

Domestic Work

is

Work

SLAVE-MASTER RELATIONSHIP IS SUPPOSED TO BE A THING OF THE PAST.

In this kind of relationship, the master gives food to his/her slaves the amount of which is just enough for the slaves to have sufficient energy to serve him/her. The slaves are owned wholly by the master. They are 24 hours at the beck and call of their masters.

But present societies do not speak of slaves anymore. They now speak of domestic “helper”. The one who works in their house, takes care of the whole family from cooking their food, washing their clothes, cleaning the house for them and so forth. They are not slaves. Some even want their domestic workers to think and regard themselves as part or member of the family. In exchange of their labour, they are given salaries. But because salaries are usually too small, sounds more appropriate to call it a token payment for the services rendered. Slaves, domestic helpers, both provide personalized service to rather privileged families.

The modern-day slaves

Let us examine then the situation of the migrant domestic workers.

In the first place, the migrant domestic worker is being referred to in the employment contract as foreign domestic helper, not worker. Second, it is the Immigration Department and not the Labour Department which makes and approves the employment contract, treating therefore the work that domestic “helpers” do on the basis of their immigration status. Third, there is no definite number of working hours stated in the contract which puts domestic “helpers” in a situation of being 24 hours on call. Fourth, they are forced by policy to stay in their employer’s house and not to do anything outside of domestic chores. In other words, they are not allowed to do anything other than serving the particular family in the contract.

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MIGRANT FOCUS

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The International Labour Organization (ILO) Convention for the Protection of the Rights and Welfare of Migrant Workers and their Families excludes trainees and domestic workers in the definition of migrant workers. They are not considered migrant workers.

Why are there domestic workers in the first place?

It is common to hear that one took up domestic work as a job to earn money because of poverty. It is often the families of peasants and workers in the underdeveloped/third world countries who send their women to work as domestic helpers in the house of rich families to, at least, lessen the “overhead expenses” of the poor family. It is not to augment income of the family because in most cases the payment is in the form of school expenses, food, or their services even serve as repayment for the family’s accumulated debt.

Eventually, the daughters and wives of poor families in the provinces flow to the main cities to work as domestic helpers to rich and middle class families. This happens through recruiters or middlemen who would promise them work. This time they receive monetary payment for their work. However, their salary is bargained from the very beginning by the middle man to the prospective employer: usually for a lower one. When the demand for ‘helpers’ increased, placement agencies developed into a business. They actively recruited from the provinces potential domestic helpers for placement to families in the urban centers.

Since then, systematic placement of poor family members from the provinces and urban poor families in the town and urban centers became a lucrative business. You can see uniformed domestic



helpers in the elite subdivision and non-uniformed in the middle class families and almost all of them were placed by recruitment agencies. But they remain in a slave-like condition, exploited and oppressed because there is no set of Labour Laws or Ordinances to give them even the least semblance of protection. They are, in fact, one of the lowest paid workers. Most governments, if not all, do not regard domestic work as work. So they are not protected under the law. More so, if they are migrant workers.

Domestic workers are service workers

Third world countries are mainly agricultural, backward in terms of technology and no basic industry. These are some of the reasons why they cannot generate domestic employment. Their agricultural products cannot compete in

the world market, not even in local markets because of the deluge of imported agricultural products from foreign multinational corporations. The huge army of unemployed has no option other than to enter the ever increasing service work force. They offer their services at a much lower price just to earn a living. They opt to migrate for work to affluent countries. Many of them are women, who took up domestic work with families where both parents have paid jobs.

Both sending and receiving governments are benefiting from these service workers through taxes and as consumers, through their remittances and government fees. But until now, their condition remains exploitative. Their vulnerability to abuse and slave-like treatment are not addressed and the payment in exchange for their services remains a pittance.

Steps taken towards improving their lot is already a step in recognition of domestic work as work. By not subjecting them to unfair and unnecessary payment reduction; by allowing them to stay out of the house of their employers after certain period of time of work; by stopping undue government fees and providing them all what is stated in the labor ordinances and not a token contract which is one-sided, are giving them that opportunity towards a stop to their slave-like conditions.

This does not liberate them from poverty or exploitative situation, as that is not solely in the hands of women and men who do domestic work. But a consistent effort against conditions will ensure that the road they take will not be towards the old road to slavery.

It is through empowerment and unity that they often succeed.

