have similar immigration restrictions on migrant workers?**

The countries that you mention do not impose those same visa restrictions on migrants. In those places, (like the US, UK and Canada) migrant workers have equal rights as other workers of, eventually obtaining permanent resident status. So while Hong Kong may protest loudly about its competitive climate for business, this difference in the way that it treats foreign workers distinguishes itself unfavourably from other economies throughout the world. In other words, the free market that the Hong Kong government likes so much to boast about isn't really very free after all if one considers that in a truly free market, the same set of rules ought to apply to all.

## *Women and migrant rights*

**But on that reasoning, since almost all of the migrant workers living in Hong Kong are in fact women, don't the levy and the restrictions on permanent residence constitute a form of discrimination as against women?**

Since the vast majority of migrant workers living in Hong Kong are in fact women, it would appear that the laws and policies that limit their opportunities (as opposed to other classes of people) do indeed serve to discriminate against women. And you should also know that there is an international treaty in force called the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) which appears to prohibit the kinds of policies that are discussed here.

The language of this Convention speaks of,

“...the full and complete development of a country, the welfare of the world and the cause of peace require that the maximum participation of women on equal terms with men in all fields.”<sup>1</sup>

This treaty also refers to the importance of ensuring that women enjoy equality in employment and that the right of “equal treatment in respect of equal value, as well as equality of treatment in the evaluation of the quality of work” is respected by all nations.<sup>2</sup>

**So then, if there are these international treaties which prohibit discrimination against women, why does this not seem to help the situation of women migrant workers in Hong Kong?**

The reason for the failure by the government to protect migrant rights is not really so complex. In fact there are other international treaties, such as the International Convention on the Protection of the Rights of Migrant Workers and their Families. These treaties form a part of the law as well, but the problem is simply that not enough pressure is being put on governments to actually honour these treaty commitments.

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<sup>1</sup> Preamble to the Convention on the Elimination of All Forms of Discrimination Against Women, U.N., G.A., Resn., 34/180, G.O.A.R., 34<sup>th</sup> session, supp. 46,p. 193, misc. 1, (1982) Comd., 8444.

<sup>2</sup> CEDAW, Art. 11.

## *The hiring process*

### **How is the hiring of a domestic helper actually done from local recruitment to placement in Hong Kong?**

When a prospective employer wishes to hire a domestic helper, he or she will generally do so through the assistance of an employment agency, which will facilitate the process of hiring a helper. This practice also ensures a steady stream of income to employment agencies.

Nearly all of these domestic workers are originally hired not in Hong Kong, but in their original countries of residence. At the other end (meaning in the country that the prospective worker lives) there will also be an employment agency that will assist in arranging for the worker to come to Hong Kong. These agencies will charge a fee from the prospective employee for these services which will be shared between the agency in the sending country and the agency in the receiving country.



## *Workers' rights and employment agencies*

### **What about the payment of agency fees?**

Although the amount that is actually being charged to the worker will vary, it is often between 70,000 pesos up to 120,000 pesos (for Filipino workers). These excessive fees are actually illegal in both the Philippines and Hong Kong however. The maximum rate that is allowed is currently set by the Philippine Overseas Employment Administration (POEA) at one-month salary (\$3,400 in Hong Kong plus 5,000 pesos). Any agency fee that is in excess of that amount is illegal and void. In other words, even if the worker signs up for this amount, she doesn't have to pay it back, according to the law of the Philippines. The law in Hong Kong regarding licensed agencies is set by the Employment Ordinance at 10 per cent of the worker's first month's salary. That means that in Hong Kong, that amount would be about \$340 as the legal limit for agency fees for domestic helpers.

### **What about the legal limit for agency fees in Indonesia?**

Since 2002, the Indonesian Government has issued what is known as a "Transmigration Decree" which imposes a tax on people who go abroad to work. The idea here appears to be that this tax was imposed in order for the Indonesian Embassies around the world to be able to assist their nationals who get into trouble. However, in fact this tax has been "privatised". In other words, the Indonesian Government has allowed employment agencies to collect a fee of HK \$21,000 (Rp 18,000,000) from workers applying to go abroad. This is usually financed through loan companies where the migrant worker repays this money at the rate of \$3,000 Hong Kong Dollars per month over the course of 7 months.

In 2003 a memorandum of understanding was signed between the Labour Ministry, the association of employment agencies and migrant worker groups setting this amount at HK\$ 16,000. However this reduction in agency fees still has not been implemented as of 2005. It would seem then that in the case of Indonesia, there is an open collaboration as between the government and employment agencies. This would seem to be at the expense of the workers interests. This very heavy burden that is placed on Indonesian migrants seems to be contrary to the law given that the Hong Kong Government imposes a standard contract for the hiring of foreign domestic workers. In that agreement it spells out that the employer should pay the cost of bring the worker to Hong Kong.

The huge debt repayment obligation on the part of the worker means that she will get only a few hundred dollars per month to spend for herself after paying off the debt instalment. And of course, in many cases these same workers will be underpaid, meaning that it will take an even greater period of time to repay the debt. But this appears to be in violation of Hong Kong law. Section 32 of the Hong Kong Employment Ordinance states that the total deductions from an employee's monthly pay shall not be greater than one half of the value the total monthly wage.

It would appear then, that the Governments of the Republic of Indonesia and of the Republic of the Philippines need to start looking after the interests of those migrant workers who are actually helping the Indonesian and Philippine economies the most as opposed to the interests of greedy employment agencies. Something therefore seems to be very wrong regarding Indonesian and Philippine government policies.

**What are some of the most common tricks that agencies use to cheat workers and what are some common mistakes that workers make when dealing with employment agencies?**

The whole problem the hiring process of migrant workers appears to be that employment agencies in both Indonesia and the Philippines often pretend that they are really there to help workers find jobs as domestic workers abroad as though they are performing some kind of service for the workers. However, their real interest is to make as much money as they can. That might be fine if they simply obeyed the law. But often times they don't obey the law at all. They violate the law just because they know that they won't get caught.

Because the employment laws are often ignored in places like the Philippines and Indonesia and because government organisations like the POEA often turn a blind eye to these illegal activities, employment agencies are currently using several tricks to break the law and cover up their crimes. In fact there is good evidence that some of these employment agencies are even willing to kill in order to prevent anyone from even writing about their illegal activities. There is also evidence to suggest that government officials are willing to sanction these killings as well. In 2006, Fernando Batul, a Filipino journalist working in Puerto Princessa City was shot and killed by two men on a motorbike. Batul had recently criticized city officials over the contracts of Filipinos whom he said were mistreated when they were sent to Taiwan.<sup>3</sup>

So how do these agencies operate?

First of all, an employment agency in the Philippines will typically demand a fee of the prospective worker that is far in excess of the maximum set by law. Often this will be in the region of 90,000 pesos (in fact, sometimes it is even more). Typically the prospective worker will already have some money available in cash. Let's say the worker has brought 30,000 pesos with her in cash to the agency. Most times, this money has been saved up by the prospective worker or (more likely) has been borrowed from her relatives. Usually this sum will be a combination of both sources.

The agency will be happy to accept that amount of 30,000 pesos as a down payment, and then they will refer the worker to a loan company in order to get the rest of the money. Usually the down payment will itself be paid in three staggered instalments.

Typically, 10,000 pesos will be paid initially by the prospective worker to the

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<sup>3</sup> BBC News <http://news.bbc.co.uk/2/hi/asia-pacific/5003506.stm> (22 May 2006).

employment agency. Then a further 10,000 pesos will be paid when the “job order” has been made, that is when an overseas employer has requested to hire that worker. And finally, 10,000 pesos will be paid at the time the actual employment contract is finally signed. Employment agencies are very reluctant to issue receipts for this cash payment and they seldom issue such receipts. Agencies will often make the excuse that a receipt will only be issued when the whole amount has been paid. But actually, this refusal to issue a receipt is another trick. They will often only issue a receipt for only the last payment. That receipt will be for between 25,000 and 29,000 pesos (within the legal limit). This falsification on the receipt is to cover up the fact that they have been illegally over-charging the worker all along. If the worker later seeks to challenge the illegal employment fee, there will be no proof that such a crime ever occurred.

The balance of say, 60,000 pesos will then be due for payment at a later time, after the worker is engaged in overseas employment. Since the loan company is closely connected with the employment agency, the loan will be easily approved and the worker will be asked to sign a loan agreement.

The reason for this is that on the face of it appears to the rest of the world that the employment agency has not charged the illegal fee of 90,000 pesos to the worker. They do this to avoid any detection by the Philippines government agency that is charged with protecting overseas workers, the POEA. It appears that the worker has received a loan for 60,000 pesos, but in fact the worker never sees any of that money. In fact, it goes directly to the employment agency. That’s another way that the agencies try and avoid being detected by the law in the Philippines. Again, unfortunately, the law in Indonesia seems to be even more openly against the workers and in favour of the employment agency’s interests.

Then following payment, the papers that allow the worker to travel overseas are processed by the agency and eventually, the worker receives a ticket to Hong Kong where she is placed with an employer. In Hong Kong, the employee is referred by the “receiving agency” or the “home agency” to a Hong Kong employment agency with which the home agency does business.

The worker is then required under the loan agreement to pay off the loan over the course of six months to one year. This is done through either the employment agency in Hong Kong or to a bank account in the Philippines through a bank in Hong Kong with which the loan company in the Philippines has an account.

Again, it’s important to notice here that the worker is being cheated once again. This is because the interest rate on the loan is much higher than interest rates being charged by other banks. Just like the employment agency, the Indonesian or Filipino loan companies are cheating the worker further by imposing an excessively high rate of interest.

Continuing on the theme of remembering that your own interests are very different from those of employment agencies, loan companies, employers or the government, you should also know that in Hong Kong, an employer will pay a much smaller fee to the

employment agency for finding a domestic worker. However, in many cases, if the employer should decide to terminate the contract of the helper within one year, the agency will find another helper at no extra cost.

In fact, here is a quotation from an actual advertisement that currently runs in several local Hong Kong magazines:

**“Great Choice of Indonesian Maids with Good English Skills”**

“For only \$2,000 a maid will arrive at your home to help you with your household chores. Simple with no extra costs including unlimited changes within two years. During this promotional period, medical check up in Hong Kong and a 1-year employee compensation insurance is provided free of charge. Our services come with a free handbook.”

This ad is typical of the position taken by employment agencies dealing with domestic workers. The ad also reveals in part, the predatory nature found among these agencies in Hong Kong and in other Southeast Asian countries. Notice how it is that “Indonesian maids” are singled out here. It’s as though “Indonesian maids” are being marketed like a brand, like Colgate toothpaste or Pepsi Cola. The sub text here appears to be, “Get an Indonesian. They will work like crazy and never complain.” Notice also that the fee of \$2,000 may well suggest to the reader that this is to be the suggested wage that Indonesian workers are typically to be paid. Most interestingly however, this ad claims that the agency offers to employers, “unlimited changes within two years”. It appears from a reading of this ad, that an employer’s contractual right to “changes” act as though one could hire and fire a domestic worker like one changes one’s hat to suit one’s mood.

**But that almost is like giving the employer an incentive to terminate a helper’s contract.**

It certainly does give the employer an incentive to terminate a worker’s contract. And many times this is done for the slightest of reasons. Migrant workers are often terminated from employment on the weakest excuses, such as in one documented case of a single failure to make the bed properly, or as in another typical case, of doing the household chores too slowly to suit the particular demands of the employer. Many times employment relations are made even worse through a failure to communicate properly between languages.

