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ABSTRACT

Hong Kong: Children’s right to asylum

PathFinders Limited (“PathFinders”) is a Hong Kong-registered charity that works to ensure that the most vulnerable children born in Hong Kong (“HK/HKSAR”), and their migrant mothers, are respected and protected.

PathFinders provides assistance to mothers and children who often apply for asylum under Hong Kong’s Unified Screening Mechanism (“USM”). The mothers lose their employment as migrant domestic workers as a result of their pregnancy. Their HK-born children are typically ethnic minorities of dual-heritage born out of wedlock, and have never lived in or been to the home country of either biological parent.

The United Nations Convention on the Rights of the Child (“CRC”) which the United Kingdom (“UK”) extended the ratification of to HK in 1994, provides the cornerstone principle that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3). It is further provided that asylum-seeking and refugee children should receive “*appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the CRC and other international human rights or humanitarian instruments which the state is party of*” (Article 22).

This paper explores whether, and to what extent, the provisions of the CRC are honoured in the asylum process in HK, both in theory and practice.

At theoretical level, this paper argues that the best interests of the child principle is currently difficult to accomplish in asylum-related decision-making and in the protection of asylum-seeking children because:

- 1) The CRC has not been incorporated into domestic law and remains subject to a reservation that seeks to exclude immigration matters from the remit of CRC; and
- 2) HK courts have rejected arguments that the best interests of the child principle constitutes customary international law or forms part of the common law.

On a practical level, it is observed that the best interests of the child principle has not been sufficiently considered or applied in framing government policies concerning asylum-seeking children. This is demonstrated in the following constructs:

1) *Inadequate representation of the child in the non-refoulement claim process*

In most cases where a child is accompanied by the mother and/or father, the child’s claim is automatically considered as part of the parent or family’s claim. However, the status and concerns of the child and parent(s) are not typically aligned. For example, the parents might be unfit and incapable, for lifestyle and/or health reasons, of being the primary carers of the child. The child might also have serious health and/or developmental problems requiring more advanced medical attention and treatment.

Unfortunately, there exist currently no mechanisms or processes to identify whether the child's individual narrative or vulnerabilities warrant separate consideration.

2) *Inadequate humanitarian assistance or support for meaningful enjoyment of CRC and other Convention rights*

Asylum-seeking children are provided with basic humanitarian assistance for food, accommodation, education, transportation and public health services. However, the assistance is far from adequate and fails to ensure that children are able meaningfully to enjoy their rights under the CRC and the other international conventions to which HK is a signatory.

The relevant rights that asylum-seeking children are unable meaningfully to enjoy include:

- a) The right to timely birth registration: this is due to the delay commonly encountered by asylum-seeking children and costs of obtaining a birth certificate;
- b) The right to education: this is due to the obstacles commonly faced by asylum-seeking children in accessing and enjoying education, the segregation of non-Chinese-speaking students, and the lack of financial support for related expenses including transportation, school uniform, lunch money/food and stationery; and
- c) The right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health: this is largely due to the obstacles commonly faced by asylum-seeking children in accessing and navigating both general and specialist outpatient services in public hospitals.

The paper concludes with specific recommendations to address the above theoretical and practical issues.

PAPER

About PathFinders

PathFinders Limited (“PathFinders”) was founded in Hong Kong (“HK”) in 2008 after rescuing two babies born in poverty to migrant women in HK. Since then, PathFinders has helped over 5,500 babies, children and women. PathFinders’ mission is to ensure that the most vulnerable children in HK, and their migrant mothers, are respected and protected. We believe that every child deserves a fair start in life.

PathFinders is an approved charitable institution incorporated in HK. It receives no government funding. PathFinders is an organisation in Special Consultative Status with the United Nations Special Economic and Social Council since August 2017.

Introduction

Around 380,000 migrant domestic workers¹ (“MDWs”), the majority of whom are female from the Philippines or Indonesia², form an integral part of HK’s families and communities.

HK has a formal temporary labour scheme for MDWs. They perform household tasks such as cooking, cleaning and household care. Under HK’s current policies, they are required to reside at their employer’s place of residence.

