

By email (mchiu@legco.gov.hk) only to:
Clerk to Panel on Welfare Services
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
Attn : Miss Maggie CHIU

PathFinders Limited
Written Submission to
HKSAR's Legislative Council's Panel on Welfare Services
In advance of a
Special Meeting on Saturday 28 May 2016 from 9-11am
in Room 3 of the Legislative Council Complex
regarding

Mechanism for Handling Abuse Cases Relating to Children from High Risk Families and follow-up to the Child Fatality Review Report

Details: http://www.legco.gov.hk/general/english/sec/invite_s/ws20160512.htm

Submitted: 23 May 2016



Introduction:

PathFinders is a Hong Kong charity that assists pregnant, migrant workers, mainly foreign domestic workers (**FDWs**), and their Hong Kong-born children.

Given that 1 in 7 working women of reproductive age in Hong Kong is employed as a foreign domestic worker, it should be anticipated that some FDWs will reproduce while working here.

The purpose of this submission is to:

1. give a voice to the otherwise voiceless Hong Kong-born babies of FDWs; and
2. highlight the abuse, neglect and abandonment that some of these babies and children suffer here.

During the last 7+ years, PathFinders has helped over 3,500 babies, children and women. Of these, 1,091 were newborns and toddlers up to 2 years' age of whom 91 were in such a vulnerable, abandoned and/or otherwise isolated predicament that they would, but for PathFinders, have been at significant risk of abuse, neglect and/or trafficking.

There is no other NGO working to protect these babies and children from harm. PathFinders receives no government funding.

Examples of PathFinders' cases include situations where:

1. the child has been abused and neglected, is living in a brothel and left to roam the streets alone;
2. where the mother of siblings is in a coma and the father serving a long prison sentence; and
3. where a newborn baby has been left at a hospital and the mother and father are nowhere to be found.

In each case, these babies and children are utterly poor in every sense of the word. One or both parents are no longer around and/or no longer capable of being an adequate parent, be that for substance abuse, health, financial or lifestyle reasons.

PathFinders then acts as the voice of these exceptionally vulnerable children to ensure each has shelter and care, an identity and, longer term, a viable permanency plan. PathFinders' case managers also sometimes act as the child's Next Friend in wardship proceedings to ensure that the voice of the child is heard and that the child's best interests are prioritised when the court exercises its wardship jurisdiction.

In PathFinders' experience, relying on Hong Kong's existing, cumbersome and antiquated legislation (it is, broadly speaking, akin to English child law in the 1980s) to protect children whose parents are inadequate or whose involvement is minimal or non-existent, fails adequately, promptly and, sometimes, at all, to protect their best interests.

Time-bound and promptly enforced protections must be available through to adulthood. Anything short of this denies every child's fundamental right to a fair start in life. Every baby and child deserves to have someone fighting on their behalf.

Hong Kong's current legislation in relation to child protection does not address the recommendations of the United Nations ("UN") Committee under the UN Convention on the Rights of the Child.¹

Disappointingly, the latest draft of Children's Bill ² also fails to address UN recommendations.

Effective legal mechanisms do not exist to protect children at risk or in harm. The current practice of child protection has failed to protect children like little Yeung Chi-wai.

PathFinders recommends:

1. That an urgent, full and in-depth review of current child-related protection practices, policies and laws take place; and
2. That a suitable authority (e.g., a Children's Commission/Court/Public Guardian) be created and be mandated to consult and consider other stakeholders' recommendations and to prepare a time-bound action plan to identify, address and close the current systemic gaps, be they policy or law related.

PathFinders' Baby/Child Clients are Some of the Most Vulnerable Children in Hong Kong:

PathFinders baby and child clients are extremely poor.

If their mothers are still working, they are working as FDWs who receive a salary lower than the statutory minimum wage applicable to all other employees. They are cash poor and the fathers are seldom around and/or supporting the baby financially or at all.

If their mothers have been unlawfully fired, as they often are when their pregnancy is discovered, they are, in PathFinders' experience likely to be staying in Hong Kong illegally have no legal right to work in order to provide for their children. Again, the fathers are seldom around and/or supporting the baby financially or at all.

PathFinders' women clients are all too often single mothers because the biological father's involvement is minimal or non-existent. If the women do co-habit with their partner, these women care also highly susceptible to family violence. Children are at high risk in such settings.

Due to economic constraints, PathFinders' women clients sometimes have no choice but to live with their children in communities prone to substance abuse, high levels of crime and/or prostitution.

PathFinders' children are often considered as 'non-eligible' persons and so have no access to Hong Kong's social welfare safety net and our otherwise world-class public healthcare system.

