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PathFinders Limited

Written Submission

to

HKSAR Labour and Welfare Bureau Public Engagement

on the

Establishment of a Commission for Children

<http://www.lwb.gov.hk/eng/press/10112017.htm>

Submitted on 2 February 2018

Background

PathFinders welcomes this opportunity to comment on the establishment of a Children's Commission.

Since our founding in 2008, PathFinders has helped 5,084 people including 2,213 newborns and toddlers (0-2) no one else could or would help. In 2017 alone, we helped 855 new beneficiaries, providing one-on-one care and support to 658 Hong Kong-born babies, children and their migrant mothers, and we supported 197 beneficiaries through one-off or hotline enquiries.

The majority of the women and mothers are current or former foreign domestic workers, typically living below the poverty line and struggling to access or navigate basic public services such as housing, health care, schooling and identity documentation for their Hong Kong-born children.

Of the 2,213 newborns and toddlers up to 2 years' of age that PathFinders has helped to date, over 160 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. These young lives are utterly poor in every sense of the word. One or neither parent is around and/or is incapable of being an adequate parent, be that for health, financial or lifestyle reasons.

In these extreme cases, PathFinders then acts as the voice of these children to ensure that each has shelter and care, an identity and, longer term, a viable permanency plan with a loving family. Absent a Children's Commission [**Commission**] or Commissioner, and with the Official Solicitor not always taking on the role, PathFinders' staff have had to step in and act as the child's Next Friend in wardship proceedings to ensure that the voice of the child is indeed represented and best interests prioritised.

The United Nations Convention on the Rights of the Child, sets out the basic rights that every child is entitled to.¹ Yet among the babies PathFinders assists, there are many who, because of their mother's immigration status, have no access to basic support including medical and social welfare, a legal identity and nationality, and humanitarian support such as shelter, food and clothing.

These babies do not choose the extremely precarious and complex situation they are born into. There is no safety net for these children. They are overlooked from a social welfare protection perspective, largely ignored and forced to rely on charity. There is no other NGO or government body specifically serving these children.

PathFinders' views on the Establishment of a Commission for Children

PathFinders is pleased that the need for a body dedicated to the welfare of Hong Kong's children has been acknowledged and that the administration is honouring its commitment to establish a Commission for Children. However, we are concerned that under the current proposals the Commission will be little more than an inter-departmental government advisory body lacking independent powers of scrutiny or investigation, intervention and advocacy and that it might not in fact help our children.

¹ The United Nations Convention on the Rights of the Child.
https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=1.162361848.531269785.1492495035

In our April 2017 submission to LegCo's Subcommittee on Children's Rights,² PathFinders set out six guiding principles to ensure the Commission can protect our children. We reiterate those principles in brief here:

1. Protect all children in Hong Kong and specifically those outside the mainstream;
2. Have clearly defined objectives in line with global best practices;
3. Have independent powers to investigate and influence;
4. Create and enforce child protection guidelines;
5. Child sector workers' criminal checks, registration and tracking; and
6. Monitor, train, collaborate and support the courts and judiciary in executing their functions when dealing with children.

Given the demographic of the babies and children PathFinders works with, and our above comments, PathFinders welcomes the administration's stated³ intention to support those PathFinders helps every day and who are currently so under-provided for by the state: [**bold emphasis added**]

“(iii) Issues that are specific to particular groups of children arising from their family backgrounds, biological characteristics or other individual circumstances

- *children with **special needs**;*
- *children in **acute health conditions**;*
- *children **living in poverty**;*
- *children with a special family background (e.g. children of divorced/separated parents, children of parents holding Two-Way Permit, **children of migrant workers**, cross-boundary students, **ethnic minorities**, **refugee children**); and*
- ***children at risk or vulnerable (e.g. abduction, abuse, violence, neglect, drug involvement, etc.) and children receiving residential child care services”***

The expected role, functions and composition of the Commission

In line with global best practice, the Commission should:

1. In English, be called a 'Children's Commission' (and not a 'Commission for Children' which has negative overtones). Be an independent, statutory body charged with ensuring that the rights of **all children in Hong Kong** are protected and respected. That should specifically include the children of migrant workers, undocumented children and other 'public' children;
2. Speak not only for the general population under 18, but also for those who fall outside the mainstream; those too young to speak, those in care or with special needs and those whose parents are migrants, asylum seekers or in jail, in hospital or otherwise absent;