Given that 1 in 7 women of reproductive age in HK is employed as a MDW, the fact that some of them become pregnant and give birth while employed is to be expected. Although MDWs enjoy the same maternity protection as all other female employees in HK, too often, once the pregnancy becomes known, they find themselves unlawfully fired from their jobs and thereby evicted from their employer’s homes and without support. They are denied access to healthcare. Many overstay their visas. In the women’s home countries, having a mixed race child out of wedlock is heavily stigmatised and so they seek asylum (or “*non-refoulement*”, using the official government term) for themselves and their HK-born children under HK’s Unified Screening Mechanism (“USM”) to ensure a safer, brighter future.

As at 31 March 2018, according to HK Immigration Department statistics, 119 non-refoulement claimant children live in HK.³ However, a report prepared for the Subcommittee on Children’s Rights of HK’s Legislative Council suggests that, as at end June 2017, there were 387 minors awaiting determination of their claims by the Immigration Department and 483 minors pending

¹ Secretary for Labour and Welfare Dr Law Chi-kwong has announced that the number will increase to 600,000 in 2047: Siu Phila, Hong Kong will need 600,000 domestic helpers in next 30 years amid demand for elderly care, labour chief says, 5 November 2017, South China Morning Post

² 54% from the Philippines and 44% from Indonesia: Immigration Department, Annual Report 2016, https://www.immd.gov.hk/publications/a_report_2016/en/ch02.html#c7f

³ Immigration Department, Statistics on Non-refoulement Claim, March 2018, <https://www.immd.gov.hk/eng/facts/enforcement.html>

determination of appeal on their claims or pending removal⁴. As at the date of this paper, no clarification or confirmation could be obtained from the HK Administration about the numbers.

The CRC, which the UK extended ratification of to HK in 1994, provides the cornerstone principle that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3). It further provides that asylum-seeking and refugee children should receive “appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the CRC and other international human rights or humanitarian instruments which the state is party of” (Article 22). This paper explores how the provisions in the CRC are realized in practice for non-refoulement claimant children in HK.

This paper will argue the following:

- 1) On the theoretical level, the best interests of the child principle is currently difficult to enforce in asylum-related decision-making and in the protection of asylum-seeking children during the claim process because:
 - a) The CRC has not been incorporated into domestic law and is subject to a reservation that seeks to exclude immigration matters from the remit of the CRC (**Problem 1**);
 - b) HK courts in previous cases have rejected arguments that the best interests of the child principle constitutes customary international law or is part of the common law (**Problem 2**).

- 2) At a practical level, the best interests of the child principle has not been given adequate consideration in government policies concerning asylum-seeking children. This can be seen in various aspects:
 - a) Inadequate representation of the child in the non-refoulement claim process (**Problem 3**);
 - b) Inadequate humanitarian assistance or support for meaningful enjoyment of CRC and other Convention rights, including the right to timely birth registration, education, and enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (**Problem 4**).

The paper will conclude with specific recommendations to address the above theoretical and practical issues.

1) Theoretical level

Problem 1: No domestication of the CRC and the CRC reservation

No domestication

While HKSAR is a party to the CRC and the United Nations (“UN”) Committee on the Rights of the Child mandates that asylum decisions must be assessed and guided by the best interests of the child,⁵ international conventions are not self-executing under HK

⁴ HKSAR Government (Security Bureau, Immigration Department, Social Welfare Department), Paper to Legislative Council House Committee Subcommittee on Children’s Rights: Non-refoulement claimants who are minors in Hong Kong, July 2017, https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/papers/hs10120170724cb4-1432-1-e.pdf

⁵ United Nations Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 2013, http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf, para 30

law. Therefore the rights and obligations contained in a treaty are not conferred on any individual unless and until they have been incorporated into domestic legislation.⁶

HK courts adopt a strict interpretation as to whether international conventions have been domesticated. The most direct example is the International Covenant on Civil and Political Rights (“ICCPR”) which has been incorporated almost completely into the HK Bill of Rights Ordinance (“BORO”) albeit with reservations, the most notable of which is section 11 of BORO which excludes immigration-related matters from the ambit of the ICCPR.

