

By email (sc_hs101_16@legco.gov.hk) only to:

Clerk to Subcommittee on Children’s Rights
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Hong Kong

PathFinders Limited

Written Submission

to

The Hong Kong SAR’s Legislative Council’s Subcommittee on Children’s Rights

in advance of a meeting on Saturday 25 March 2017

about

‘Children’s Expectation on the Government’

Submitted on 24th March 2017

Background:

PathFinders is a Hong Kong-registered charity with tax-exempt status;

We ensure that the most vulnerable children born in HK and their migrant mothers, are respected and protected;

The focus and purpose of this submission is to give a voice to the otherwise voiceless babies and children we serve at PathFinders;

From inception in 2007 to date, PathFinders has now helped over 4,300 babies and their migrant mothers. The majority of the mothers are current or former migrant domestic workers. In 2016, 88% of the babies' biological fathers were in Hong Kong. Given that 1 in 7 women of reproductive age in Hong Kong is employed as a foreign domestic worker, it should be both anticipated and expressly provided for that some will have children while employed here;

This extremely vulnerable population deserves significantly more help and attention;

Introduction:

Hong Kong's current laws, contracts and policies regarding maternity protections for Foreign Domestic Workers ("FDW") fail adequately to provide clear guidance as to what should happen when a domestic worker is pregnant in order also to protect the best interests of that unborn child;

Quite correctly, and as for all other employed women in Hong Kong, pregnant FDWs are protected by law from employment termination and discrimination on the grounds of pregnancy;

However, the singular absence of policy and guidelines confirming how a happy, healthy pregnancy is to be successfully and lawfully managed by the employee, the employer and agents has devastating human consequences for both child and mother;

To put that into perspective, PathFinders had helped manage, support and ensure the safe arrival of over 1,400 babies into Hong Kong's policy, healthcare and social welfare void. This is unacceptable;

It is a globally accepted and indeed enshrined in our own laws that all children deserve a fair start in life;

This submission:

1. explains the key gaps PathFinders sees in our daily work; and
 2. provides recommendations as to how those gaps might be filled
- with a view to ensuring that every child has a fair start in life;

Problems encountered by PathFinders' Children:

Based on PathFinders' experience, children born to FDWs are among the most deprived children in Hong Kong. In the majority of cases, the cycle of deprivation begins when the mother's pregnancy is announced or discovered;

We highlight the problems encountered by these pregnant women and mothers because their experience of hardship and deprivation has such a dramatically negative effect on the unborn child's health, basic survival, and long-term well-being;

1. Lack of statistics and data collection:

There is a lack of data available explaining the magnitude and nature of issues faced by children born to FDWs in Hong Kong;

To date, departments, agencies and other related organizations including the Immigration Department, Social Welfare Department, Public Hospitals and Family Planning Association have not provided or published any information on issues such as the number of FDWs seeking family planning services and of what type, or the number of children born to FDWs in Hong Kong;

Requests by PathFinders for this type of information have typically resulted in the department/agency stating that such data is either not collected at all or not by that specific department;

No one, it would seem has any idea how big the potential population of such extremely vulnerable children is;

2. Inadequate protection and enforcement of FDW pregnancy and maternity rights:

FDWs and all other employed women in Hong Kong are protected from termination and discrimination on the grounds of pregnancy. They are also eligible for statutory maternity leave protections;

However, no law or policy addresses what is to happen to the woman or child during maternity leave or specifically the interplay between maternity leave and the so-called live-in rule;

Currently, the government has told PathFinders that if the FDW is in Hong Kong, she must reside in the employer's home during maternity leave (**ML**), regardless of whether or not the infant is also permitted to stay there. This is inhumane for both newborn baby and mother. Separating a mother and child at birth and for the first few weeks of life is intolerable. As any parent knows, that first few week of life is incredibly fragile;

And into this legal, policy and practice void, no surprise then that every pregnancy and ML we handle ends up being a difficult individual negotiation, always keeping the welfare of the unborn child front and centre. The stress on the pregnant women and unborn child is noticeable and unnecessary. The employers don't know what they should do; the FDWs and agencies don't know what they should do either. Everyone is scared they might break the law (and they often do);

Even where parties agree that the FDW can go to her home country for statutory ML, by law that leave can only start at the earliest of 4 weeks before the expected delivery date, i.e. when the worker is already 36 weeks' pregnant and not only worried about the risk of flying for herself and the baby but largely prohibited from doing so under most airline policies;

With no clear guidance as to how to handle a safe, lawful and successful pregnancy and birth, FDWs are still too often unlawfully fired or forced to ‘resign’¹;

Further, some of the women feel unable to return to their home country for various personal and practical reasons. Having lost access to welfare and healthcare once unlawfully fired they end up giving birth alone or on the streets;

Once born, their babies also do not have access to healthcare, basic immunizations or welfare support. These undocumented children are highly vulnerable to lack of nurture, malnutrition and disease, abuse, neglect, abandonment and human trafficking as they are not known to the authorities;

To be clear - this is not a matter of these babies acquiring Hong Kong residency - this is far more fundamental. These babies have no legal identity, no nationality, without immunisations, without care or shelter;