²<http://www.pathfinders.org.hk/public/wp-content/uploads/PathFindersLegCoCRSubCommittee-5thWrittenSubmissiononProposalsforEstablishingaChildrensCommission19April-2017FINAL.pdf>

³ http://www.lwb.gov.hk/childrencommission_public_engagement/index_e.html#s3

3. Be a fully independent body with specific powers to oversee the welfare of the most vulnerable children in society including migrants, those born to migrants and those in care and in detention with their parents;
4. Have the power independently to review and enforce all relevant law and policy relating to children and to conduct independent investigations into complaints and allegations of all types of abuse from children, their carers and other relevant professionals. An independent structure similar to that of the Independent Commission Against Corruption might be considered; and
5. Act as a forum not only for the views of all children in Hong Kong, but also those working in the children's sector including teachers, NGOs and other professionals. In PathFinders' experience, the absence of effective channels to consult and communicate directly with children and relevant professionals, can too often lead to the needs of the most vulnerable children, such as those in care, being overlooked.

The structure of the Commission, e.g. the types and focuses of working groups to be set up under the Commission

1. Ethnic minority children - To ensure that all students can attend school in a non-segregated environment;
2. Children in care or with special needs - provide independent representation for children within the social welfare and legal system;
3. Child abuse - comprehensive review of domestic violence- and child abuse-handling procedures putting the child first and to include reference to global best practices;
4. Healthcare including mental, access etc - remove the obstacles to access to General OutPatient Clinics (GOPC) and Specialist OutPatient Clinics (SOPC) services; and
5. Education and special needs - take steps to improve access to education for USM-claimant children and in particular to fully fund kindergarten places for them, ensure admission is non-discriminatory, either waive or provide funds to pay the deposit required to secure the place and increase financial assistance for school related expenses such as transport, textbooks uniforms etc.

Priority areas or issues to be addressed by the Commission in the first two years

1. Enhance systems to ensure that all children born in Hong Kong are issued with a birth certificate within three months of birth. A fee waiver system should be introduced for parents who cannot afford to pay the fees for copy birth certificates;
2. Create and enforce child protection guidelines for all those working with children. The focus should be on putting the child first and recognising that parents and carers do not always act in the child's best interests. 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 and in a time-bound framework;
3. Establish a register of all those cleared and permitted to work in the childcare sector (similar to the licensing system for construction workers); track and communicate those who are prohibited from working in the childcare sector. Require all those working in the sector, paid or unpaid, to undergo criminal background checks;

4. Provide training and guidance to the courts, Department of Justice and judiciary regarding their role and jurisdiction as well as best practice in relation to wardship proceedings. These provisions should articulate clearly that the jurisdiction is not adversarial but inquisitorial with the court as quasi-parent; and
5. Establish specialist Family Courts staffed by professionals who have received intense training about child development, interviewing and cross-examining children, child abuse, domestic violence.

Independent research studies/reviews to be initiated by the Commission to better addresses root causes by being research-based and data-driven

1. Undertake a comprehensive review of existing child law in Hong Kong and a comparative review of the law and protections in other jurisdictions with a view to benchmarking and improving the child protection laws of Hong Kong; and
2. Create a comprehensive database of statistics concerning children from inception through to 18 years. This should include birth, registration, education and access to healthcare data for all children including those born to foreign domestic workers, refugees and asylum seekers and to all other marginalised groups.

Funding schemes to be set up under the Commission to state clearly their objectives, criteria for funding and target applicants

1. After-school activity and homework support centres for ethnic- and linguistic-minority and refugee children; and
2. Set up an anonymous advice and referral hotline for children and concerned individuals similar to the UK's Childline⁴
3. Create free online child rights and protection educational toolkits that are widely publicised to educate our children and society more generally about their rights and responsibilities and where they can go for help when things go wrong.

Thank you for considering this submission. PathFinders welcomes further discussion and collaboration.

About PathFinders Limited

PathFinders is a Hong Kong-based tax-exempt charitable organization in Special Consultative Status with the United Nations Economic and Social Council since 2017. We work 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. For more information please visit: www.pathfinders.org.hk

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⁴ <https://childline.org.uk>