Typically, a Cantonese speaking employer will be using basic English skills to communicate with the worker, whose English skills might be marginal as well. The resulting frustration and lack of real communication can be the basis of many forms of mutual misunderstanding. Over time, this lack of communication may result in a deep resentment on the part of both the employer and the worker. Although every case is different, and exact advice in these kinds of matters is hard to assess, it may be a good

idea for the worker in such circumstances for the worker to learn some basic Cantonese phrases. This attempt to learn some language skills just may possibly serve as a means of winning over some degree of sympathy on the part of the employer. In any case, learning a new language is never a wasted endeavour.

Similarly, one of the most common problems concerning employment contracts generally, and contracts of domestic workers in particular, is that they are very much tied to personal relationships. If the personal relationship as between an employer and an employee goes permanently bad, it is very difficult to continue in that employment situation.

But this problem of bad relationships in employment situations is made far more serious in domestic employment situations where the employer and employee may be living together with several other people in a small flat consisting of just a few hundred square feet. This situation is made even worse for the worker, who does not have nearly the bargaining situation as does her employer. However, this bad situation is only made worse by the role that employment agencies play in the placement of foreign domestic workers.

The profitability of employment agencies of course depends on volume. That is, business success depends on how many contracts the agency is able to process every month. The way it works in fact is that the more times the employer decides to terminate some unfortunate woman's contract, the more money the agency stands to make in terms of agency fees paid by workers. But even that's not all of it. The Immigration Department also facilitates the profitability of employment agencies in furthering the incentive on the part of employers to arbitrarily terminate workers. The Immigration Department will allow the tax (or levy) on the employment contract to be carried over to the next helper that he or she hires. In other words, if the employer terminates a worker, he or she can then hire another worker, and the money already paid to the Immigration Department for the levy is carried over to the next worker so the tax need not be repaid for a new worker.

## *Borrowing money and the dangers posed by loan companies*

### **So what are some of the things that can be done by the worker to avoid being cheated either by employment agencies, loan companies or employers?**

One of the most important things that a worker can do in order to avoid being cheated is to avoid signing anything that they are not sure of. For example, very often workers will sign a receipt for money that they never see when they sign the loan agreement. In these cases, the worker will sign a receipt for money to be paid to the employment agency. But the money is not actually given to the prospective worker. Instead it is transferred directly to the employment agency. The problem here is that the worker has incurred legal responsibility for money that she has never seen. This responsibility can later be used against the worker. The lesson here is to never, ever, sign a document that you do not fully understand and agree.

Sometimes, loan companies also cheat workers when they are paying back their loans by taking the cash payments and not giving out receipts in return. These people seem to like offering excuses like, “You trust us, we trust you.” Many times they will use the worker’s religious beliefs and use the language of faith. “Trust us, we too believe in your religion” they tell the worker. If you should hear of any talk like that from people who you do business with, it’s probably a cover for an even bigger lie that they are trying to get you to believe. But if at all possible, try and stay away from any dealings with any loan companies. They are parasites. Just remember that should you have any dealings with them, any time that you make a payment to either an agency or a loan company, make sure that they give you a receipt for the full amount that you have paid to them. Save that receipt as proof of payment.

### **Can loan companies keep my passport if I borrow money from them?**

The practice of requiring passports or identity cards to be handed over in exchange for obtaining a loan is totally illegal in Hong Kong. It also is in violation of Philippine law to use your passport as a pledge for obtaining a loan. Your passport or ID card belongs to you and no one else. Never, ever hand your identity papers over to anyone at all, especially your employer, an employment company, a loan company or an individual who lends money with interest. The possible exception to this advice would be to surrender a passport to the issuing government according to the laws of your own country. Most consulates suggest that their nationals make a photocopy of the data page and the relevant visas in the passport and keep them in a separate safe location.

### **Speaking of loan companies, is it ever a good idea to try and help a friend by signing a loan agreement for them?**

The practice of those who ask others to sign a loan agreement, and then promise to repay the money is one that is all too common among migrant workers living in Hong Kong. In fact, this is a very old trick that is used by dishonest people to take advantage of the kindness of the people around them.

The scam works something like this: A person (very often from your own nationality or province) will befriend you. Then she will tell you that she is faced with some very urgent problem, such as the death or illness of a close relative. She needs \$10,000 immediately. She tells you that she needs to go back to the Philippines, in order to see her family for the funeral (or perhaps for some medical emergency).

But unfortunately she tells you, she can't approach the loan company because there is some slight problem. She says that there isn't enough time for that. Or possibly for some other reason, she can't approach the loan company. So she asks, would you possibly be able to borrow the money for her. Only you can then give her the money that she urgently needs for her sick relative.

She then promises again and again that she will be able to pay back the \$10,000 to you as soon as she gets back. Since you are such a kind person, you go to the loan company, borrow the \$10,000 and give it to her. But your new friend never will pay back the money. And you are stuck with the debt and with the interest on that debt.

She has just wiped about three-months of earnings from your two-year employment contract. You have been cheated in a significant way. If this person wishes not to repay the money to you, there is very little that you can do in order to get it back. And as mentioned already, this scam is all too common in Hong Kong. The only advice to offer here is: never allow yourself to be fooled by this kind of story.

## *Setting boundaries with employers*

**It sounds as though things can be very difficult regarding the signing of an employment contract. But once I have been hired, how can I best live with my own needs and also meet the demands of my employer?**

It is important to recognise that every relationship that you are ever in has what can only be termed as “acceptable boundaries”. This means that in each relationship that we have with other people, whether that be family members, friends or one’s employer, there are things that we can do to get along with each other. Many times this means that there must be a compromise or give and take between the different parties to a relationship. However, at the same time, there are things which people demand of us that are just not acceptable. The limits of behaviour that is okay to do, that is, the region of give and take are what may be called “acceptable boundaries”.

Employment relations are only one type of the many other ties that we have in our lives (such as those of family and friends). When a worker becomes involved in an employment contract, the employer will normally set various rules that the employee has to observe. This in theory is reasonable, and is done in all employment situations.

For example, an employer may reasonably say that the worker may not smoke while on duty. Or, an employer may also say that a worker must not wear shoes in the house, because as a rule, no one else wears their shoes in the house.

However just as the employer can set limits on the behaviour of the worker, the worker is best advised to set limits on the kinds of behaviour that is acceptable by the employer. This is reasonable in the same way that we set limits on the way we expect to be treated by our family members and our friends. This also can be said for the way in which a worker allows her employer to act towards her.

**What do you mean by setting acceptable boundaries between me and my employer?**

This can be a very difficult area for the worker to determine. Obviously, every worker wants the best situation that she can possibly get in terms of pay, working conditions, and relationship with the employer. But in fact, some situations are better than others. And of course, standards about what kind of behaviour is acceptable may vary from worker to worker. Everyone is different in terms of what it is that they expect. For example for some workers, living in a household with small children would not be acceptable. But for most domestic workers it would be an acceptable thing to live and work with children. For the heavy smoker, the rule that forbids smoking in the house would not be acceptable. But for most people, such a rule would be considered as reasonable.

The point here is that every worker must find a balance between what they expect and what they are prepared to compromise in terms of the employer-employee relationship. Yet, however the relationship may be arranged, the worker must make clear that there are certain boundaries that she expects to be observed by her employer.



## *Rights in the workplace*

Hong Kong law and the terms and conditions of the employment contract serve to determine some of these boundaries. For example, there is a rule set out as a condition of employment that stipulates that the worker must have a designated sleeping space for her use that has a bed. She must also have access to a toilet and shower. So if the employer expects the worker to sleep on the kitchen floor, this would be in violation of the employment contract and would not be acceptable.

### **What if I get sick? Am I entitled to free medical care?**

A domestic helper is entitled under the terms of the employment contract to be given medical treatment by her employer free of charge if she becomes ill or suffers an injury on the job. Generally, employers ought to provide medical insurance for their domestic workers. However they are responsible for the necessary medical costs of their helper whether they provide insurance or not. It is also important to remember here that should a worker need to see a doctor, the consultation as between the migrant worker and the doctor is totally confidential. In other words, just because the employer is paying, does not allow the employer to automatically get access to the helper's medical records.

Another rule set by the contract of employment is that a worker is not to be put to work in any place outside the domestic household. For example, if the employer sends the worker over to clean the apartment of his mother-in-law, this would be in breach of the employment contract and in breach of the law. In fact, this would expose the worker to possible criminal prosecution for the offence of working in "unapproved employment."

### **Can an employer take away personal stuff that belongs to a domestic helper?**

Still another area in which the employee is not expected to bow to the demands of the employer is in relation to her own personal possessions. Remember that your personal stuff belongs to you and you alone. So for example, while it may be reasonable for an employer to restrict the calls that you make on your phone during the day, he may not take away your mobile phone or the battery. The things that belong to you may be kept in your possession at all times.

### **What can I do if my employer locks me in my room at night, or locks me in the house at any time?**

This has been known to happen to domestic workers living in Hong Kong. There was recently a case in Hong Kong where an employer locked her employee in the house and then went off on holiday for a month. The worker was only able to get food from her friends who would come by daily and pass food through the door grill. Keep in mind that it is illegal for an employer (or for anyone else for that matter) to deprive you of your freedom to move freely around the city. This constitutes the civil and criminal offence of unlawful imprisonment. It is a serious crime, meaning that the offender could go to jail. In addition the victim could sue the person responsible, for money damages if she has

been unlawfully imprisoned.

If your employer is doing any of these things, such as taking away your possessions, forcing you to work outside the house or locking you up, first try and reason with your employer. Point out politely yet firmly as to how you are supposed to be treated.

However if you feel that this is not possible, or if you feel that your contract would be terminated if you object, then you must contact the Immigration Department or the Labour Relations Department in writing at the address found at the back of this book. Inform them of the illegal activity and be as specific as you can, regarding what has happened to you.

If you feel that you are unable to do this because of fear or some other reason, then you owe it to yourself to contact one of the help agencies that are listed at the back of this book. The people who are working at these voluntary agencies will certainly be willing to make a formal complaint to the Immigration and/or Labour Relations Department on your behalf. Although writing these letters may not solve the immediate problem that you are in, it will do something to help you at a future date, should you terminate your contract and wish to reprocess your papers with another employer. Letters to the authorities, sent at the time the mistreatment is going on will provide legal evidence that may be used in your favour. Should your contract ever be terminated, this may help you to be able to reprocess your papers while you are in Hong Kong.

### **But what about things not acceptable to me that are not actual violations of the terms of the employment contract or of the law?**

This is an area that you as a worker must determine in terms of what you are willing to put up with. Sometimes compromise and co-operation are the best methods in terms of getting along with an employer. And certainly in any relationship, a degree of compromise or accommodation on the part of both sides is often necessary.

For example, many employers will expect that their domestic workers wash and wax the family car. This is probably a reasonable request even though it involves work that is outside the home. Another such case would be if the employer asks his helper to do work in the garden. Again, although the work is outside the home, there is a degree of compromise that can be made on the part of both the worker and employer.

However, while all employees may find it necessary to allow for some degree of give and take, this attitude of compromise must hold true both ways. Without some degree of reciprocity on the part of the employer, the worker who always gives way will likely over time, become a doormat. To put this in another way, if it is you who is always giving and never taking, your employer will realize that he or she can always push you around and get away with it. Furthermore, employers are just like most people - if they realise that they can push you around, they will likely do so in ever-greater degrees. So while you have to get along with your employer, you must always maintain a core-respect for yourself. And this core-respect you must never compromise with anyone.