Regrettably, ICCPR is the only international convention which the HK Government has directly incorporated into domestic legislation. Other conventions such as the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), and the CRC have not been made part of domestic legislation and hence render these Conventions unenforceable in HK. Most recently, the Court of Appeal confirmed that since the CRC is not legally enforceable in HK, the best interests of the child principle cannot be applied as a substantive right, as a fundamental interpretative legal principle or as a rule of procedure.⁷

In reality, domestication takes place through less overt or obvious means:

First, provisions from international conventions can be applied in specific contexts through specific domestic legislation but which falls short of actually ratifying a dedicated piece of legislation that transposes the Convention into domestic law. For example, under the Children’s Act 1989 in England and Wales, the best interests of the child principle is mandated to apply in court decisions concerning the upbringing of a child or the administration of a child’s property or the application of any income arising from it.⁸ Further, the Children’s Act 2004 states that the Children’s Commissioner, in exercising its “primary function” of protecting the rights of children in England (Section 2(1) is required to “have regard to the United Nations Convention on the Rights of the Child in considering ... what constitutes the rights and interests of children (generally or so far as relating to a particular matter” (Section 2A(1)).

The spirit of the best interests of the child principle is also made applicable in immigration matters under section 55 of the Borders, Citizenship and Immigration Act 2009 which states that in all functions of the Secretary of State in relation to immigration, asylum or nationality and any function conferred by, or by virtue of, the Immigration Acts on to an immigration officer, the functions must be discharged “having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.”

In stark contrast in HK meanwhile, the only legislation that governs non-refoulement claimants (Immigration Ordinance, Cap. 115) makes no mention as to how children should be treated during the claims process. The USM is a part-statutory, part-administrative system created in March 2014 in response to strategic litigation that challenged the previous “dual system” whereby the HKSAR Government determined non-refoulement claims based on torture under the UN Convention Against Torture (“CAT”) and those

⁶ *Ubamaka v Secretary for Security* (2012) 15 HKCFAR 743, 21 December 2012, para 43

⁷ *Comilang, Luis, Demele v Director of Immigration* CACV 59/2016, CACV 60/2016 & CACV 149/2016, 26 March 2018, paras 123-124

⁸ “(1)When a court determines any question with respect to—

(a) the upbringing of a child; or

(b) the administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the court’s paramount consideration.” (Section 1(1)).

claims based on torture, cruel, inhuman or degrading treatment (“torture and CIDTP”) under the HKBORO - while the UN Refugee Agency in HK (“UNHCR”) determined asylum claims based on the UN Refugee Convention to which HK is not signatory.⁹ Under the USM, the HKSAR Government is responsible for processing all claims for non-refoulement for all applicable grounds.¹⁰ Part 7C of the Immigration Ordinance, Cap. 115, governs the procedures relating to claims based on torture while claims based on other grounds are governed by Immigration Department’s administrative procedures only. The Immigration Ordinance contains no references mandating a child-sensitive approach along CRC lines.

Second, CRC provisions can be made applicable (and hence enforceable) if the State Party has adopted a practice of taking certain international conventions into account when making decisions. This argument is based on the administrative law concept of legitimate expectation, whereby an affected person is entitled to expect the state will indeed do a certain thing if it has indicated previously (either to the affected person or the public at large) that it has done or will do so¹¹.

In HK, where non-resident children are concerned, the courts are reluctant to hold that international conventions are mandatory considerations in government decisions and are all too ready to accept that there is a high level of discretion in immigration matters. In *Pagtama*¹², a case concerning whether non-resident mothers of HK Permanent Resident children should be allowed to remain in HK, the court had the chance to determine whether and/or the extent to which the CRC is applied in immigration decisions in HK through the government’s established practice. The applicant in the case argued that the HK Government has an established practice of considering the best interests of the child when making various decisions including those concerning immigration, by reference to its statements to the international community and public, statements to the UN Committee on the Rights of Child and evidence filed by the Director of Immigration.¹³ Unfortunately, despite clear statements by the Government that the best interests of the child are “necessary considerations in all relevant decision-making, including legislative proposal and policies, and are taken into account as a matter of course”, the court held that in the context of a non-resident parent’s right to stay in HK, the Director of Immigration only needs to take the best interests of the Permanent Resident child into account in his determination of whether “humanitarian and compassionate” grounds (or “compelling and exceptional humanitarian circumstances”) exist that justify a departure from his policy of removing all illegal immigrants.¹⁴ Further, the court reiterated the Court of Final Appeal’s ruling in *Lau Kong Yung*¹⁵ that the Director is not obliged to consider humanitarian and compassionate grounds and that, even when and if the Director considers the humanitarian and compassionate grounds, the said exercise of discretion is generally not subject to court’s scrutiny in judicial review¹⁶. These holdings are accepted by the Court of Appeal in its recent judgment in *Comilang & Others*¹⁷, which concerns three similar cases heard together on the issue of whether a foreigner can remain in HK to take care of his or her HK Permanent Resident child.