Is There a Legal Definition of Domestic Work in Law in Hong Kong?

by
Melville Boase

GIVEN THAT THERE ARE OVER 200,000 foreign domestic helpers in Hong Kong, it is surprising that a search of the Judgments of the High Court does not provide a legal definition of what is domestic work.

There are cases of course on what is *not* domestic work. One also has the general terms of the form of contract prescribed by the Immigration Department.

In Hong Kong, it is a criminal offence for a domestic helper to perform work which is not 'domestic work' – or to perform 'domestic work' in a place other than the employer's residence.

There has long been a feeling that Hong Kong is in breach of its obligations under various International Labour Conventions (ILC), particularly the Penal Sanctions (Indigenous Workers) Convention, 1939. Article 2 of that Convention provides "All penal sanctions for any breach of contract to which this Convention applies shall be abolished progressively and as soon as possible."

The matter of the use of the criminal law in this field has recently received a lot of attention in the USA. Upto the present, it is not a criminal offence in the USA. The Bush Administration now proposes to introduce laws to use the

criminal law – i.e. make it an offence, as in Hong Kong. The news media carry reports of very large public protests against such proposals.

It is a matter of civil actions, not criminal, particularly as applied to the immigrant.

The ILC's recognize that overseas workers are much more likely to be subject to exploitation – that is, that employers will take unscrupulous advantage of them. Restrictions are normally imposed of the exploiting employer, not on the immigrant.

Hong Kong, however, takes the opposite view. It is the foreign worker who is liable to be prosecuted for being exploited. If proceedings are taken against an employer normally they are on the ground that the employer has 'aided and abetted' the foreign worker to perform work for the employer. The Hong Kong Government seems to have a very strange view of how employment happens – that somehow the foreign worker generates or makes the work and somehow

induces the employer to engage them. Anyone in the ordinary world knows that it is entirely up to the employer if he/she wishes to employ someone, and what work one is to do.

Turning to domestic work, the basic starting point is that it is work done in the residential premises of the employer in preparing food and tending to the household chores. The classic example of the difficulties that can arise are in chores for the employer outside the premises.

On the one hand, it has always been accepted that doing shopping for items for the house comes within the term. Similarly, delivering items to a member of the household in another place.

One area that has caused concern is motor vehicles. Is it domestic work to clean the car? No doubt the owners of car-washing businesses would claim that it is not – but the Immigration Department and the Courts have never taken the



Melville Boase is a legal adviser of the Mission and a member of its board. He has been a long-time companion and supporter of the Mission since the Mission's establishment in 1981.

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Organizing Indonesian migrant workers:

THE ATKI PHENOMENON

ATKI-HK, or the Association of Indonesian Migrant Workers, emerges as an organization to emulate in terms of arousing, organizing and mobilizing migrant workers.

Organized on October 1, 2000 by a number of Indonesian workers staying at the Bethune House Migrant Women's Refuge while attending to their on-going cases at the Labour Department, ATKI has now grown into a 200 general membership with 60 active members.

This strong force was very apparent during the People's Action Week held in December 2005 at the WTO 6th Ministerial Conference in Hong Kong. The dynamic energy of the mainly young Indonesians kept going during the protest actions and cultural presentations.

Education, said ATKI chairperson Eni Lestari, is the key to the group's unique achievement. It takes various forms: discussions, cultural activities, seminars and leadership training. Empowerment of both members and non-members is initially done through paralegal training focusing on the employment ordinance and other laws in Hong Kong.

"We take advantage of every major activity to recruit members," Eni said. If she already has a group, they establish relation with the group.

Legal Definition, from p. 3 point. In any event, would a domestic helper want to be at risk of prosecution by complaining that car-washing is not part of domestic duties. But if the employer wants the Domestic Helper to take a child to school, it is accepted that the worker can do that if they walk or take public transport – but special permission is required if the

domestic helper is to use the family car.

The domestic helper can walk to the shops to do the family shopping, but cannot use the family vehicle, unless special permission is obtained from the Immigration Department.

Such attention to what seems a small part of domestic life, but no restrictions on the hours

Early this month, ATKI mobilized Indonesian migrants beyond its original target considering it was a statutory holiday, as not many are allowed to take their day-off.

Amazingly, the following Sunday, ATKI again mobilized around 2,000 Indonesians at the Queen Elizabeth Stadium in Wanchai to watch a musical concert it organized.