## *Your rights to rest days and public holidays*

### **What about rights that workers have to days off, like holidays and rest days?**

The Hong Kong Labour Department has set a minimum of rest days for domestic workers. This means that the worker is to have at least one day off during each week. In addition, the worker is entitled to days off from work on what are called “statutory holidays”. It is illegal for employers to deny their workers a chance to freely go out on these weekly rest days and on public holidays.

### **What if my employer refuses to let me go out on my day off? Or what if my employer only gives me one or two days off per month? What if my employer doesn't let me have a day off on public holidays?**

This is a difficult problem for many domestic workers. This is difficult because in cases like these, the fear on the part of the worker is that if she confronts her employer and demands her day off, she may get her contract terminated. This is a question that the worker herself must deal with.

However, along with this reality there is also something that the worker can do. If she is being denied her days off, then the employer is breaking the law. What the worker can do to help herself is to write to either the Immigration Department or the Labour Department and inform them that her days off are being denied by the employer.

### **What if the Labour Department writes back and my employer finds out that I have complained? Then I really will find my contract terminated.**

The worker who is complaining could choose to use a return address other than her employer's. This might be a boarding house, or a friend's house, or even it might be the address of one of the help agencies that are listed at the end of this book.

## *The importance of keeping an employment diary*

The other thing that the worker is able to do in terms of helping herself, is to always keep a diary of anything that happens regarding your working hours, your days off, recording your monthly pay, or anything else that is important regarding your job. What the worker can do is to simply buy a lined notebook, or better, a diary, with page entries for each day of the year. Then on every day, the worker writes in her own language what she did in terms of work on that day. And also record all pay days and the exact amount that she has been paid. Also record all days off and other relevant work events.

### **Why is having an employment diary and keeping regular entries in the diary important?**

Keeping regular entries in an employment diary is important because it is possible to use such a document as admissible evidence in court in the event that you ever have to file a claim against your employer.

### **What if my employer treats me improperly? What if my employer abuses me by always shouting at me, or insulting me? What if my employer deducts money from my salary for mistakes that I do?**

This kind of behaviour such as frequent shouting, or insulting remarks to the worker is a form of verbal abuse. Although the limits of what is acceptable behaviour are never precise, excessive shouting or insults to the worker is not acceptable according to the law. This is yet another case where it is important to keep regular entries of events in an employment diary.

Incidents of shouting and insulting words and actions should be recorded with the date, time and nature of the event. Regarding an employer who deducts money from wages for “mistakes” this too is illegal. These types of wage deductions should be recorded in the diary for any future possible legal action made by the worker in order to get the money from the deducted wages back.

### **What if an employer ever treats his domestic helper badly in terms of sexual or physical abuse?**

Any form of physical or sexual abuse is a serious crime in Hong Kong. It should be reported to the police immediately.

### **What about a situation where the employer puts pressure on the worker to have any kind of intimate relations with him?**

Such pressure or intimidation would constitute a serious form of sexual harassment. The law on this is clear. Any kind of pressure on the part of the employer to have sex with an employee is illegal. If there is in fact evidence that such inappropriate behaviour is going on, the employee should complain immediately by writing to the Immigration Department or the Labour Department (and this can also be done through the help agencies listed in this book). It also constitutes grounds for a claim for money damages

against the employer.

**But if the worker who is being abused, actually reports this abuse by her employer to the police, she will probably lose her job.**

This is an area of one's life, which is just too important to ever compromise, even just a little. If an employer starts to abuse his or her helper by any physical means, there is no way of predicting where it will end. It is well known that abusers tend to act according to a pattern. If acts of physical or sexual abuse begin, chances are that they will not end. If there are instances of physical abuse, it is likely that it will only get worse. Physical or sexual abuse is a very serious crime in Hong Kong law. It must not be tolerated by anyone, under any circumstances, ever.

Any case of physical or sexual abuse must be reported to the police as soon as possible. There is no employment situation on this earth that is worth being assaulted for. It is especially important in the case of physical or sexual abuse, for the police to be informed within the first few hours so that the evidence of such abuse can be recorded and preserved. For example, if the victim has been raped, it is very important not to change clothes or have a shower until she has first seen the police and a doctor. This is to preserve the evidence of the crime. In any case of either physical or sexual abuse, get to a safe place as soon as possible. Get to one of the help agencies listed at the back of this book and get to a police station as soon as possible.

**If the worker really is being physically abused, then don't you think that it would be difficult for the worker to get out of the employer's house? For example, she might be locked up or phone might be taken away from her.**

There have been cases in Hong Kong and elsewhere where workers have been restricted in that way. But keeping the worker in total isolation is probably an extreme situation. In most cases, there will be an option for the worker either to contact someone or pick up a phone and dial the police emergency number, 999 at some point.

If the employee can possibly get out of the house and to the street or to a public place, she should try and find a way to get to the Accident and Emergency (A and E) unit of a hospital as soon as possible. There, she should demand that a doctor examine her. She should also provide a full account of the situation to a doctor or person in authority there. If the worker has alleged an instance of physical or sexual assault, the police should also be notified of this matter at that time. It is important to remember that the police take any accusations of physical or sexual assault very seriously in Hong Kong. What they need however, in order to both protect the worker and to investigate the crime and prosecute the abusing employer, is physical evidence or eyewitness accounts of the crime.

It is also important to realise that in cases where employer abuse is provable, workers are normally entitled to apply for a new contract while in Hong Kong. Therefore, there should be no reason to remain in an employment situation where there is any kind of physical or sexual coercion.

## *Termination of employment*

### **So what will happen to the migrant worker if or when her contract has been terminated?**

Normally, after two weeks, the helper's visa terminates and she will be forced to return to the Philippines, Indonesia or her country of permanent residence. However, this period of legal stay may possibly be extended for a further two weeks if the worker whose contract has been terminated can provide a good reason for doing so. To get an extension, the terminated employee should promptly go to the Immigration office and fill out an "Extension of Stay" form.

In applying for the extension of stay, she should also provide a relevant reason for this extension, such as the need to find another employer while in Hong Kong or some other important business that must be done in Hong Kong prior to leaving the territory. Another reason for which the Immigration Department will grant an extension of stay will be in a situation where an employee has filed a claim with the Labour Tribunal against her former employer or for some other legal action.

## *Racial discrimination and the Government's two-week rule*

**Domestic workers and other migrant workers need a valid employment contract in addition to their visa. But if my employer terminates my contract, then I must get a suitable release letter to take to the immigration department and then a new contract with a different employer all within two weeks. Is this the same for other foreigners living in Hong Kong such as Americans, British or Japanese people?**

Foreigners who are not domestic workers are not subjected to what is known in Hong Kong as the “two-week rule”. This means that for them, it is far easier to switch from job to job without fearing that they will be sent back to their own countries.

**It doesn't really seem to be only one law for all of the people living in Hong Kong. Instead it appears that there is one law for some people and another law for other people, based not on principle but on both ethnicity and on class difference.**

It is true that the law doesn't treat everyone the same. In fact, the two-week rule is yet one more example of this unequal treatment. It was drawn up by the government and hastily implemented in 1987 without any democratic procedure or even what the government calls a “consultation process.” The two-week rule is now a central part of Hong Kong immigration policy, and is currently in force in Hong Kong. Since the two-week rule implies the government's unilateral foreshortening the terms of stay on a person's legally granted visa, this policy appears on its face to be in contravention of the law. Whether or not it is “legal” there is no doubt that it discriminates against a significant class of people living in Hong Kong.

Despite its questionable legal basis, the actual effect of the two-week rule has been to open the door for an increasingly oppressive form of exploitation of migrant workers on the part of employment agencies. The two-week rule has had the practical effect of significantly weakening the bargaining position of the worker as against either the employer or the employment agency. The two week rule has had the dual effect of making the worker both vulnerable to dismissal by a capricious employer and dependant on greedy employment agencies for the prospect of future employment. By any civilized standards, this policy on the part of the Hong Kong Government is unfair, and it is important to remember that it has been criticised on several occasions by the United Nations Human Right Commission as a form of racial discrimination.

**If I should find another employer while in Hong Kong, can my papers be processed while I am here, or do I need to return to my home country in order for the papers to be processed?**

Normally in these situations, the terminated employee may search for another employment situation while in Hong Kong. However, in order for that new contract to be processed, she must first return home while that procedure is being done. Possible exceptions to this rule (that the employee must return home while the papers are being processed) would be in a case where the contract has already been completed or where

the employer has terminated his or her employee due to some financial reasons of his own (such as the loss of the employer's job).

Another exception would be where the former employer has broken the contract in some significant way. Here, the employee must be able to prove that the employer had underpaid his employee, deprived her of holidays, or abused his employee in some way. The other exceptions to the rule would be where the employer has emigrated from Hong Kong, or if the employer has died during the contract period.

### **Are there benefits that workers are entitled to after they work for an employer for some period of time?**

On completion of 24 months service (that is to say completion of a two year contract) a worker is normally entitled to severance pay which is calculated at the rate of two-thirds of one months salary times the number of years in service. Following the completion of say, two contracts of service, the worker is entitled to terminal pay, calculated at the rate of two thirds of the monthly wage, times the number of years served. After five years of service, a worker is normally entitled to what is known as long term service pay. This sum of money is calculated also, at the rate of two thirds of the monthly wage times the number of years served.

The exceptions to this rule of severance, terminal service or long term service benefits are if the employer terminates the employee's contract "summarily". That means that the employee has done something, which is seriously wrong, such for misconduct, fraud, theft or wilful disobedience by the employee of a lawful request.

However, if the employer wishes to get out of his obligation to pay the employee terminal benefits, he must be able to prove to some degree that the summary dismissal was justified. This would be one of the kinds of disputes that tend to come before the Labour Tribunal. This matter is further explained below.

### **What if in the course of termination, my employer asks me to sign a document such as a letter of resignation?**

It is important to remember that for anything that you sign, you must totally understand what it is that you are signing. Second, you must, at all times be in agreement with that document that you sign. In other words, you must never sign something that you believe is not true. One problem that is often encountered by workers, who have been terminated, is that employers may ask their employees to sign a blank piece of paper.

Dishonest employers can later use this signed document against the best interests of the worker. It can be used to show that a worker has resigned. It can also be used to show that a worker is willingly giving up some of the money that she has earned. And in addition, it can be used to show that the worker has admitted to doing improper things that she did not do.



For example, the employer may write out a letter of resignation, in which the worker admits to doing something very wrong, such as stealing from her employer. The employer will then demand that the worker sign this “confession” letter. If the worker does this, it will be very difficult for her to later say that she did not wish to resign because of having done improper acts. Once again, it is unwise to sign any document that you do not understand and agree to.

**What if the employer says that I have to sign some paper, then don't I have to obey the order of an employer?**

Certainly you do not have to sign anything that you do not understand or agree to. It is never a good idea to sign a document that you are not in full agreement with. And according to the law of Hong Kong, you never have to do so.

Still another example of how workers are cheated by their employers is that they are asked to sign pay receipts for money that was never paid to them. Many times employers will underpay their domestic workers (there are many cases of this practice in Hong Kong) and then demand that the worker sign a receipt for the full amount. Agreeing to sign false receipts of this kind is a very bad idea since it will be very difficult to show in future that the worker has in fact been underpaid.

**What if my contract has been terminated and the employer says that he has bought a plane ticket and he wants to take me to the airport now?**

In this case, it would seem that the employer wishes to remove the worker from Hong Kong as soon as possible. There may be a number of reasons for this. However, it would also appear that the employer is trying to get rid of the worker and to place her outside of Hong Kong where she cannot seek legal advice or bring legal action against the employer for wages or other benefits.