⁹ *C & Ors v the Director of Immigration* [2013] HKCFA 19, March 2013

¹⁰ For the purpose of this paper, the term “non-refoulement claim(ant)” is used interchangeably with the term “USM claim(ant)”

¹¹ *AG for HK v Ng Yuen Shiu* [1983] AC 629, 638

¹² *Pagtama v Director of Immigration*, HCAL 13, 45 & 56/2014, 12 January 2016

¹³ *Ibid*, paras 141-142

¹⁴ *Ibid*, paras 143-146

¹⁵ *Lau Kong Yung and Others v The Director of Immigration* [1999] 3 HKLRD 778, 3 December 1999

¹⁶ *Pagtama v Director of Immigration*, HCAL 13, 45 & 56/2014, para 145

¹⁷ *Comilang, Luis, Demele v Director of Immigration* CACV 59/2016, CACV 60/2016 & CACV 149/2016, 26 March 2018, paras 128-130

The courts' decisions regarding the applicability of the CRC in *Pagtama* (and later in *Comilang & Others*) arguably only concerns the right of a non-resident parent of a HK Permanent Resident child to remain in HK. However, the courts' sentiment that Convention rights rank lower than the public interest needs of preventing illegal immigration and overstaying means that the best interests of the child are often neglected where immigration is concerned. A further reason why this is so is because HKSAR entered into a reservation for CRC regarding immigration matters.

CRC reservation in relation to immigration matters

Initially, two reservations to the CRC regarding immigration were made.

The first reserves the right of HKSAR Government "to apply such legislation, insofar as it relates to the entry into, stay in and departure from the HKSAR of those who do not have the right under the laws of the HKSAR to enter and remain in the HKSAR, and to the acquisition and possession of residentship as it may deem necessary from time to time".

The second reserves the right of HKSAR Government to apply CRC to the fullest extent to children seeking non-refoulement in the HKSAR "except insofar as conditions and resources make full implementation impracticable". HKSAR Government withdrew this second reservation in 2003 after the influx of Vietnamese refugees subsided.

The first reservation remains in place but its scope remains to be decided by the courts. Yet, in deciding the absence of any legitimate expectation that international conventions would be taken into account in immigration decisions, the courts have been influenced by the reservation. In *Comilang & Others*, the court held that "because of the reservation", Hartmann J decided in *Chan To Foon* that "our immigration laws may continue to be applied even if they conflict with or are in any way incompatible with those conventions. ... [The] voice of those responsible for entering into the international instruments could not be clearer. The manifest instruction to the Director is that, in applying HK's immigration laws, he is not bound by the provisions of the ICCPR or the CRC."¹⁸

In *Pagtama*, the court commented that even if the CRC is enforceable in HK, it is excluded by the reservation in relation to immigration matters and the scope of the reservation is similar to that under the HKBORO¹⁹.

From the above cases, it can be seen that the reservation effectively deprives asylum-seeking children, who do not have the right to stay in HK²⁰, of CRC protection. This position is evident in HKSAR Government's last Response to the UN Committee on the Rights of the Child's List of Issues in 2013 regarding asylum-seeking children (This will be dealt with in greater detail below).

Problem 2: Not customary international or common law

HK courts have rejected arguments that the best interests of the child principle constitutes customary international law ("CIL") which is binding on all states.²¹

¹⁸ *Comilang, Luis, Demele v Director of Immigration* CACV 59/2016, CACV 60/2016 & CACV 149/2016, paras 125-126

¹⁹ *Pagtama v Director of Immigration*, HCAL 13, 45 & 56/2014, para 131

²⁰ A person can only raise a non-refoulement claim if he or she is "subject or liable to removal", i.e. where he or she has overstayed: Section 37W, Immigration Ordinance Cap.115.