"We have won the trust and respect of our fellow Indonesians after a hard work of implementing the ATKI programs," Eni affirms.

Welfare assistance is the main reason why they organize. ATKI provides mobile counseling services in Victoria Park where Indonesian migrant workers congregate during their day off.

Campaigns on urgent issues facing migrant workers are also conducted in coordination with other nationalities in the Asian Migrants Coordinating Body (AMCB). Their resistance against anti-migrant policies of Indonesia serves to unify and strengthen the bond among them.

"To keep the spirit of camaraderie, ATKI holds socialization programs such as birthday celebration, karaoke, hiking, beach party. It is

the employer can make the helper work in the home, or the quality of food to be provided.

Assistance from government bodies like the Labour Department, is not very effective, one factor for which is that the contract's terms are set by the Immigration Department. The Labour Department is not even involved in checking and approving the terms

of employment when the contract is processed, despite specific provisions in one of the International Labour Conventions. Unfortunately the consulates of the countries from which the foreign workers come do not seem to be very effective in drawing these obligations, designed to protect their citizens, to the attention of the Hong Kong



an effective way to encourage members to work closely and help each other," she added.

ATKI-HK is faced with many more challenges as an organization. "With the help of concerned institutions like the Bethune House, the Asia Pacific Mission for Migrants, the Mission, AMCB, sectoral organizations in Indonesia and several other individuals, we hope we can build a strong migrants' movement that can contribute to the strengthening the people's movement in our country," Eni vows.

Government, or to the International Labour Organisation.

In summary, the foreign domestic helper in Hong Kong is in a very exposed position. The work done by organizations such as the Mission for Migrant Workers is very important in trying to provide some protection for the weak and vulnerable. 📧

OUR FAITH,
OUR
STRUGGLE

Father
Dwight dela
Torre
IFI Chaplain
MFMW

In Call for the Dignity of Labor

BACK HOME, IT WAS HAILED AS “PEACEFUL”. In Hong Kong, the Labor Day march was the biggest, attended both by local workers and foreign domestic helpers (FDHs). A group of local workers demanded for a legislated minimum wage. (Here, only FDH’s have a set minimum allowable wage or MAW.) The FDH’s demands were for the abolition of the levy and MAW increased to HK\$3,670 level.

These remind me of a Pastoral Letter issued on August 3 1992, on the 90th anniversary of the Iglesia Filipina Independiente (IFI) by its Supreme Council of Bishops (SCB). It was issued during the SCB Chairmanship of the Most Revd. Abdias dela Cruz when the Most Revd. Tito E. Pasco was the Obispo Maximo/Supreme Bishop. This Pastoral Letter was issued towards the term’s end of then President Corazon Cojuangco-Aquino.

I think the Letter’s application is as valid as it was twelve years ago even as its call should not apply to the IFI alone.

* * * * *

13. ‘Men and women are not commodities whose worth are measured only in terms of how much they can contribute to the total cost of production. The human person is, as our



Migrant Workers, from p. 8

home and abroad. “With the fall of the GMA regime, we can restore our own economy,” One Migrant worker said, “Currently we are semi-feudal and semi-colonial Country – Our agriculture is sold abroad before being used at home, and the Imperialist United

States Government controls key aspects to our lives including our Politics and Economy.” Most importantly, after the inevitable fall of Gloria, a transitional government would have a representative in the Parliament for Migrants to protect their interests and voice concerns.

Judeo-Christian faith clearly proclaims, ...”*created in the image of God* (Gen. 1:26-27)...” Therefore the human person must be treated with respect and dignity. The laborers’ wages must, therefore, be set with the standards of justice, decency of living and self respect.’

14. We, therefore, call on [Philippine] government to fully exercise its political will to protect the laborers’ rights, both in domestic and overseas employment.”

21. “All dimensions of human life stand under the judgment of God and in the cries of the vulnerable we hear the voice of God.

Many of the calls during the rally were to increase wages which were cut in 2003 and to abolish the Employees Retraining Levy which has been thrown onto the migrants. The HK\$9,600 levy was implemented by the Hong Kong government to tax employers who hired migrant domestic helpers in an effort to increase the employment of local domestic workers. This happened six months after the minimum wage of workers was reduced by HK\$400, which if multiplied by 24 months (equivalent of a contract) would amount to HK\$9,600.