In such a situation, the best thing that the worker can do is to remember that she has at least two weeks right of stay following the date of her termination. During that time, she can move out of the employer's residence, and then seek help if she wishes regarding any claim that she has against her employer. Remember also that the employer is still obliged to pay for the ticket.

But as to whether the worker decides to file a claim or not, it is probably a mistake to allow the employer to send her to the airport on the day of termination. It is much better upon termination to move out of the employer's house, carefully think about your situation and get help.

## *Filing a claim with the Labour Tribunal*

### **If my contract has been terminated, is there anything that I can do to help my situation or to get money that is owed to me by my former employer?**

Hong Kong is a place that favours the rich over the poor and it favours employers over employees in terms of legal actions. This is the way that things are done. It is a political and legal reality in a place like Hong Kong where there is no democracy and where the rich count far more than the poor. Hong Kong is in fact governed by a small group of individuals most of whom either are from very wealthy backgrounds or who represent big money. It is always important to remember that there is no truly representative form of government in Hong Kong. The people in government are not actually elected by the people. As such they are not accountable to the people. And they certainly do not take into account the views of migrant workers.

The reason that this is important to mention is not to make a political point, but in order that it be understood that workers in Hong Kong do not enjoy the same rights as against their employers that they do in most Western European or North American legal systems. However, there are some limited means by which employees can try and obtain justice regarding claims as against their employers.

The dispute resolution body that is initially available to domestic workers is the Labour Tribunal. The Labour Tribunal is empowered to settle disputes of up to any money amount. In the event where a worker's employment contract has been terminated and that worker has a claim for unpaid wages, any holidays or rest days that were withheld, long term contract pay that has been denied, or some kind of abuse, a claim can be filed with the Labour Tribunal. In such a case, it would probably be a good idea to seek assistance from one of the help agencies that are listed at the back of this book.

### **What can help agencies do for me?**

It's important to remember that the help agencies that are any good at all in terms of helping the interests of the worker tend to be ones that are not connected with any government. Instead, private or religious organisations fund the best agencies and these are either free of charge or are offered at a minimal cost to the client. The people who work at these help groups will be willing and able to listen to your story and then try and sort out just what can be claimed in terms of money. They also can help by assisting you to file the actual claim.

The worker should make the claim with the Labour Relations Division, seven (7) days after the date of termination of contract. The claim itself will be a form that will indicate what grounds the claim is based upon as well as how much money you are claiming from your former employer.

## **What happens next?**

Following the filing of the claim, the clerk will set down a date for something known as conciliation meeting. The employer will also be notified of the date for the conciliation meeting. On the date of the meeting, the worker who is filing the claim will be expected to appear before a Labour Officer who is there to try and encourage some kind of compromise agreement regarding the former employee's claim.

If such an agreement is found as between the two parties, then the claim will effectively come to an end. If not, the claim will then move on to the next stage. In this event, the claimant may choose to take it to either to the Minor Claims Adjudication Board (for claims that are below \$8,000) or to the Labour Tribunal (for claims of \$8,000 and above).

If no agreement can be reached as between the two parties to the dispute, a date will then be set down for a hearing as before either the Minor Claims Adjudication Board or the Labour Tribunal. There, the two parties to the dispute will then meet in front of an adjudicating officer who is empowered to settle the dispute as between the worker and her former employer.

## **If I am making a claim against my former employer, can or should I have a lawyer there with me?**

Under the rules for Labour Tribunal hearings, neither you nor your former employer, are allowed representation by a lawyer. You are both there to give your own side of the story. The judge (called a Labour Adjudicator) is there to listen to both sides, to weigh the evidence and make a decision in the dispute. This means that you have to act as your own lawyer in a claim before the Labour Tribunal. However, you are not totally on your own. A non government organization of the kind listed at the end of the book can at least assist you in the preparation of your case. They can do this by writing out your story in the form of a letter that will be addressed to the Tribunal.

It should now become clear as to why it is so important for the worker to prepare in advance for this possibility. For example, if you were alleging that your employer has denied you rest days and statutory holidays, it would really help your case if you had previously written to the Immigration Department, complaining about that.

Those letters would be there on file and would be powerful evidence in your favour. And likewise, this is why you should always keep an employment diary. Such a document that has been kept on a daily basis would be admissible as evidence in court. And this is also why you must never sign things that you don't understand or agree with. Your signature on a letter admitting that you have been fully paid for your entire contract would be powerful evidence against your case.

**How long will this claim before the Labour Tribunal take before the dispute is finally decided?**

That would be hard to say. It may be a matter of several weeks or even months, depending on the complexity of the case, the amount of co-operation on the part of the former employer and the workload of the Tribunal. But the immediate and most serious problem confronting the worker seeking the claim is that following her termination until the ultimate decision by the Labour Tribunal, she may not legally work in Hong Kong. There are four exceptions to this “no work” rule however.

The first exception is if the employer has emigrated from Hong Kong. The second exception is if the employer was forced to terminate the contract due to financial reasons, such as the loss of his or her job. The third reason was if there is strong evidence to show that there was either abuse or exploitation on the part of the employer. The fourth exception is if employer has died and there is a claim as against the employer’s estate. Finally, it is possible an employee to reprocess her papers in Hong Kong (and then take up work) while a claim against her previous employer is under way if her contract with the previous employer has already been completed and a claim against him or her has been made.

**If I don’t fall under one of those exceptions then how can I live during that time, if I can’t even earn any money? That doesn’t seem fair to me. Can my employer work during the time that I am making a claim against my former employer?**

Clearly it’s not fair or right that you are not permitted under law to work while your claim is pending while at the same time your former employer may do so. It is totally not fair that while you cannot work, your former employer can work. This rule is yet another example of how foreign domestic workers in Hong Kong are wrongfully discriminated against, since other foreign workers may legally find work while their own claims are being heard. Just to say this one more time, although Hong Kong loudly claims to be a place where the free market applies, the laws and policies of the Government show that the “free market” doesn’t apply to migrant workers. A really free market means that the law provides a proper remedy to those who have been placed at a disadvantage through the breach of contract.

However in Hong Kong, migrant workers face the added disadvantage due to not being able to legally work while the contract dispute is being settled. So that means that even though the employer may have delayed the case as a way of avoiding paying the worker what is due to her, and this delay causes further money problems for the employee, she will not get compensation for that extra loss of money.

This failure by the Labour Tribunal to address injustices caused by Hong Kong immigration policy that prevents migrant workers from working while their claim is being heard is another form of racial discrimination that is being perpetrated by the government. Rather than being a free market, Hong Kong’s laws regarding migrant workers make it clear that it is in reality nothing more than a cheater’s market. This “no

work” rule for those claiming compensation from their employers, is just one more obstacle that migrants are forced to deal with.

Therefore if you do find yourself in a situation where you are forced to bring a claim before the Labour Tribunal and are unable to work during that time, it will probably be necessary to seek accommodation either with a friend or with one of the shelters for domestic workers. The Philippines Consulate funds and operates one of these shelters as do Bethune House and the Mission for Migrant Filipino Workers. Further information about access to the Philippines shelter and other charitable organisations offering similar assistance may be found at the back of this book.

## *Termination of contract; overstaying, and surviving*

**What if a worker doesn't get all of the information about dealing with termination until after her visa expires? Or what if she just runs away from her employer, and finds herself in a situation where she is an overstayer? What can a person like that do to help her situation?**

In fact, there are probably thousands of people who at one time find themselves living and working illegally as overstayers in Hong Kong. Because of the unfair nature of the employment laws in Hong Kong, and given the difficulties that migrant workers constantly face in terms of being able to assert their rights as against their employers, it is easy to see why some workers end up overstaying their visas and end up working illegally.

And what's more, there are several different ways in which this situation may occur. Maybe over time, the worker has been underpaid by her employer. Maybe the worker is being abused or mistreated by her employer. Or maybe the employer has lost his job and the worker's contract is then terminated. Not knowing what else to do, she makes the most basic decision regarding a major problem – in order to survive, she simply runs away from her unacceptable employment situation.

Once free of her employer, she will very likely meet up with a few of her friends and move into a flat or boarding house. Now she is at least free and away from her miserable employment situation. But the larger problems facing her remain the same. Given the large debt that she still owes to the employment agency back in Indonesia, she feels that at this point, she cannot go home. This is almost entirely because of a lack of money. If she were to go home just now, with no savings in her pocket, how could she possibly pay back that debt? Just what could she do in central Java to earn that kind of money? What's more she fears, that her family might think that she has failed in her opportunity to help them. But now there are new problems that are also facing her. And those are the problems of being an overstayer and (if she gets a part-time job) of being an illegal worker.

In order to make the best of a bad situation, she starts earning money through doing part-time domestic work. Or maybe, she finds a job as a waitress in a restaurant. The money that she's earning through these jobs is not at all bad. And the work that she is doing is even kind of fun. Actually to her, this appears to be a good life. In fact, there are thousands of people in Hong Kong who find themselves in situations just like this.

While they are finally removed from their old employment situation, these people have the freedom that they never had before in terms of their working hours and just what they can do with their time. There is less pressure in the new work as compared with what they had done in the role as a domestic worker. The problem however, is that these individuals are living in Hong Kong illegally and if they are caught working, they will be charged with the offence of unapproved employment and most likely they will spend some time in prison.

**Is there something that can be done to help those workers who for some reason or another have become overstayers?**

The advice here is for individuals in this situation to realise that the situation cannot go on forever. Sooner or later, reality will catch up with them. They will in all likelihood be caught by the police or immigration and if they are caught while they are working they will probably go to jail for as long as six months.

However, there is the possibility for a person in such a situation to try at least and minimise the damage. If a worker is living in Hong Kong as an overstayer, it is possible for her to “surrender” herself to the Immigration Department and request to return home. It is advisable in such a situation for the worker to first consult one of the help agencies listed at the back of the book. In addition, the Philippines consulate will offer assistance to their nationals in these cases.

The consulate or the help organisations will be able to provide assistance in writing a letter to the Immigration Department explaining the specific circumstances of her overstaying her visa. It would also be a good idea to provide the Immigration Department with a return air ticket and the address of a shelter or a friend where the worker is able to stay during this time. At the Immigration Department, the worker will be questioned about her actions and then a date will be given for her to appear in court.

At that time, she will be charged with the offence of overstaying. Again, a letter given by a help agency would be able to explain the exact circumstances regarding the offence. Although it cannot be guaranteed, it is likely that the worker will receive only a suspended sentence. This means that a prison sentence is to be suspended for a period of say, two years, and if the worker doesn't get into trouble within that time, she will not have to go to prison. Following the court hearing, the worker will spend maybe another week in Hong Kong, while the immigration department makes final arrangements for the return home.

Although this idea of surrender to the Immigration authorities may not seem like an ideal solution (for example it won't solve the money problems that the worker may still have) at least she will probably be able to avoid spending time in a Hong Kong prison.

## *Migrant workers and the criminal law*

### **What about the law and me, out on the street? What are some of my rights and duties with regard to residency and identification, as well as police powers of search and seizure?**

One of the biggest problems facing people who get into trouble with the police in Hong Kong is ignorance. They are all too often ignorant about what the law requires and they are ignorant about what rights they have. Here, we're talking about the problem of getting into trouble with the authorities such as the police or the immigration department.

Often times, people who are not from Hong Kong, especially those who are overseas contract workers, are not really aware as to just what their rights and duties really are. Often, people take the view that legal problems will never happen to them, because they only want to obey the law, and they think that only troublemakers get into trouble.