¹ http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CHN&Lang=EN. Click on CRC; then select 'Concluding Observations' dated 28 October 2013 and open PDF here: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en

² [http://www.lwb.gov.hk/parentalresponsibility_consult/doc/Draft_Bill_\(Eng\).pdf](http://www.lwb.gov.hk/parentalresponsibility_consult/doc/Draft_Bill_(Eng).pdf)

Due to their precarious immigration status, their mothers' mis-understanding of the welfare system and their fear of 'surrendering' to the immigration authorities after they overstay, some former FDWs who overstay their visas do not register their children with the Birth Registrar. These children do not exist.

Please also read our submission to the Ombudsman regarding unregistered children in Hong Kong.³

Like little Yeung Chi-wai, PathFinders' child clients are children born and raised in Hong Kong. They all deserve to be protected.

Child-related professionals, agencies and government departments including social workers, pediatricians, therapists, school, teachers, NGOs, foster families, the Police, the Hospital Authority and Health Department, the Education Bureau, the Court and judiciary, and most importantly, the Social Welfare Department ("**SWD**") should act in accordance to the Best Interests of the Child.

Recommendations for Working with High Risk Families:

1. For all children in Hong Kong, regardless of their immigration status, Hong Kong should provide a basic safety net that serves to protect, and does effectively protect, all children from harm.
2. SWD should gather information and intervene promptly upon receipt of a referral of child abuse or suspected child abuse. Timely intervention should be carried out according to the level of risk or harm.
3. All child protection referrals should be handled by a specialized and centralized unit.

Some of PathFinders' baby and child clients are clients of International Social Services ("**ISS**") under the "Assistance to Asylum Seekers and Torture Claimants Project". ISS case workers act in place of SWD social workers in providing services. However, ISS workers do not have the same level of responsibility, knowledge, experience, training and expertise in handling child protection cases or assisting children at risk.

PathFinders recommends that ONE SINGLE unit handle ALL child protection referrals in Hong Kong.

This unit should collaborate with, and be granted priority investigatory powers to glean information from all departments and parties involved in the child's life. These accesses and powers should include police, hospital, MCHC, NGOs, drug treatment agencies, schools, etc.

Currently only extreme child protection cases can be referred to and managed by FCPSU. This is unacceptable.

4. Where "Protection Plans" are set up at Multi-Disciplinary Case Conference ("**MDCC**")'s, they must have clear timescales for action. These should be reviewed at and by the conference and only withdrawn following consultation with, and agreement by, ALL members of the MDCC.

³ <http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-November-2015-18-Ombudsman-Investigation-Unregd-Babies-FINAL-PDF.pdf>

5. For all child cases, consideration should be given at the very earliest stages to the development of a formal “permanency plan” with a view to finding a permanent, stable family and home environment as quickly as possible.

It is well-established that delays in long term care planning and implementation of permanency options have a compounding and detrimental impact on children. SWD social workers need to be more realistic about prospects of rehabilitation.

Parents must evidence their efforts to address their problems within acceptable timescales. The children’s lives should not be put ‘on hold’ for parents who are not ready to engage with support services.

The permanency plan and implementation timeline must be set out clearly and followed.

6. All care plans, actions and orders relating to children to be strictly time-bound and rigorously enforced. Even relatively short periods of instability can have long-lasting effects on a child.

The bonds a child forms with their primary care giver(s) play vital roles in the child’s development, both in terms of the physical development of the brain, as well as the development of stable social relationships and social skills throughout life, including with their own children.

A permanency plan should be developed within, and carefully balanced alongside, the need for time-bound action. Not having any timeframes has contributed to there being a serious backlog in Hong Kong’s foster system.

Too many children languish in institutionalized care.

The UN Convention Committee on the Rights of the Child also raised concerns about Hong Kong’s absence of procedures requiring regular case reviews of children in care.⁴

Best practice from other jurisdictions should be considered. For example, in England and Wales, the Children and Families Act 2014⁵ imposes a 26-week processing and determination timetable.⁶

7. Conduct a review of the care plans of all children currently in care and implement realistic permanency plans in a timely manner.

One of PathFinders’ baby clients was left at a hospital a few weeks after birth and, 2 years on, the mother is still nowhere to be found. Despite the significant passage of time and the mother’s ongoing disappearance, the relevant government department says it is willing only to consider placing the child in a permanent home when it is 3 years old. This is entirely

⁴ http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CHN&Lang=EN. Click on CRC; then select ‘Concluding Observations’ dated 28 October 2013 and open PDF here:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en

⁵ <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

⁶ Regarding 26 week period, refer to the link at footnote 5, c.6 PART 2 Section 14

unacceptable, lacks of urgency and fails utterly to place first the best interests of this very young child.