For most migrant workers, they are the breadwinners of their families, and the pay cut has drastically affected their livelihood. “I have brothers and sisters going to school whom I support. The \$400

22. Ours is a badly fragmented society... We cannot stand idly by. We, therefore, have to live in responsibility and urgency...

23. The calls we raise are not for our own benefits. They are for our children and their children’s children.

24. The only legacy we can leave them is a land of justice and peace. ‘...*the fruit of justice will be peace, and the yield of justice, quiet and security* (Is. 32:17)’”

Let us support and be one with the struggle of the people. May we not waver in our resolve to promote their welfare, their rights and their dignity. 📧

dollars a month was my monthly allowance,” they expressed.

Monday’s event was able to show many of the migrant workers the importance of voicing their concerns in hopes of recruiting new concerned members to increasing membership among the many different migrant coalitions in Hong Kong. “Today we showed that the oppressed people in the working class will not remain quiet!”

Afterwards, migrant workers enjoyed Labor Day celebrations behind the HSBC Building hosted by UNIFIL and Migrante. “All the workers of the world celebrate today the lives of those who have sacrificed their blood, sweat, and tears, to earn a living for their families.” 📧



KNOW YOUR RIGHTS

Part II: The Migrants' Guide to the Minor Employment Claims Adjudication Board

WHAT IS MINOR EMPLOYMENT CLAIMS ADJUDICATION BOARD (MECAB)?

The Minor Employment Claims Adjudication Board (**MECAB**) is a board established under the Minor Employment Claims Adjudication Board Ordinance (Chapter 453) with limited jurisdiction to adjudicate minor employment claims. It is a quick, simple, inexpensive and independent service operated by the Labour Department.

What are minor employment claims?

Minor employment claims are claims:

- (a) arising from disputes of statutory or contractual rights of employment;
- (b) involving not more than 10 claimants; and
- (c) not exceeding \$8,000 per claimant.

Who can lodge a claim with MECAB?

A claimant having gone through conciliation by the Labour Relations Division without a settlement may file his claim with the Registrar of **MECAB**. Direct application by a claimant for adjudication

at **MECAB** without first going through conciliation will not be accepted. Cases that are within the jurisdiction of **MECAB** cannot be brought before any other court. A claimant whose claim exceeds \$8,000 should proceed to the Labour Tribunal. Often times, however, the claimant is encouraged to abandon the excess amount so that the **MECAB** has jurisdiction to hear the claim.

Remember, it is the claimant's full right to decide whether or not to pursue the full amount of the claims. No legal representation on either side would be allowed. The Board makes the final decision after a process of hearing.

How does MECAB conduct its hearing?

Hearing is conducted in public, and in an informal manner. The proceedings in the Board are conducted either in English or Chinese by an adjudication officer who is a senior officer of the Labour Department.

The Board may order the production of any document, record, book of account or other exhibit and make inquiries on parties and witnesses as it thinks fit. An award or order will be made as soon as possible after the conclusion of hearing by the adjudication officer.

How is an award or order of MECAB enforced?

When anyone fails to comply with the MECAB award/order, a case can be filed at the District Court. The case to file is for the "Enforcement of MECAB award/order."

An award or order of the Board may be registered in the District Court and, as a result, becomes a judgment of the District Court and be enforced accordingly.

Besides, the Labour Department will also consider taking out prosecution against the party who fails to comply with the award or order of the Board.

What are the review and appeal procedures?

An adjudication officer may, either by his own decision or by application of either party, review an award or order within 14 days of making the award or order, and on such review may:

- (a) reopen and rehear a claim,
- (b) call or hear fresh evidence, or
- (c) confirm, vary or reverse the award or order.

An application for review must be made by a party within 7 days. A party may, within 7 days after a written award is served on him, appeal to the Court of First Instance against the award on grounds that it is wrong in law or that the claim is outside the jurisdiction of the Board. Appeal against the decision of the Court of First Instance can be made to the Court of Appeal.

Where to go for help?

You can get assistance concerning your claim from the nearest office of the Labour Relations Division of the Labour Department or the Registry of **MECAB**.