But the reality is that legal problems can happen to anyone, even people who are careful to obey the law. In many cases, people have an unrealistic fear or respect for the authorities such as the police. Possibly they think that anything the police may do must be right because according to their reasoning, the police and the law are one and the same thing. Although it may be true to say that respect for the police and the law are a good thing, it never occurs to these people that sometimes, the police may actually be breaking the law.

The reality is that it's a mistake to put your faith in the authorities, because they can do things to people that go outside the law. The result of this is that if you fail to arm yourself with the information that you need, then you will be the one who is denied justice. This might mean that you are deported, or even spend time in jail when the problem could have easily been avoided by getting and using the information that you need about the law and your rights and duties.

Other people feel that that they are victims and are simply powerless to do anything to help themselves. These people feel that all people in positions of authority are only there to harm or oppress anyone who falls into their hands. These people don't understand that there are some in positions of authority that may be willing to help them. Actually, there are many people in Hong Kong who can be very helpful to those who for some reason get into trouble. But one thing that nearly all those who are overseas contract workers lack is a full appreciation for their own legal rights in Hong Kong.



## *Identity cards*

### **Do I really have to carry my passport or Hong Kong ID card with me at all times?**

If you're over 11 years old, then yes you do have to carry a form of identification, when you go out in public places. The Immigration Ordinance and the Police Force Ordinance of Hong Kong tell us that police officers or immigration officers may require any person over the age of 11 to produce his/her ID card while in a public place. People living in Hong Kong then have a duty to produce some legal form of identification such as a passport or Hong Kong identity card while in public. Failure to do so actually constitutes an offence, which may result in a \$1,000 fine.

## *Passports*

### **What about my passport? Do I have to carry my passport at all times as well?**

No, you don't have to carry your passport if you have a valid Hong Kong ID card in your possession. However, *it is important to keep in mind* that the Hong Kong authorities are very strict about all personal identity documents.

Any kind of alteration (or changes) made to passports or ID cards, is taken very seriously by the police and immigration authorities in Hong Kong. For example, there have been cases of workers who have come to Hong Kong, and then after their contract is finished, returned to their home country.

Then, at some later point in time they alter their identity documents by entering a different name or a different date of birth on a new passport. They then return to Hong Kong thinking that the immigration authorities will not find out about the changes that have been made in terms of their new identity. It is very important to remember however, that this is a big mistake for anyone to try and do this. It is easy for the authorities to determine the real facts. The Immigration Department will have both your fingerprints and your photo on file.

Furthermore, any falsification of personal identity documents is considered to be a jailable offence in Hong Kong. Such acts are considered to be the offence of making a false statement to an Immigration Officer. As such this kind of thing is treated as a serious crime. Those who are caught may be given a prison sentence of up to two years. It's never a smart thing to do because it's easy for the Immigration Department to discover the truth and it will be treated very severely.

### **What if my employment agency or my employer tells me that I have to hand my passport over to them?**

Your passport is your own personal property and no one, such as an employer, agency or loan company can legally order you to turn it over. In fact the law states that you have a responsibility to keep your passport in your own possession. If someone such as an employer, loan company or employment agency asks you to hand it over, tell him or her that the law forbids you to do so. Never give up your passport or identity card to either employers or employment agencies.

## *Search and seizure*

### **If I'm stopped when I'm out in public, like on the street for example, can the police then search me and go through my stuff like going through my pockets or my bag/purse?**

The Police Force Ordinance states that if a police officer believes that you are acting suspiciously, he/she has the power to stop you. In addition to requiring you to show your ID card, the police can question you about things like your address, where you were going, what you were doing and general things like that. This law also gives the police the power to search you if he/she has a belief that you are carrying a weapon or anything that might be considered a threat to the officer.

### **What if I refuse to be searched by the police?**

In that case, the law gives the police the authority to detain you for a reasonable period of time and do a search of you and your stuff in another place. Therefore, it's generally a good idea to be polite and co-operative in these situations. However, you may wish to ask to see the officer's warrant card (official identification) in order to confirm that this person is really a police officer. Remember that people other than the police are not authorized to search through your belongings.

### **What if I refuse to be searched and the police search me anyway, and find nothing illegal? Can they charge then me with not agreeing to be searched?**

So long as you do not resist physically (which is never a good idea anyway) they can't charge you with the offence of simply refusing to be searched.

### **What if I am at home? Do I have to produce my ID if the police or immigration officers come to my house?**

No. The position here is that if the police or immigration officers come to your house and demand that you open the door, you may if you like, invite them in.

### **Do I have to allow the police to enter my home?**

No, not really. If you aren't sure that you would like these officers in your home, or if you really would not care for them to come in, you should ask them if they have a search warrant, which specifies your address and is signed by a judge or magistrate. If they produce one, then you have to allow them in. If not, there is no legal obligation on your part to open the door.

The whole idea here is that you don't have to open your door to just anyone who knocks loudly. The authorities are the same as anyone else in that they have a duty to obey the law just as you do. What gives them the power to enter your house is not their uniform or their badge, but their *legal authority*. This legal authority must normally be given to the

police by a judge or magistrate based on reasonable suspicion that there is some illegal substance (such as drugs or forged documents) or there are overstayers or illegal immigrants staying in that house.

**Why do the police need the signature of a judge or magistrate to get a search warrant?**

This is because a judge or magistrate is seen as being somewhat independent of the police. If the police could enter and search any house, flat or other types of private property any time they wanted, it could lead to abuses of power by the police. This is the idea that it is better to be governed by the law than by the will of the police.

**Do the police or immigration officials *always* need a search warrant to enter a house?**

No. According to the law, police or immigration officials do have the power to enter and search houses where they have a good reason to believe that an immigration offence has been committed there. Generally, this “good reason” will be in the form of a tip-off to the authorities from a member of the public. However, this does not mean that law enforcement officers may make random visits or house-to-house searches based on that suspicion. They must have a genuine reason to believe that an offence has been committed.

**If the immigration officers can enter and search houses based only on their suspicion, won't this lead to a similar abuse of the Immigration Department's power?**

There are many people who feel this way, and that's why it's a good idea for everyone to carefully observe what they are doing in the community and report any abuses that we encounter on the part of the authorities.

**So are you saying then that I should let them in immediately?**

No. If they are going to rely on their special powers to enter your house because of a “good reason to believe” that immigration offences have been committed there, then they will enter no matter what you do. But if that should happen you should ask them why they want to come in.

If the police do not say that they want to enter because they believe that some immigration offences have been committed there and they don't have a warrant they you do not have to let them in. If you invite them in, they will just say that they had permission to enter your house anyway. The point is that in these situations you can't keep the authorities out of your home as though it were a fortress. You can however, ask them to explain to you as to why they have to come in. Also ask them to record that you did not give them permission to enter.

**What if the police or immigration officers behave badly after they enter my house?**

No police or immigration officer is allowed to use unnecessary force on people that they are dealing with. That means if you don't resist them, they shouldn't grab, hit or restrain you. In addition, they are not permitted to use abusive language. If they do, you will help others, if you make a formal complaint about their behaviour. Tell them to leave.

Unless the police or immigration officers have brought a search warrant, they must leave your home with reasonable speed if you tell them to go. If they do not leave, or satisfy you that they do not need a warrant, then they are breaking the law and you should complain about that too.

**What if I'm at my employer's house and the immigration officials knock at the door?**

In that case, your employer may let them in, and if they do enter, they can ask to see your identification. Just like in the last case though, your employer may ask to see a search warrant.

**What if my employer isn't home at the time that the immigration officers knock on the door?**

We are talking about your employer's house right? In the situation where your employer was not home, would you let into the house any strange person who knocked on the door and asked to come in?

**No, that would never be a good idea.**

Well, that more or less answers your own question as to whether you must open the door while at your employer's house. The best thing would probably be to wait until your employer has returned.

**But the immigration officer has ordered me to open the door. Can I get into trouble for not obeying his order?**

The point is that if the officer has no search warrant, then he has no legal authority to order you to open the door, and submit to a search of the house. He is counting on you to obey because he thinks you will be ignorant of your rights. It's never a good idea to resist with force. In reality, you may want to defend your house against the authorities like a fort or a castle, but it doesn't really work that way. It's a much better idea to ask the authorities why there is a need to enter your house. Remember that the police are required to follow the law just as you are.

## *Arrest*

### **Can you tell me what to do if I am arrested?**

This is a difficult area to give advice about, because obviously, being arrested by the police or immigration authorities is about as big a trauma as anyone is ever going to face. It's also hard to give advice about this because the circumstances about arrest tend to differ a lot from case to case. But it is clearly not going to be any kind of pleasant experience for one to go through. You have a responsibility to yourself and to your friends and family to maintain your own dignity and to help yourself. Hopefully, this information will assist you to do that.

The thing is that you must try and keep a cool head about you. If you are ever arrested, the most important thing is not to resist physically. This will only give them an excuse to use physical force on you. Don't fight back. Instead, stay calm. Use your head.

### **How will I know if I am actually under arrest?**

The arresting officers should tell you this fact specifically. In other words, "You are under arrest..."

If you are being arrested, the important thing is to be clear what you are being charged with. If you are not clear in your own mind, ask, am I under arrest? This is because if you are not under arrest, then you really don't have to spend more time with the officers. If you are not under arrest you certainly don't have to go anywhere with them.

### **But what if they tell me that I am under arrest?**

Then you must ask them, "What crime am I suspected of committing?"

Get that absolutely clear first. It is extremely important that you know this. Often the police or immigration officers will not tell you anything about your legal status. But no matter what they do, or do not tell you, always insist on knowing what you have been arrested for.

They should also inform you as follows, "You are not obliged to say anything unless you wish to do so, but what you say may be put into writing and used in evidence."

That means that you don't have to say anything to them. If you do however, the police or the immigration officers may try to use anything that you say to convict you of a crime.

*The right to silence and statements to the police or immigration officials*

**That sounds scary. Then I should not say anything to them?**

That's right! Being arrested is very scary indeed. Therefore, it is always a good idea to first listen to what it is that the police or immigration officials are concerned about. So always try and listen first and if possible, don't talk.

**If I am arrested, is it legal for the police to search me?**

Yes. The arresting officer may legally conduct a search of your person, including your pockets and your handbag. He/she may also take from you any property, which may be used as evidence against you, such as illegal drugs, stolen property or weapons.

**What happens next?**

The authorities, who are arresting you, should take you promptly to some place such as a police station or the immigration office. There, they may want to question you further. When you have been taken into a police station or the immigration office, you should tell them first of all, that you demand the assistance of a solicitor. Secondly, you must demand to make at least one phone call.

**Who should I call?**

This is a very important issue for anyone who has been arrested and detained. Many times people who are arrested do not make a phone call to someone who is able and willing to help. What happens in that case is that they disappear from their friends and family until they are sent home. The problem is that if a person is arrested, no one who cares knows where she is being held.

Therefore this issue of insisting on being able to make a phone call is especially important. Most people today have cell phones, so if you have been arrested, make sure to inform as many people as you can.

The person (or persons) that you should call depends on a number of things. If you know a lawyer, call him or her. If not, you may have a best friend or relative that you know is dependable. The important thing to remember here is if you are prepared in your own mind for this kind of event, you will be able to figure out who to call. The best person to call will either be a reliable friend, relative or a person who is responsible who is also sympathetic to you. If you don't know anyone like that, then it might be a good idea to call someone from one of the help groups listed at the end of this book.