3. Access to documentation:

Too often, Pathfinders has seen cases where babies do not even have birth certificates because the cost of the birth certificate is either beyond the parents’ means. Alternatively, the Birth Registry delays issuing the birth certificate for up to 9 months;

Registering the birth of a child is free in Hong Kong. However, obtaining a copy of the birth certificate, which is necessary to register the child for the purposes of healthcare, education and to obtain identity and travel documentation (in other words the basic necessities of life) costs HK\$140. If the parents fail to register the child within 42 days of birth, a copy costs HK\$280 and if they fail to register within a year, the cost rises to HK\$680 plus a further \$140 search fee. We have asked and there is no discretion for case officers to review individual cases and, where appropriate, to waive the cost of issuing a birth certificate for the extreme poor or at all. And so, at present, when necessary, PathFinders is funding the cost of obtaining these birth certificates;

According to the Birth Registry, delays in issuing birth certificates are due to uncertainties surrounding the identity of the child such as: whether the child has residency in Hong Kong; who is the legal husband of the mother; whether the identity documents of the legal husband can be produced and, if the documents are in a foreign language, have them officially translated; who is the biological father of the child, and whether a DNA test is needed to substantiate the father-child relationship. These documentary hurdles are all too often nigh impossible to fulfil;

Undocumented children face very difficult lives. They exist in the shadows. They are without access to public healthcare, welfare and education. Without an identity and social welfare protection, they easily fall prey to the most dangerous and frightening elements of our society including abuse, neglect, severe poverty and trafficking;

We refer this committee to our November 2015 submission to the Hong Kong Ombudsman regarding

¹ *Waliyah v. Yip Hoi Sun Terence and Chan Man Hong* (DCEO 1/2015 & DCCJ 1041/2015) [Judgment](#); [Riyanti](#)

undocumented births in Hong Kong: <http://www.pathfinders.org.hk/public/resources/pathfinders-material/>

4. No entitlement to social services support:

Children born to unemployed FDWs have no legal right to remain in Hong Kong - even if the sole reason the mother is unemployed (and therefore without a visa) in the first place is because of the previous employer's unlawful (civil as well as criminal) act of firing a pregnant employee. The women are not the only victims of this unlawful behaviour - their babies also suffer - without lawful immigration status, these babies are not entitled to social welfare support, medical care or education;

The only exception to this is when the biological father is Chinese or is a Hong Kong Permanent Resident, provided he can be found and is also willing to attest to that fact at the Birth Registry;

Where the parent has applied for a non-refoulement claim on behalf of the child, the child is issued a recognizance paper and will then become entitled to humanitarian support from the Social Welfare Department via International Social Services Hong Kong. While these babies do have access to accommodation, food, medical care, transportation and education, this support is minimal and, for children, developmentally limiting;

5. Inadequate protection by Social Welfare Department (SWD) of children in drug-abusing families and unaccompanied minors

We re-iterate the concerns raised in our December 2016 [submission](#) to this Sub-Committee regarding the safety and welfare provisions by SWD for children in drug-abusing families. We have similar concerns for unaccompanied minors;

Recommendations:

On behalf of the voiceless children we help, PathFinders recommends that:

1. HKSAR Government departments and their agencies collect and publish relevant data to assess the needs of this community. This should include:
 - The number of FDWs in Hong Kong who become pregnant;
 - The number of children born in Hong Kong to FDWs both in and outside public hospitals;
 - The type and frequency of reproductive health-related services sought by FDWs such as family planning services and maternity; and
 - The number of unlawful dismissals of FDWs due to pregnancy; and
 - The number of criminal investigations, prosecutions and convictions for unlawful termination and discrimination due to pregnancy
2. HKSAR Government review, clarify, clearly communicate and enforce the law, practice and policies to enable lawful, safe and healthy pregnancies for FDWs and their unborn babies. This could be done for example by relaxing the live-in rule specifically during statutory ML; making the statutory ML period more flexible;

introducing a concerted education programme for all key stakeholders;

3. In the interests of the unborn babies, all FDWs, including those who have been dismissed from their employment due to pregnancy, continue to have access to essential public maternal health services, especially peri-natal care and immunizations and that their children have access to ongoing care while they remain in Hong Kong;
4. All babies and children born to FDWs be given an identity and registered as existing, free of charge, ideally within 3 months from date of birth. This could easily be done by issuing a printed copy of the birth return to parents free-of charge on discharge from hospital, or creating an online register where the baby is/was not born in a hospital or already exists, whereby the parent can list the child's existence, free of charge;
5. HKSAR Government review the level of humanitarian support for asylum-seeker babies and children, in particular to increase the transportation allowance for school children and their parents, and to provide in-kind or financial assistance for education-related expenses such as textbooks, stationery, school uniform etc;
6. Consideration be given at the very earliest stages of a child's involvement with the welfare system to the development of a formal "permanency plan" with a view to finding a permanent and stable family and home environment as quickly as possible.

Thank you for considering PathFinders' submission.



Kay McArdle
CEO, PathFinders



Luna Chan
Deputy-CEO, PathFinders