Address of Minor Employment Claims Adjudication Board:

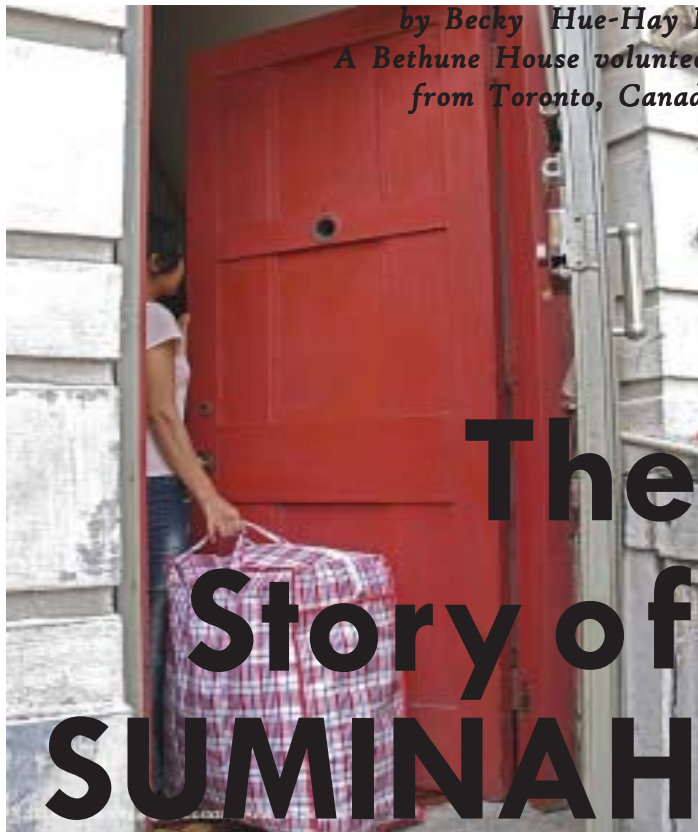
10/F., Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon. (near Sham Shui Po MTR Station)

Labour Department
Telephone Enquiry Service:
2717 1771

Labour Department
Homepage Address: <http://www.labour.gov.hk/>

Knowing about the MECAB can help many of us in dealing with cases related to this.

by Becky Hue-Hay Ip
A Bethune House volunteer
from Toronto, Canada



The Story of SUMINAH

SUMINAH ARRIVED IN HONG KONG from Indonesia on February 15, 2006. It was her second time in Hong Kong, as she had previously worked here from 2002 to 2005. When she arrived, she was picked up from the airport by a staff member from her employment agency.

She stayed there for two days, until her employer and her employer's mother arrived to pick her up. The agency and her employer made her sign an agreement to a set of policies, which stated that she would sleep on the kitchen floor, have a curfew of 7 pm on rest days, could not own a mobile phone, long hair, sexy clothing, make-up or perfume. The agency and her employer kept a copy of the statement, but she was not given one.

When Suminah was taken to her employer's flat in the evening, she was made to start working right away. Finally, at 10:30 pm, her employer's mother asked her if she had eaten dinner. When she said that she had not, her employer's mother gave her two slices of plain, cold, hard bread.

Suminah worked for four people in that flat; her employer, her two brothers and their mother. Her main duty was to clean the house while she provided assistance with going to the market, cooking and sorting the laundry. She would wake up at 6:30 am and begin work at 6:45, working until 11:00 pm. She slept beside the table on the living room floor, without a mattress, and only a pillow and blanket.

She was never taught how to use the washing machine, so she had to wash her clothes in a small basin of water. She wasn't allowed to wear gloves while using harsh bleach to clean the bathtub. Instead, she had to try to clean very carefully without soaking her hands, angering her employer's mother in the process, who accused her of not wanting to work hard.

Meals were also sparse. On her second day of work, her employer's mother gave her a packet of crackers for breakfast, telling her that she was "lucky" to be given something to eat. For dinner, she was given a bowl of rice, accompanied by a few pieces of vegetables, and a couple of small pieces of meat. Her lunch was either small portions left over from the previous meal, or instant noodles. She was also prohibited from cooking her own food.

During her third day of work, Suminah's employer asked her to take a bag of her old possessions to the dustbin outside. As she was throwing it out, she noticed that some of the items inside could still be used, including a wristwatch. She kept the watch.

On the evening of February 22, her employer asked her to sign a receipt stating that she was getting \$50 per month for breakfast. She signed it, and was given the money. When her mother returned home, the employer told Suminah to pack up her belongings, as she was being asked to leave. As she packed, her employer searched her belongings. Suminah showed her the wristwatch, and as soon as she saw it, she placed the watch on Suminah's bag along with her other belongings, and took a photo. She called the police and reported that she had stolen the watch.