**What if they ask me questions?**

It's important to understand that every case is different. In addition, it's very difficult to give advice in a book like this one that will apply to all possible situations. But when you

are being questioned, unless you are really sure as to just what you are doing, the best thing to do is to politely say that you will not speak to anyone until you have spoken to your lawyer. Even if you don't know the name or telephone number of a lawyer, this request on your part should indicate to the police that you are exercising your legal right to remain silent in the face of questions.

**What if I am not confident of my English language ability when I am being questioned?**

The police and immigration officials are required to provide people that they are questioning with a competent interpreter/translator. If you are not capable of fully understanding the nature of the questions being put to you or if you are not confident of your language abilities then it would be a good idea to request an interpreter. It's also important to remember that interpretation/translation services are also available to those people who are in court.

**If I am being questioned, do I have to answer any or all of these questions?**

As to whether you are under a legal duty to answer any questions from either the police or immigration officers, the advice here is that you absolutely do not. But it will take a lot of courage to say no to serious questions from a police officer or immigration official. Just remember that according to the law, you have the legal right to silence. Furthermore you should remember that your silence in the face of questioning may not later be used as evidence of your guilt for any crime.

In other words, if you do not choose to respond to questioning and keep silent, the police cannot later use the fact of your refusal to argue that your silence indicates that you are guilty of some crime. The point here is that it is entirely your decision as to whether you choose to say anything to them. But remember that if you are not comfortable with the situation, in terms of the direction that the questions are going, or you are not sure as to just what you should do, the best advice is to say nothing at all to the police.

**What if they tell me that all these problems can be solved if I only answer their questions?**

Tell them that you want to speak to a lawyer.

**What if they ask me the names of my friends?**

Tell them that you want to speak to a lawyer.

**So then, I should tell them absolutely nothing?**

Just for a moment, think about a situation in which you are being questioned, either by the police, or by an immigration officer. Let's further assume that you are being questioned at one of the offices of the immigration department. You have already been at



the immigration office for some time. You are also probably tired. The officer is asking you questions like; “We have good reason to believe that you are working in unapproved employment”. You begin to get uneasy and uncomfortable in your seat.

The immigration officer angrily says to you, “Look, don’t lie to us. We all know that you have been working as a waitress in a restaurant. Come on, admit it!”

Now at this point, you are probably very frightened, because the police or immigration person thinks that you have been committing a crime under the Immigration Ordinance. So under these circumstances it would be very easy to become confused or simply give up and talk to the officer. It would be really easy to simply say something like, “Yeah, I’m really sorry, but I was only working there for a few weeks.”

But for you to do something like that would be a huge mistake. Remember that you have got to use your head in this situation. If you think for a moment, you would realise that you can only get into even more trouble by talking to the official. And here is another example of just what might happen to you or another worker:

Suppose that instead of being questioned at the immigration department, you actually are caught by the police as you are serving food in a restaurant. Further suppose that you took the job as a way to earn some extra money. It’s the lunch hour and you are coming out of the kitchen with a tray of food in your hands. Or maybe you are selling lunch boxes in Victoria Park on Sunday afternoons. Your friend tells you that it would be a good way to earn a little extra money. Suddenly, two officers wearing badges grab you and say you are under arrest.

As we know that such activity would be considered as being an offence of unapproved employment for a domestic worker according to the Immigration Ordinance. So then, here’s a question. What do you think would happen if they caught you in the act of serving food in a restaurant in Central or selling lunch boxes in Victoria Park?

**If they caught me doing something like that, they would likely arrest me. The police would probably take me to a police station.**

That’s exactly what they would do. You most likely would be taken to the police station. In other words, they wouldn’t bother to waste several hours of their time asking you questions about what you were doing, since they caught you in the act of doing so. They already know what you were doing. They would suspect that you were breaking the law. But more importantly, they have good evidence, which can be put before the court that you were breaking the law. Even so, the police must tell you that you are under arrest and that anything that you say will be used against you in evidence. So, it is very important to stay silent in such a situation.

But if you were caught working in a restaurant, you would probably be held in custody for a day or two until you would be brought before a court, and a magistrate would hear your case. Then, he or she would determine whether or not you had broken the law.

First you would be given a chance to plead guilty or not guilty. If you were to plead guilty, you would be given a sentence at that time. If you were to plead not guilty, a trial date would be set and you would probably wait in jail during that time if you could not get released on bail.

But remember that in order for the judge to do anything to you; it is first necessary that legal evidence is brought before the court. In the case of where you are arrested for working in a restaurant, the evidence against you would be clear. There would be a police officer there in the courtroom as a witness to say that he saw you when you were working as a waitress (or selling lunch boxes).

In such a case, what would happen is you would almost certainly be found guilty of unapproved employment. This would probably be true if you pleaded either guilty or not guilty. The evidence itself would be enough to convict. Most likely, in that event you would go to jail for a few months at least. You would then be removed from the territory and sent home to your country of residence.

### **So what's your point?**

Go back to the first scene for a moment. Recall the situation in which you are being questioned over and over by an immigration officer. You have gone there to the immigration department in order to apply for an extension of your visa, and suddenly you find that you are being questioned about something else. These two officers keep saying to you, that they know that you are working in a restaurant and that all you have to do is to confess and sign a statement and then you can go home. Think. Why do you suppose that the two officers have been spending so much of their valuable time in asking you those questions?

### **I'm not sure as to just why they are doing this. So just why then are they spending so much time questioning me?**

The reason that he is doing so is this - although they certainly have a suspicion that you have broken the law, they cannot prove it. What's more they cannot take that suspicion to a court and hope to get a conviction against you. They have no evidence based on that suspicion that can prove to a judge that you have broken the law.

And this is the most important point, so put this in your brain. In such a situation, the only way that you can be convicted of a crime in Hong Kong is if a judge in a court of law convicts you of that crime. And for this, there needs to be proper evidence of that crime that is put before the judge. And here's a word about evidence. This refers to some form of information from the word of other people (such as what the arresting officer saw) or from admissions (such as what it was that you told the police officer or what you wrote down or signed).

Remember always that even though the immigration department has a suspicion that you may have done something illegal, that by itself, is not enough to convict you. Even if

someone has written an anonymous letter to the immigration department (this happens very frequently) accusing you of a crime - that by itself is not enough to convict you of anything.

In a situation, where you find yourself being questioned about something they think you did the only person that can really harm or help is you, yourself. An anonymous tip-off or letter that someone has written to the police or immigration department is not sufficient to convict you of a criminal offence. In law, it's a big nothing.

**Okay, let's get back to the issue of the arrest itself. What will happen if they ask me to sign something, like some document? Do I really have to sign it?**

It is important to remember here that according to the law, you do not have to sign anything that is put before you by a police officer or an immigration official.

Often if you are in a situation of being questioned, the police or the immigration authorities will ask you to sign a "statement". Many times this statement will amount to you admitting that you committed a crime. More importantly, this document will be used against you in court as evidence. This statement will be used as evidence that you have committed a crime. Very often, the police will write it out themselves while they are questioning you, and then demand that you sign it.

If you do sign such a document, it will be difficult (if not impossible) to later argue in court that you didn't actually admit to those things. Remember that you do not have to sign anything unless you yourself actually want to write down something that you have said to the police. You also have the full right to alter or add to what's written down because it is your document. Any statement that you sign should be your own account of what happened. It should be your own answers to any questions that the authorities have asked you.

**If I do sign a statement, then can I have a copy for myself?**

Yes. This is very important for you as well. If you do agree to sign a statement that you make to the police or to the immigration department, you are entitled to have a copy of that statement for your own record. As I say, it's your document. Should you ever sign a police statement it is a very good idea to demand a copy for yourself, because you will want to show it to a lawyer at a later date. That statement will provide very important information relating to your case. Always request a copy of any statement that you sign.

**What if I'm not sure whether it's a good idea to sign it, but they tell me that it is a good idea for me to sign it anyway?**

If you are not absolutely clear as to exactly what you are signing, you should never, ever sign it. It will not be in your best interests to do so. Also never sign a statement written in a language which you yourself cannot read or cannot read very well. Always remember that you have a right to a translator/interpreter. If you are not sure of your

English ability, it is best to demand a translator during any questioning from police or immigration officers.

**Can the police *force* me to sign a statement?**

No, neither the police nor the immigration authorities can force you to sign anything that you do not want to. You should also be aware that you have specific rights regarding these matters. It is important for you to realise that the police are prohibited from trying to get a statement from you based on threats, intimidation or inducements (promises). In fact however they will often use these methods in trying to get you to admit to something.

But apart from using threats or promises, it is a very serious offence for the police to use any physical violence on you. It's also important to remember that it is a serious offence for the police to sexually assault or harass anyone in their custody. If you are a woman, and being questioned, there always should be a female officer present.

It is always important to remember that any statement that you make, or that you sign should only be what you have done of your own free will in the absence of coercion. Again, if in doubt, you should say that you would like to see a lawyer and get his or her advice on whether to sign a statement or not. Should any of these things ever happen to you, it is important to keep in mind just who your real friends are. Are the people who have arrested you going to be your friends?

**Are the people who have arrested me going to be my friends? I don't think so...**

Well then, is it really a good idea to trust them concerning what will happen to you?

**If I understand you, I am either being questioned by the police. Maybe immigration officers are questioning me. I am away from my home and my friends. I'm not comfortable with those people and quite frankly, I'm scared. What if I am thirsty or have to use the toilet?**

Then ask them for a glass of water or to use the toilet. You are entitled to these things while you are being questioned.

**Well, if I am not supposed to listen to the advice that the police give me then just who can I trust?**

Trust yourself. Demand to see a lawyer and trust him or her. Let's say that the police or the immigration people have arrested you and taken you away from your work and your home. Why would you want to place your trust in their hands?

**I suppose you have a point. It would be foolish to place my faith in those people whose job it is to arrest and deport me. But to resist the demands that they are making of me - that's not going to be easy, is it?**

No. It will not be easy at all. But coping with questioning by the police or other uniformed officials can be done through recognising what your best interests are, and of course through remembering to insist on standing up for your rights.

**What if the police tell me that if I don't answer their questions or sign some paper that I am hiding something? I mean, can I get into trouble for not talking to them?**

You absolutely cannot get into more trouble for not talking to the police or immigration officers. You will never get into any *more* trouble than you already are by remaining silent. Remember once again, Hong Kong law tells us that if your case does go to court, it is the authorities that have to prove to the magistrate or judge that you are guilty. Remember that it's not the other way around. You don't have to prove to anyone that you are innocent.

According to Hong Kong law, your decision to remain silent cannot be taken to mean that you have something to hide or that you are guilty. But because of the fact that the law enforcement officials do have the powers to arrest, question and even temporarily detain, those people that they suspect of having committed crimes, it is a very good idea to have access to your own lawyer.

## *Getting access to a lawyer*

### **So then, what will a lawyer be able to do for me?**

A lawyer who is working for you will be able to give you specific advice on your situation. He or she will be able to assist you by arguing your case before a judge if the case goes to court. The lawyer will be able to study the evidence against you and determine as to whether that evidence can be legitimately used in court. A lawyer will be able to study any statements that have been given to the police and provide advice on how best to conduct yourself in court. A lawyer will also be able to argue on your behalf in any court hearing and to present your situation to the judge in the best possible light.

It is important to remember that any lawyer, which you have requested, is acting for you alone, and will *never* be able to inform the police or immigration officials about what you have told him or her. Therefore, it is very important that you inform your lawyer as to all of the relevant information about your case. It is not a good idea to try and withhold information from your lawyer or to try and conceal important information from her.