²¹ *Pagtama v Director of Immigration*, HCAL 13, 45 & 56/2014, Paras 150-158

CIL arises from a general and consistent practice of states followed by them from a sense of legal obligation. To show the existence of general and consistent practice, three elements must be demonstrated.²² The Court of First Instance held in *Pagtama* held that there is insufficient proof of those three elements in so far as the CRC is concerned.²³ The Court of Appeal in *Comilang & Others* further held that even if CIL is established, it would nevertheless be inconsistent with HK's domestic laws, namely the immigration reservation in Section 11 of HKBORO and in the CRC.²⁴

Lastly, the court in *Pagtama* also rejected the argument that under the principle of *parens patriae*, the common law has developed a principle of law that whenever a child's welfare and wellbeing is involved, the court is obliged have regard to the best interests of the child as a primary (if not, at least a relevant) consideration.²⁵ The courts differentiated between the UK and HK cases on the basis that the UK cases were specific to the family law context of wardship, guardianship and maintenance proceedings rather than applying more generally. Further, in contrast to the UK whereby the CRC immigration reservation was withdrawn, the reservation continues to apply in HK.²⁶ This reasoning was confirmed by the Court of Appeal in *Comilang & Others*.²⁷

2) Practical level

Problem 3: Inadequate representation of the child in the non refoulement claim process

The problem in Hong Kong

The HKSAR Government confirmed that as at the end of March 2018²⁸, there were 119 children in HKSAR with USM claims pending. This accounted for 2.7% of the USM claims still pending determination. A report to the Subcommittee on Children's Rights, however, indicates higher numbers of minor claimants.²⁹ HKSAR Government does not currently publish any other data regarding the specific situation and lives of infant/minor non-refoulement claimants including how their claims are being processed, thereby leaving the public in the dark as to whether these children are adequately protected and provided for.

In the Immigration Department's Notice to Persons Making a Non-Refoulement Claim³⁰, there is no mention of how a child's non-refoulement claim is to be determined. The Notice merely states that if a claimant has "special needs in relation to the

²² *C v Director of Immigration*, CACV 132-137/2008, paras 45 and 46

²³ *Pagtama v Director of Immigration*, HCAL 13, 45 & 56/2014, paras 156-157

²⁴ *Comilang, Luis, Demele v Director of Immigration* CACV 59/2016, CACV 60/2016 & CACV 149/2016, paras 131-132

²⁵ *Pagtama v Director of Immigration*, HCAL 13, 45 & 56/2014, paras 159-174

²⁶ *Pagtama v Director of Immigration*, HCAL 13, 45 & 56/2014, paras 159-174

²⁷ *Comilang, Luis, Demele v Director of Immigration* CACV 59/2016, CACV 60/2016 & CACV 149/2016, paras 133-134

²⁸ Immigration Department, Statistics on Non-refoulement Claim, March 2018,

<https://www.immd.gov.hk/eng/facts/enforcement.html>

²⁹ As at end June 2017, there were 387 minors awaiting for determination of their claims by Immigration Department and 483 minors pending determination of appeal on their claims or pending removal, HKSAR Government (Security Bureau, Immigration Department, Social Welfare Department), Paper to Legislative Council House Committee Subcommittee on Children's Rights: Non-refoulement claimants who are minors in Hong Kong, July 2017, https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/papers/hs10120170724cb4-1432-1-e.pdf

³⁰ Immigration Department, Notice to Persons Making a Non-Refoulement Claim, 4 September 2017,

https://www.immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf

investigation or assessment of [his / her] non-refoulement claim” he or she should inform the Immigration Department staff at the initial briefing session.³¹

In its 2013 Response to the UN Committee on the Rights of the Child’s List of Issues, the HKSAR Government gave a vague response to the Committee’s question of how a child asylum seeker’s claim is assessed. For example, the HKSAR Government stated that it “does not remove a torture claimant (including children) from the HKSAR to a torture risk State until his torture claim is withdrawn or finally determined as unsubstantiated”, “each torture claimant is given every reasonable opportunity to establish his claim”, publicly funded legal assistance is available and each claim would be considered “on its merits.”³² No reference was made to any special procedures for prioritizing and assessing claims involving children, whether accompanied or unaccompanied by their parent(s).