Suminah was arrested, and taken to jail. She was bailed out but at that point, it was already late, so she spent

the night sleeping in the interview room. A friend had told her about Bethune House Migrant Women's Refuge, so the next morning, she made it her destination.

At Bethune House, Suminah was assisted with computing and lodging her claims for her wage of days worked, wage in lieu of notice, airfare to place of origin, and travelling allowance, which totaled to \$7174.90. At their conciliation meeting with the Labour Department, Suminah's employer only agreed to pay \$545.75 for her wage, saying that the first night that she made Suminah work did not count as a full work day. She refused to pay for anything else, and also asked for \$41.07 worth of breakfast allowance back, as she had not worked for a full month.

On April 28, Suminah's trial was held at the Criminal Claims court, and was found not guilty, based on lack of evidence. She is currently filing her remaining claims against her employer through the Minor Employment Claims Adjudication Board.

Suminah is thankful for the help that Bethune House has provided, and says that she likes staying there. "I needed aid, and had no money, and they let me stay," she says.

When asked what she plans to do after settling her claims, she says, "If I can, I will look for a new employer in Hong Kong."

It is difficult to find the good employer in Hong Kong", Suminah adds. "I will try to find the good one if I can."

Truly Celebrating Labor Day

My Day with the Filipino Migrant Workers

by **Ali Manek**

Ali is a Canadian student currently studying in Hong Kong University. He has been a supporter of the migrants' campaigns in Hong Kong.

MAY 1ST MARKED the celebration of laborers world wide and in solidarity with comrades throughout the Asia Pacific. Hong Kong held their own version of the Labor Day Rally and Celebrations. Organized by the Hong Kong Confederation of Trade unions along with the Asian Migrants Coordinating Body, the rally saw an approximate 8000 protestors march from Victoria Park in Causeway Bay to the Government offices in Central. Many nationalities including Chinese, Nepali, Indonesian, Filipino, and Thai labors in Hong Kong marched together while chanting an array of slogans. The outlying objective of this event was to raise awareness to the Local Government as well as to the thousands of migrant workers employed in Hong Kong.

Labeled the "day of solidarity" by one of the organizers, the momentum of Monday's efforts must spread farther than Hong Kong. "We must link this back to our respective homelands," an Indonesian migrant worker stated, "We have to address the question: Why are we separated from our families and country to be migrant workers?" The answer may have different outcomes however, most will acknowledge that the poor governance of specific Asian countries is to blame. "Indonesia is a county rich in oil and gold reserves yet 95%, approximately 200 million people, are peasants." This is because of the forceful Imperialist Governments and Multi-National Cooperation's dominating reserves in Indonesia and a lack of restraint from their Government.

Similarly, many Filipino Migrant workers voiced comparable concerns. One woman stated, "We are here to demand just wages, good working conditions, and protection against unjust termination." Filipino migrants make up the bulk of

domestic workers worldwide and their demand for good working conditions does not come unwarranted here in Hong Kong. Most live with their employers and are on call 24-hours a day, have a 9pm curfew, only permitted 7 days for vacation in a year, and most work for 15-hours per day. However, the conditions they are forced to live under are revolting. Some are able to share bedrooms with children, however there are cases of workers forced to sleep on the floor of kitchens, on living room chairs, or inside the washrooms. "We place a piece of wood over the tub and sleep on it like a bed," one woman described.

Almost all Filipino Migrants also recognize the importance behind supporting the ousting of the oppressive Gloria Arroyo (GMA) regime. They affirm it will better their situation at

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**The Mission for Migrant Workers
St. John's Cathedral, 4 Garden
Road, Central, Hong Kong SAR
CHINA**



MIGRANT FOCUS

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Editorial Team

Cynthia Ca. Abdon-Tellez,
Norman Uy Carnay, Jun
Tellez, Fr. Dwight dela
Torre

Contributors

Vicky Cabantac, Rey Asis,
Becky Hue, Ali Manek

Address

St. John's Cathedral, 4
Garden Road, Central,
Hong Kong

Tel No. 25228264

Fax No. 25262894

E-mail

mission@migrants.net

Webpage

http://www.migrants.net

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