A lawyer may be also able to help get you released from detention while you are waiting for your case to be heard. Finally, through his or her arguments, a lawyer may be able to argue the special circumstances of your overall situation to a judge, and this might mean you avoid being sent to prison. In any case, you will not be worse off if you ask for a lawyer.

### **What if the authorities tell me that I'm only making trouble by asking for a lawyer?**

Then you know that they are not telling you the truth. Ask them to see a lawyer once again.

### **If I have been arrested, and I do ask to see a lawyer, (or if my friends ask for me) when will I get to see her?**

That depends on a few things. If you do know a lawyer, then you should be allowed to see her as soon as it is practical for you to do so. If you don't know any lawyer, you may not get to see one while you are in police custody. But the police must take you before a judge as soon as possible and you have the right to demand a lawyer at that point.

### **Okay, how, am I going to get to talk to this lawyer that you keep talking about?**

First of all, if you know a lawyer, by all means, demand to see him/her as soon as possible following the arrest. In all likelihood, the sooner the lawyer is able to be assessed of the facts of the case and receive instructions from you, the more she is able to do for you. If you were to delay this until just before your hearing, many times a lawyer's options are more limited.

### **What if I don't know any lawyer or have no money to pay for one?**

In that case, you may be entitled to a lawyer through the Duty Lawyer Office, but only if the case actually comes to court. However you may not be entitled to a lawyer under this scheme during the time that the case is being investigated.

## *The Duty Lawyer Office*

### **What is the Duty Lawyer Office?**

The Duty Lawyer Office is a service called the Duty Lawyer Scheme, which is provided by the Hong Kong Government along with the Law Society and the Bar Association. It is intended to provide people with legal representation who would normally not be able to pay for this service.

### **What kinds of services does the Duty Lawyer Office provide?**

In addition to providing legal representation to people who are in need, the Duty Lawyer scheme offers free legal advice to people on just about any question. To get this advice you must visit them at their offices. Their telephone number is provided at the end of this book.

### **Would I be able to get a lawyer under the Duty Lawyer scheme?**

Once again, that would depend upon you and your own situation. It would depend on how much money you earn, and on what type of offence you were charged with. For example, if you are being charged with certain crimes such as illegal hawking, or traffic related offences you would *not* qualify for the Duty Lawyer scheme.

### **Are immigration-related offences, like overstaying or illegal employment covered by the Duty Lawyer scheme?**

Currently, a duty lawyer may be provided in immigration related cases.

### **How can a person who is in trouble get access to a lawyer? Like, if I'm in trouble, with the police or immigration authorities, how do I manage to request for a lawyer?**

One idea is for you to contact one of the help organisations, which are listed at the end of this book. Some of them have lawyers who might be able to help you. In addition, you can always try to contact the Duty Lawyer office and tell them about your situation. They just might be able to help you.

### **If I know a lawyer already, can I request that person through the Duty Lawyer Scheme?**

It is currently possible to request a particular lawyer through the Duty Lawyer Scheme.

Finally, it never hurts to ask the police or magistrate anyway. Because if you don't request legal representation for yourself, you will generally find that no one else will do so. In other words, unless you ask, it's very unlikely that you will get it. And if you don't have legal representation, your chances of receiving justice are much poorer than if you



are properly represented.

**So how else can I prepare myself for the kinds of things that might happen if I ever get into trouble with the authorities?**

Well, one way is to be prepared for what might possibly happen to you if you ever get arrested.

**Just how can I prepare myself for an event like being arrested?**

For a start, it is very important for you to always be aware of your legal rights and obligations under the law. If you are ever arrested, you will probably be detained for a period of time. Keep in mind that the police officers who have arrested you must take you before a judge as soon as possible or at least within 48 hours of your arrest. That means that the police do not have the power to keep anyone locked up as long as they please.

Also, those who have been arrested and charged with an offence may possibly be released on bail. However, there are more kinds of restrictions on bail for people who have been arrested for immigration offences.

## *Police bail or release on terms of recognisance*

### **What's bail and how can I be released from detention on terms of bail?**

Bail generally refers to the release from detention of someone that has either been charged or convicted of an offence on certain agreed conditions. That person who applies for a release on bail must first agree to appear later in court or surrender to custody at a certain time. The idea here is that for crimes which are not regarded as being a serious threat to public safety, the accused person should be allowed to go free while waiting for trial.

For example, a person accused of shoplifting will normally be allowed to go free until the trial date. The conditions of bail that are typically set are that the accused person is to appear in court on the date of the trial. However, the police, immigration officer or judge making the decision to grant bail must first be satisfied that the accused person will not avoid his/her court appearance or run away. In deciding whether to grant release on bail, the judge will often first require that that the accused person has a fixed address. This requirement may well be a serious hurdle for a migrant worker whose contract has also been terminated.

In almost all cases, a judge will require that an amount of money (called a surety) be deposited with the police to help make sure that the person will comply with the conditions of bail. The money will be returned to the accused person if and when the conditions of bail are met. In other words, the accused person gets the money back if he or she shows up for the trial.

In addition, the authorities who are making the decision whether to grant bail may require that another person give a guarantee that the person who is applying for bail will meet the conditions that they set. This person who is capable of guaranteeing bail will be required to have a regular income as well as a fixed address.

## *Detention and prison conditions*

**What other things can I do to help my situation? Are there any things that my friends can do to help me?**

Remember that if you should ever get into trouble with the authorities, and are being detained, your friends will be thinking about you but they will also wish to help you in practical ways too. For example, they might want to visit you where you are being kept. In order for your friends to help out, it is very important that they know your whole name.

One practical thing that you can do to help yourself right now is to tell your best friends your whole name, the way it appears on your passport or ID card. In fact, you might want to give your ID number to your closest friend and take down and keep his/her your own ID number as well.

**That's a good point. For most of my friends I just know them by their first names or nicknames. They too only know me by my nickname. But why is that important?**

This is important because if you want to visit someone in police custody or prison you have to produce the whole name just as it appears on his or her ID card. To help each other, you must know the entire name. Should your friend ever get into trouble, you will need their whole name to find out where the person has been sent.

**Is there something else that I can do to help my friend who is in trouble?**

Yes. When a person is being processed into a detention centre, the prison officers will let that person make out a list of those people who she would like to see. Most people in that situation will tend to put down their mother or father or other close relatives.

**But for me, they would not even be living in Hong Kong!**

That is exactly the point. If your mother or father lives overseas, it's not likely that they will be visiting you, is it?

**So who do I include on the list of visitors?**

You put on to the list those friends who live here in Hong Kong and to whom you have given your full name to. You prepare for this, right?

**In other words, we make an arrangement to help each other in an emergency.**

That would certainly be a good idea to have an arrangement to try and keep in touch in the event of an emergency. Then, even though something has happened and you are out of touch, you can still keep in communication with each other. Try and imagine the

situation that you would be facing here:

The Immigration Department, which has made up all of the rules that serve to limit and restrict visits, appears to be acting in an effort to isolate and confuse you. Suppose that by this time, mobile phone has also been taken away from you. You find yourself to be completely alone. No one will visit you because they can't. In other words, your friends won't have any way to know just where you are being held.

But at the same time, it is important to remember that you don't know all of these things while you are in jail. So there you sit, and the prison officials who are detaining you get to control you absolutely, which of course is exactly what the police or immigration officials want. They are best served when you are in a weak and isolated position. They are least happy when you are in a position of having knowledge and control over your situation.

**So then, if I am being detained, other than putting my friends' names down, what can I do to get people to visit me?**

If you are ever in a situation where you are being detained, there is hardly anything at all that you can do on your own will to remain in contact with the outside world. That's just one more reason why it's not a nice thing to be detained.

## *Getting access to detained persons*

**Okay, what if we change the facts around then. If it is my friend who is the one that is being detained, then how can I find a way to locate and visit him or her?**

First, you must know her entire name, just as I have mentioned, and not her nickname. Then you have to find exactly where they are being held.

**Is visiting a friend in prison, a very difficult thing to do?**

Yes. Attempting to visit persons while in detention is often quite a difficult and frustrating experience. But mostly, rather than being hard, locating people under detention is very, very time consuming. There are several places where they could be. But if you continue to make enough phone calls, eventually you will find out where your friend is being held.

**So what do I do in order to find my friend who I suspect is being detained?**

First, call the police station near to where you believe the arrest occurred. Ask to speak to the Duty Officer, and tell him/her the situation. Say that you are looking for your friend who you believe has been arrested. Always be polite when speaking with the police. Tell him (or her) the person's name, and when and where you understand that the arrest took place.

Ask what charges were made against your friend, and ask where the person is being detained. Sometimes you will be referred to the immigration department or sometimes you will be referred to other police stations. You might find that this is frustrating work. But keep at it and you should be able to track your friend down. When you do finally manage to locate the location of where your friend is being held, make sure to request from the officer that you are speaking to, her detention number. This number will be more important than her name in initially gaining access to you friend in a detention centre.

**Will I get into trouble for visiting my friend in jail or for asking about her?**

No. You can't get into trouble simply for visiting your friends in jail. On the other hand, visiting someone in jail is not an easy thing to do. One thing that you will find is that detention centres are most certainly not like hotels. Upon entry, you are required to fill out a form giving your name and address. You must also submit your ID card at the front gate. Your bags will be searched. It is important to remember at this point, your ID card may be run through a computer by a prison guard to determine the legality of your status in Hong Kong.

While you are waiting to visit your friend (and you *will* do a lot of waiting) you will be in a part of the detention centre that is locked up as well. It's never a nice thing to be in a place where you cannot leave as you please. In addition, the prison guards may treat you rudely.

For some strange reason, the prison guards (referred to as Correctional Services Officers) always seem to act rudely to anyone who is visiting at the prison. But they also tend to treat women and persons of colour worse than they do men, Europeans or North Americans.

They appear to make things as difficult as they can by an absolutely strict interpretation of their rules. They will think nothing of turning you away, if the spelling of your name is not quite the same as the name on the prisoner's list of visitors. It doesn't seem to bother them at all that you have travelled as much as four hours for nothing. They seem to think that in some strange way, you as a visitor of a prisoner must be guilty of similar crimes as those people detained in their prison.

However, being rude and arbitrary to visitors, is a very strange thing for prison guards to do actually when one realises that by visiting people in prison, this act serves to improve the attitude of the prisoners themselves. As such, the visitors are actually making life easier for the prison guards. However, one thing is for sure; when you visit any person in prison, you will discover very soon that prison guards are not your friends at all.

### **So what can I do for my friends when I visit them in jail?**

By visiting them you will be doing a lot of good. First of all, just by you being there will lift their spirits. In addition, you can remind your friends that they ought to be demanding to see a lawyer. Finally, you can bring certain personal items to your friends to make their lives easier.

### **What kinds of things may I give to my friends who are in detention there?**

The Victoria Immigration Control (VIC or Victoria Prison) located above Hollywood Road in Central, Hong Kong, was previously used by the security services as a place where both men and women (and in fact, sometimes even children) would be held before being deported or removed from Hong Kong. It is one of the oldest buildings in Hong Kong. As such, it is not surprising that the facilities were incredibly old-fashioned. For example, this facility did not even have flush toilets in the prison cells. Instead, buckets were used for the disposal of waste.

Furthermore, Victoria Prison was often very over-crowded for both the male and female inmates who are being held there. Surprisingly however, despite its old and crumbling appearance, this prison had a reputation as having a slightly more liberal regime than the other institutions in Hong Kong. In 2005 however, the Correctional Services Department began to move detainees previously kept in Victoria Prison to a facility in Tuen Mun called the Castle Peak Bay Immigration Centre.