The UN Convention Committee on the Rights of the Child also raised concerns about Hong Kong's "lack of legislation on the termination of parental rights when necessary".⁷

Please also refer to PathFinders' other submissions regarding our baby and child clients to LegCo and to the UN.⁸

8. Conduct a review of the foster care and residential care system and services.

The SWD must ensure that there are sufficient foster care or alternative care arrangements for children deemed at risk of harm.

Those children that are assessed as unsafe to return to their parents care should, under no circumstances, be placed at risk due to placement shortages.

The Department must use all means necessary to ensure sufficient placements are available, for example, they should recruit more foster carers, implement timely permanency plans for in-care-children to free space for other children in need and work with extended family networks.

9. Professionals from all disciplines must recognize that their primary duty is to safeguard and promote children's wellbeing.

10. Data and key performance indicators to be made publically available regarding: care capacity, waiting periods for assessment, average in-care time (separately and jointly between all care facilities), numbers of children who grow up primarily in institutional care, teenage permanency and teenage delinquency of children in care.

11. Longitudinal data should be collected and analysed to confirm what the life chances are for children in care and the research then used to inform and advocate for changes in attitudes, policies and laws in order better to safeguard and promote all children's wellbeing.

12. SWD to have access to an in-house lawyer(s), specifically trained on family and child matters, to: assist social workers with reporting to the courts, with prompt legal advice, with applying for Court orders pro-actively (rather than reactively) in the best interests of the child, and with understanding their statutory duty and obligation to protect Hong Kong's most vulnerable babies and children.

Parental Substance Misuse:

13. Parental substance misuse has adverse effects on children from conception throughout childhood.

⁷ http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CHN&Lang=EN. Click on CRC; then select 'Concluding Observations' dated 28 October 2013 and open PDF here: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHN%2fCO%2f3-4&Lang=en

⁸ <http://www.pathfinders.org.hk/public/resources/pathfinders-material/> and scroll down to 'Submissions'

These adverse consequences are cumulative and may vary from child to child depending on their stage of development and include failure to thrive, inadequate health care, incomplete immunizations, failure to register for and obtain a Birth Certificate/Passport/HKID, early childhood substance misuse, a range of behavioral and emotional issues and poor educational attainment.

At the time of writing this submission, there is no data available as to how many children are affected by parental substance misuse in Hong Kong.

In a home where a parent struggles with substance misuse, children are likely to suffer significant harm primarily through emotional and physical abuse. These children may also not be well protected from other forms of abuse due to diminished parenting capacity.

Recommendations Specifically for Working with Drug-Abuse Families:

14. All drug treatment agencies to refer client's children to the SWD to ensure safeguarding of the child.
15. Pregnant substance misusers should be recorded and pre-birth assessments carried out by the SWD to ensure safety of newborns.
16. Prior to discharge of a baby born to a substance misuser, a 'Child Protection Plan' should be drawn up with the parent(s) setting out what support they need to safeguard their children as well as contingency plans if the parent(s) continue to misuse drugs. This plan can be drawn up during a MDCC at the hospital and be monitored by the social worker and new born baby clinics' health professionals.
17. Any children removed from the care of their parents due to substance misuse should only be rehabilitated back to their parents' care following parental engagement with a drug treatment plan and a sufficient period of abstinence from drug misuse. In the UK, an abstinence period of 12 months is considered as evidence of positive change.
18. Multi-disciplinary practice needs to be at the forefront of all interventions and decisions that are made in regard to safeguarding children of substance misusers.

No single agency is able to provide sufficient intervention and monitoring. It is of utmost importance that all agencies involved in a child's life work together, communicate with each other, keep records of intervention(s) and share these when necessary to protect children.

MDCC's need to be more proactive in engaging all helping professionals, including the NGO sector, to ensure holistic protection plans are put in place and implemented.

19. Specialized drug treatment units where parents can be referred by social workers and health professionals need to be set up and manned by experienced practitioners.
20. Pediatricians undertaking child protection medicals need to be vigilant and investigate the possibility of substance misuse when they interact with children in need.

Recommendations Specifically in Connection with the Review of Yeung Chi-wai's death:

21. Conduct a full and independent Case Review to reveal the facts surrounding Yeung's death to identify what went wrong.
22. Identify any systematic gaps and/or human error and/or mis-conduct; and
23. Commit to a time-bound action plan to close the gaps.

Thank you for considering PathFinders' comments and recommendations. PathFinders has a UK/HK-registered child care specialist Senior Social Worker who might also assist you in your deliberations – please let us know if you wish to speak with her.

Very best,



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