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Clerk to Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Hong Kong

**PathFinders Limited
Written Submission
to
HKSAR Legislative Council's Subcommittee to
Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims
in advance of a
Meeting on Monday, 21 May 2018, at 2:30 pm in
Conference Room 3 of the Legislative Council Complex
regarding
Screening and Appeal Procedures in respect of the Unified Screening Mechanism**

https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/general/hs54.htm

Submitted on 14 May 2018

1. Introduction

PathFinders' mission is to ensure that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected. We believe that every child deserves a fair start in life.

The Hong Kong SAR Government's [HKSARG] March 2014 introduction of the Unified Screening Mechanism [USM] was a positive change for HKSAR's non-refoulement claimants. However, the introduction of the USM was just a first step towards a fairer and more treaty-compliant process for dealing with people claiming refugee and asylum status in HKSAR.

PathFinders' experience supporting USM claimants, and particularly child claimants, has been deeply troubling.

In this submission, PathFinders:

1. Repeats points raised in previous submissions by PathFinders [PF] to the LegCo Subcommittee on Children's Rights¹ and to the United Nations Human Rights Committee² and again draws attention to the challenges that infant/child USM claimants face; and
2. Makes recommendations as to how HKSARG can bring about change for the better.

2. Statistics and data collection regarding Infant/Child USM Claimants

HKSARG has confirmed that end of March 2018³, there are currently 119 children in HKSAR with USM claims pending. This accounts for 2.7% of the total undetermined USM claims. With the exception of the total number of children with USM claims pending here, HKSARG does not currently publish any other statistics regarding the specific situation and lives of infant/minor USM claimants.

PathFinders believes that in order to formulate and develop a non-refoulement system that prioritises the 'best interests of the child' then much more information about these infants/children must be gathered and communicated. To date, HKSARG has not provided any information as to:

¹ PathFinders' written submission to the HKSAR LegCo subcommittee on Children's Rights on 'Rights of Refugee Children', 18 July 2017

<http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Written-Submissions-on-Rights-of-Refugee-Children.pdf>

² PathFinders' written submission to the United Nations Human Rights Office of the High Commissioner on Third Cycle Universal Periodic Review for China as it applies to the HKSAR, March 2018

<http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Limited-Hong-Kong-SAR-China-UN-UPR-March-29-2018-Upload-PDF.pdf>

³ See website of Immigration Department: <https://www.immd.gov.hk/eng/facts/enforcement.html>

- 2.1 The respective numbers of unaccompanied and accompanied child claimants (i.e. children with claims dependant on one or both of their parents' claim(s));
- 2.2 The breakdown of infant/child USM claimants according to their named Risk State(s)⁴, sex and age range⁵;
- 2.3 Whether, and if so how many, any accompanied children's claims were assessed and determined independently of their parent's claim(s), due to, for example, risk of abuse or neglect from the parent(s); or in addition to their parent's claims, due to additional risk of harm faced by the child;
- 2.4 Whether, and if so how many, infant/child USM claimants and families with children have been accorded priority in screening, and, if so, the average screening time for these claimants; and
- 2.5 The number of substantiated infant/child USM claimants, both unaccompanied and accompanied, with a breakdown of their named Risk State and whether unaccompanied or accompanied.

3. The Claims made by Infant/Child USM Claimants

Infant/child USM claimants receive no separate procedural consideration or legal representation during the USM process. The *'best interests of the child'* principle is not being given adequate consideration.

In PathFinders' cases, the infant/child is typically accompanied by the mother and/or father. The infant/child's asylum claim is treated as adjunct to that of the parent or family's claim(s). The fate of both child and parent are, in effect, bound together on a recognisance or bail certificate with scant regard, if any, as to the infant/child's specific needs or vulnerabilities. This is problematic because the status and concerns of the child and parent are not always aligned.

For example, the parent(s) might be unfit and incapable, for lifestyle and/or health reasons, of being the child's primary carers. The child itself might also have serious health and/or developmental problems requiring more advanced medical attention and treatment and therefore protection. The child may face being sent to a country with which he/she has no connection and has never been to. There, the child might not speak the language and face discrimination for being of mixed race and/or born out of wedlock. A female infant/child might be sent to a Risk State where female genital mutilation exists.