In July 2017, HKSAR’s Security Bureau, Immigration Department (“ImmD”) and Social Welfare Department submitted a report for submission to HK’s Legislative Council’s Sub-Committee on Child’s Rights regarding the topic of non-refoulement claimants who are minors in HK.³³ Regarding screening procedures, the report states that “in general, the grounds of a non-refoulement claim of a minor are the same as those of the claim(s) of his or her father and/or mother. In this regard, ImmD will process the claims of the minor and his or her father and/or mother in one go.”³⁴ Further, it stated that case officers at the ImmD receive relevant training to handle and accommodate special needs of claimants who are minors, including giving appropriate attention to them to ensure effective communication at interviews, arranging a relative or guardian to accompany them to attend screening interviews, and seeking assistance from social workers or other professionals where necessary, etc. Immigration Department said it will accord priority to processing claims involving minors.³⁵

It is submitted that if the above information represents the screening procedures specifically for child asylum seekers, the best interests of the child and other principles in the CRC would not be adequately observed.

As stated above, ImmD assumes that the grounds of a non-refoulement claim of a minor are the same as those of the claim(s) of his or her father and/or mother. No guidance is given as to when this general assumption is rebutted and no public statistics are released as to whether such cases exist and of so, how many such cases there are. When applying for non-refoulement protection in HK, there is no prompt, advice or support for parents to raise additional grounds on behalf of their children. No procedures or protocols are in place for the Immigration Department or other welfare providers (e.g., social workers) to identify risk factors necessitating the separation of a child’s claim from that/those of his/her parents.

This is problematic because the status and concerns of the child and parent(s) are not necessarily aligned.

³¹ At paras 24-25

³² HKSAR Government, The Government of the HKSAR’s Response to the List of Issues raised by the United Nations Committee on the Rights of the Child on 10 May 2013 (September 2013), http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/List_of_Issues_201309.pdf, paras 25.3-25.6

³³ HKSAR Government (Security Bureau, Immigration Department, Social Welfare Department), Paper to Legislative Council House Committee Subcommittee on Children’s Rights: Non-refoulement claimants who are minors in Hong Kong, July 2017, https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/papers/hs10120170724cb4-1432-1-e.pdf

³⁴ *Ibid*, Para 4

³⁵ *Ibid*, Para 6

Two situations commonly arise. First, the minor's parents are unable or unfit (for lifestyle and health reasons) to be the primary carers of the child. Second, the minor might have additional grounds (because of his/her own background or identity or profile) for non-refoulement to those of his/her parent(s). For the babies and children PathFinders helps, the additional risk usually arises because the children are born in HK, have never been to their parents' home countries, might not even speak the language there and thus have no connection to those countries. Further as a mixed-race child many times born out of wedlock, they might face discrimination in their parent(s)' home country(ies). The risk might also arise for some children who have health or developmental issues which their parent(s)' home country(ies) do not have the adequate resources to deal with. Specifically, girls might face the risk of female genital mutilation. In those situations, there is no guardianship system in place to ensure the adequate representation (including legal representation) of the child.

An example concerns a PathFinders case of a former MDW, her boyfriend and their young child. Because of the parents' abuse of drugs, the child was born with serious developmental defects. The child requires close care and a long-term plan for its future. The parents are both non-refoulement claimants. They are absent and incapable of caring for the child. However, because the child's immigration status is determinative of 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' claims is determined. Based on PathFinders' experience, this terribly vulnerable young child will likely be deported to a country he/she does not know, with parents he/she does not know, to a place where the facilities and support he/she needs are likely unavailable and without assessing his/her best interest. This is because the child's status hinges not on what is in his/her best interests, but on the fact that the merits of his/her USM claim is attached to, and considered as part of that of his/her parents, rather than as an individual or additional claim. 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 the child might be possible.

Requirements in the CRC

Article 22 of the CRC provides that a child asylum seeker or refugee shall receive "appropriate protection and humanitarian assistance in the enjoyment of applicable rights". It is submitted that in certain circumstances "protection" must exclude that of the child's parents or supposed caregiver. This is supported by other provisions in the CRC. Article 3(2) states that a child must be given "such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her". Article 12(1) provides that every child has the right to be heard in "any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body". Article 19(1) further states that States Parties take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child, whilst Article 39 requires the taking of "all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse".