At the Castle Peak Bay facility, visitors may give most clothing items to detainees. Warm clothes are really appreciated by anyone being detained in the winter. You may also bring certain approved brands of soap, toothbrushes, toothpaste and tissues. Other items such as food and cigarettes are quite restricted. The rules that have been created for

what are known as “hand-in articles” are mind numbingly restrictive and appear to have been made in an extremely arbitrary fashion.

For example, you are only allowed to bring one officially approved kind of candies (*Peanut M & Ms*, 200 grams in original packaging) and subject to the approval of the Superintendent, a pack of cigarettes (*Hilton Kings* soft package, duty paid). You may bring a very limited assortment of personal items, such as one toothbrush (plain, transparent, regular) and only “*Darlie*” brand toothpaste (75-gram tube).

You may bring only one brand of skin lotion (*Johnson*, 100 ml. or 300 ml.). Along with that you may give one tube of hand-cream (*Pear* brand plastic bottle, 80 ml., sealed in original package) and a single bar of soap (*Lux*, 100 gram). Other items, which you may bring to prisoners, at Victoria Prison include *Tempo* brand tissues (10 pieces, original packing) along with a “Good Morning” towel (regular size, 81 cm. x 34 cm.). Finally, you may provide prisoners with a pack of sanitary napkins (*Whisper* brand, Night Slim, 28 cm. long with wing, in light blue pack)

The prison guards there will allow you to give many types of magazines (such as news or fashion magazines), but they won’t allow inmates to receive a newspaper. Generally, visitors are allowed to bring novels and other books to detainees. However, visitors are not permitted to give detainees money or anything which is valuable like a watch or jewellery.

It’s important to remember however that as these rules are constantly changing, this information may be out of date. For the most recent rules on just what kinds of things that prisoners are allowed to receive, demand to see a list of officially approved items from the guards at the prison.

Chi Ma Wan Correctional Institute for Women and the newer Chi Sun Correctional Facility both located on Lantau Island are currently being used to detain large numbers of women migrant workers and others who are serving prison sentences. Because of the Hong Kong Government’s intolerant immigration policies, the prison population for women has jumped alarmingly during the past 10 years. Very often, women prisoners who have been migrant workers are first sent to Tai Lam, and then after a period of time are sent to either Chi Ma Wan or Chi Sun in order to serve the remainder of their sentence.

At the present time, Chi Ma Wan and Chi Sun (located about five minutes apart) can only be reached by ferry, which travels from Mui Wo, on Lantau Island (or alternatively, Chi Ma Wan may also be reached by taxi from Mui Wo). Chi Ma Wan or Chi Sun may be reached via the island of Peng Chau by a ferry from Central. The ferry departs nearly every half-hour to 45 minutes from Terminal no. 5. Chi Man Wan’s visiting hours are, 9:00 to 12:00 and 2:00 to 4:00, Sunday through Monday. However Chi Ma Wan is closed to visitors on Wednesdays.

Chi Ma Wan previously served as a detention centre for Vietnamese refugees and currently is a medium security correctional facility for women. Chi Sun is a newer

facility. Normally the persons in detention there have already been convicted. In that place, women may not wear their own clothing, but are given uniforms instead. The prison regime there is much more restricted than that at Victoria Prison.

The Tai Lam Correctional Institute for women is located in Tuen Mun in the western part of the New Territories. The Tai Lam Centre for Women currently serves as Hong Kong's main women's prison for those convicted of criminal offences. However it also serves as a remand facility. This means that women who are still waiting for trial and who have been kept in detention during this time may well be detained in Tai Lam.

For those persons who have already been convicted, Tai Lam is listed as a maximum-security facility. However, the prison houses all kinds of prisoners; those convicted of the least serious, as well as the most serious crimes. Tai Lam may be reached by bus from Central District or Kowloon. The 61 M bus to Tai Lam can be boarded from in front of the PCCW office near the Tsuen Wan MTR Station, and will drop you off at the nearest point from the prison (the Tai Lam bus stop) on Castle Peak Road.

From there, you will have to walk nearly a kilometre in order to get to the main guardhouse. At the guardhouse (which is still a few hundred meters from the actual prison) your name and ID card will be recorded. You will probably be asked to wait for several minutes until a guard will escort you and any other visitors there to the gates of the prison.

Once inside the very grey concrete prison walls of Tai Lam, you will be instructed to place any bags (and of course your phone) in a locker that will be provided to you. You will wait in a small grey room until the name of the prisoner is called. Visitors may talk to the prisoner, but visitors are separated from the prisoners by a thick Plexiglas barrier. Speaking is done through a telephone that does not seem to work very well.

Visiting hours are from 8:30 a.m. until 12:30 p.m. (for convicted prisoners) and 1:00 p.m. until 3:00 p.m. for remand prisoners. The prison visiting rules are quite inflexible so it is important to be there prior to the deadline.

The regime for inmates of Tai Lam is somewhat more severe than either the VIC or Chi Ma Wan, and Tai Lam is somewhat more restrictive in terms of what you may give to prisoners. For example, here you may not give any items of clothing, as the prisoners are all required to wear brown and white checked uniforms.

You are permitted to give paperback books and magazines (but not any hard-copy books) and you are not allowed to include any writing (such as a name or a dedication that is hand-written) inside the book. The prisoners are only allowed to have at most, five books at any one time. The rules spell out a long list of prohibited topics for reading material, including "anything involving indecency, tactics, weapons, horrible story, [*sic*] containing information on the manufacture of any explosive or deleterious substance, encouraging violence, escape or gambling in the prison". Individuals from the Philippines Consulate visit Tai Lam Prison (as well as other prisons including Chi Ma



Wan, Chi Sun, Shek Pik, Ma Po Ping, Stanley and Lai Chi Kok) twice a month. They bring newspapers which are turned over to the Prison Social Welfare Officer.

The regime of Tai Lam prison has apparently become more restrictive over time. Certain kinds of topics relating to “ghost stories” seem to be banned for no apparent reason. As one can see, the people who have managed to find work in the Correctional Services Department are obsessed with rules, most of which, serve no function other than to make life even more miserable for the prisoners than they already are, as well as the lives of those who are there to visit and comfort them.

Very often when you finally get to the detention centre to visit your friend, you will discover that the guards will not let you give the things that you brought with you. This may be because the items either don't conform to the strict list of things that are allowed or the rules have suddenly been changed.

Quite frankly, to have come all of that way, wait so long and have the prison guards turn you away or refuse your presents is very a frustrating and disappointing experience for a prison visitor to have to go through. But remember that just to have a visit from a friend makes a huge difference in the life of someone in prison. You will really help the situation of your friend by your visit. Your visit will give your friend hope and strength far more than you could ever realise.

*Conclusion: On taking rights seriously*

**What's the point of trying to learn all of these things when the authorities have all of the power and we have none?**

It's not altogether true to say that migrant workers living and earning a living in Hong Kong have no power at all. Workers do have specific legal powers and freedoms in Hong Kong, to the degree that they are able to assert them. In other words, it is most important for you to take your rights seriously. Hong Kong is a place which has long claimed to enjoy the rule of law. This idea, which still applies (at least to some degree) in Hong Kong, offers to the individual, at least a chance of obtaining a degree of justice in your dealings with authority.

The rule of law means that the laws in Hong Kong apply to *all* people living here, including local people, migrant workers and government officials alike. It says in theory at least, that all persons are to be considered equal before the law. Furthermore, the rule of law is a principle that carries with it the understanding that laws and policies must not be arbitrary. As such the laws that we have for ourselves must be based on some principle of law and not on the whim of an official.

The degree, to which laws and policies are arbitrary, is the degree to which Hong Kong has in fact departed from the rule of law. In this way, through educating yourself, by knowing your rights and by challenging the people who hold the positions of power when your rights are violated, you are showing that you are a human being with inherent dignity and respect. Dignity means that you command respect from others. That you have inherent value means that you are valuable, not as a commodity in the way that employment agencies or the Hong Kong Government sees you. Rather, that you are infinitely valuable in and of yourself.

By taking your rights seriously, you are demonstrating to them that you are a person who is to be respected by all. Finally, it is important to remember that if you don't stand up for yourself, you will discover to your considerable cost that no one else will.

*Some useful contacts:*

*Government agencies and consular offices*

Castle Peak Bay Immigration Centre  
84, Castle Peak Road,  
Tuen Mun,  
New Territories  
3693 8222

Chi Ma Wan Correctional Institute for Women  
333 Chi Ma Wan Road,  
Lantau Island, N.T.  
2984-8358,  
2984-3800,  
2984-6693

Duty Lawyer Office  
Room 2707,  
Gloucester Tower  
Landmark  
Hong Kong  
2526-5969

Equal Opportunities Commission (EOC)  
20<sup>th</sup> Floor, Office Tower,  
Convention Plaza, 1 Harbour Road,  
Wanchai, Hong Kong  
2511-8211

Hong Kong Labour Department  
Labour Administration Branch  
12/F., Harbour Building,  
38 Pier Road,  
Central, Hong Kong  
2852-3535

Eastern Hong Kong  
Offices of Labour Relations Division  
34/ F, Revenue Tower,

5 Gloucester Road,  
Wan Chai, Hong Kong  
2717-1771 (hotline)

Western Hong Kong  
3/F, Western Magistracy Building  
2A Pokfulam, Road  
Hong Kong

Kowloon West  
Room 1009, 10/F,  
Cheung Sha Wan Government Offices,  
303 Cheung Sha Wan Road  
Kowloon

Immigration Department  
Immigration Tower,  
7 Gloucester Road,  
Wan Chai, Hong Kong  
2824-6111

Indonesian Consulate General  
127-129 Leighton Road,  
Causeway Bay,  
Hong Kong  
2890-4421 (hotline)

Lai Chi Kok Reception Centre  
5 Butterfly Valley Road,  
Kowloon  
2176-0107

Legco Complaints Commission  
5<sup>th</sup> fl., Citibank Tower,  
3 Garden Road, Central,  
Hong Kong  
2526-4027

Office of the Ombudsman  
30/F., China Merchants Tower,  
Shun Tak Centre,

168-200 Connaught Road, Central  
Hong Kong  
2629 0555  
2629 0556

Philippines Consulate  
17<sup>th</sup> Floor, United Centre,  
Admiralty,  
Hong Kong  
Main number:

2823-8500

Assistance to Nationals (ATN) Hotline: (for police cases, immigration cases, overstaying or loan problems)

9155 4023

Labour Hotline: (for contract related matters, termination, welfare counselling and benefits)

6080-8323

Consular Hotline: (for passport, visa or notaries inquiries)

9332-7451

Human Trafficking Hotline: (for victims of human trafficking)

9770-3869

Tai Lam Correctional Centre for Women  
110 Tai Lam Chung Road,  
Tuen Mun, New Territories  
2450-8214,  
2450 8061

*Non Government Agencies*

Asian Migrant Centre  
9/F Lee Commercial Building  
115 Woo Sung Street, Kowloon,  
Hong Kong  
2312-0031

Bethune House  
2721-3119

Mission for Filipino Migrant Workers  
St. John's Cathedral  
4-8 Garden Road,  
Central, Hong Kong  
2522-8261

Helpers for Domestic Helpers  
St. John's Cathedral  
4-8 Garden Road,  
Central, Hong Kong  
2523-4020

Hong Kong Bar Association  
LG 2, High Court, 38 Queensway,  
Hong Kong  
2869-0210

Hong Kong Human Rights Monitor  
4th Floor, Kam Tak Building,  
20-24 Mercer Street, Sheung Wan,  
Hong Kong  
2811-4488

Written by:

Jim Rice

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