Currently HKSAR does not have a system/mechanism through which a child's individual circumstances are investigated in order to establish what is in their best Interests and whether the

⁴ Note this does not necessarily equate to the child's nationality or country of origin.

⁵ Suggested age range categories are: (i) Aged 16 – 17; (ii) Aged 14 – 15; (iii) Aged under 14; (iv) Aged 0-3; (v) Age unknown

child might be at such serious risk that separate assessment of that child's USM claim is indeed justified.

One PathFinders' case concerned a former Foreign Domestic Worker (FDW), her boyfriend and their young child. Because of the parents' abuse of drugs, the baby was born with serious developmental defects. This child still requires close care and a long-term plan for its future. The parents are both USM claimants. They are absent and incapable of caring for the child. However, because the child's immigration status determines what will happen to him/her, and his/her status is attached to his/her parents' claims, the child languishes in institutional care. No permanency plan has been made. The child faces remaining in care until one or other of the parents' USM claims is determined. Based on PathFinders' experience, this incredibly vulnerable child will likely be deported to a country it does not know, with parents it does not know, to a place where the facilities and support he/she needs are likely unavailable. If the child's USM claim were separate from that of his/her parents and his/her best interests were a priority consideration, a better future for this child might be possible.

When applying for non-refoulement in Hong Kong, there is no prompt for parents to make separate USM claims for their children. The government provides no advice or support to parents as to the benefits of making a separate claim for their child. Instead, the government joins the child's claim to that of his/her parent(s).

4. Recommendations

On behalf of the infant/minor children of the USM claimants PF supports, PathFinders urges HKSARG to adopt the following recommendations:

Statistics and Data Collection

1. HKSAR Government departments and their agencies do collect and publish data relating to processing of non-refoulement claims infant/child USM claimants. This should include:
 - a. The respective numbers of unaccompanied and accompanied (i.e. children with claims dependant on one or both of their parents) children;
 - b. Breakdown of children USM claimants according to their named Risk State,⁶ sex and age range;⁷
 - c. Whether any accompanied children's claims were determined independent of parents, due to for example risk of abuse or neglect from the parent(s);
 - d. Whether children USM claimants and families with children have been accorded priority in screening, and the average screening time for these claimants; and

⁶ Note this does not necessarily equate to the child's nationality or country of origin.

⁷ Suggested age range categories are: (i) Aged 16 – 17; (ii) Aged 14 – 15; (iii) Aged under 3-14; (iv) Aged 0-3; (v) Age unknown

- e. Number of substantiated children USM claimants, both unaccompanied and accompanied, with breakdown in their named Risk State and whether unaccompanied or accompanied.

Assessing children's non-refoulement claims

2. To consider infant/child USM claims in their own right, independent of and unattached to the claims of their parent(s). In particular to:
 - a. To implement a specific guardianship system for foreign children who are not accompanied by their parents and/or where the parents are not protecting and/or are not capable of protecting the child's rights and best interests;
 - b. To provide clear guidance/policy as to whether, in what circumstances and how the claims of children will and will not be assessed and prioritized;
 - c. To make the welfare of the child the paramount consideration when considering infant/child USM claims. Whether the needs of the child are served should be determined irrespective of immigration status;
 - d. To consider the age of applicants, the effects of stigma on their development, and to improve transparency and speed of process; and
 - e. Put in place free legal representation for these children.

Close

Thank you for considering PathFinders' submission and recommendations. We welcome further consultation and discussion.



Kay McArdle

CEO, PathFinders Limited

About PathFinders Limited

PathFinders' mission is to ensure that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected. We believe that every child deserves a fair start in life. PathFinders Limited is an approved charitable institution incorporated in Hong Kong. It receives no government funding. PathFinders was founded in 2008 after rescuing two babies born in poverty to

migrant women in Hong Kong. Since then, PathFinders has helped almost 5,500 people of whom over 2,400 are babies and children born in Hong Kong.

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