The UN Refugee Agency UNHCR published its "Guidelines on Protection and Care"³⁶ for child asylum seeker or refugee in light of provisions in the CRC. The Guidelines state that when a decision is being made about an individual child, then the child's best

³⁶ UN High Commissioner for Refugees (UNHCR), *Refugee Children: Guidelines on Protection and Care*, 1994, <http://www.refworld.org/docid/3ae6b3470.html>

PathFinders ensures that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected. PathFinders Limited is incorporated in Hong Kong CR No. 1289039 and is an approved charitable institution under s88 of the Inland Revenue Ordinance, file no. 91/10272. PathFinders is listed on WiseGiving. PathFinders Limited is an organisation in Special Consultative Status with the United Nations Special Economic and Social Council since August 2017.

interests must be, “at a minimum, a primary consideration”. Since the CRC emphasizes relationships between children and their family and community, the starting point is that the “well-being of children and the enjoyment of their rights are dependent upon their families and their community”. However, there are some situations where the child's welfare must receive priority consideration. For example, in a case of abuse or neglect, a child can be separated from parents if it “is necessary for the best interests of the child.”³⁷ Adults often suffer greatly in refugee situations; this can influence their ability to provide for their children. Sometimes parental distress results in child abuse, abandonment, family strife and other forms of family disintegration³⁸. There is then also the risk of maltreatment where children are taken care of by non-relatives (e.g. taking the child's food ration, emotional neglect, abusive work assignments, etc.).³⁹ In these situations, the Guidelines state that intervention to counsel and support the care giver, or to place the child with another family may be necessary to prevent further harm and to promote good care.⁴⁰ Therefore, what is truly in the best interest of the child depends on the facts of his/her particular case and any legislative or administrative framework must be capable of responding appropriately to varying needs.

Best practice⁴¹– United Kingdom

In the UK, the Immigration Rules specifically allows for a child to be included as the dependant of an asylum claim or to make an asylum claim in their own right and for that claim to be considered separately (para 349). Whether a child is considered as “accompanied” or “unaccompanied” depends on whether he is she is “being cared for” by an adult who in law or by custom has responsibility to do so, instead of being merely physically accompanied by a parent or guardian (para 352ZD).

Safeguards and procedures are in place at all stages of the asylum process to ensure accompanied children have their claims separated from their parents or guardians where it is in their best interests to do so.

According to UK Home Office guidance on “Dependents and former dependents”, it will normally be in the best interests of the child to accompany the parents, but submissions to the contrary must be carefully considered, taking into account the need to safeguard and promote the welfare of children in accordance with the section 55 duty.⁴² It is important not to lose sight of the child as an individual, as well as part of the family, to be vigilant and responsive to their protection and welfare needs and consider how this could impact on the needs of the family as a whole. Caseworkers have discretion to interview dependant children where appropriate- for example where they have “individual and specific protection needs.”⁴³ Caseworkers must gather additional information on key aspects of the claim from dependants where this is necessary to fully consider the claim.⁴⁴ Caseworkers must be aware that dependants may raise issues independent of the principal applicant which may give rise to a protection claim in their own right.⁴⁵ Where there are child welfare or protection concerns that may involve safeguarding issues within the family unit, the

³⁷ *Ibid*, p. 6

³⁸ *Ibid*, p. 14

³⁹ *Ibid*, p. 15

⁴⁰ *Ibid*, p. 15

⁴¹ Please note our reference to “best practice” here only focuses on the law and policy, not the actual practice, of a particular jurisdiction on the issue in question.

⁴² UK Home Office, Dependents and former dependents, May 2014

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314042/DependantsAndFormerDependants_External2014-05-22.pdf

⁴³ *Ibid*, pp. 5, 12

⁴⁴ *Ibid*, p. 12

⁴⁵ *Ibid*, p. 12

case must be referred immediately to the Vulnerable Minors Team, the relevant local authority and the Office of the Children's Champion, or the police.⁴⁶

According to UK Home Office guidelines on "Children's asylum claims" in order to safeguard and promote the welfare of the child, Home Office staff must be "alert to potential indicators of abuse or neglect, be alert to risks which abusers may pose to children, and be ready and able to share relevant information with other public bodies with a responsibility towards children in order to safeguard a child."⁴⁷ All children, whether accompanied or unaccompanied, are subject to a welfare interview at their first encounter with the Home Office. A welfare interview is not a screening interview on the child's grounds for asylum. Instead, it is an interview where the immediate welfare of the child must be considered, safeguarded and promoted. Any modern slavery or urgent welfare concerns, if present, are dealt with as a matter of priority involving senior managers and other agencies, such as local authority children's services or the police⁴⁸ (p. 25-26). If a child is accompanied by an adult, the adult's identity must be verified (p. 28).

Where an accompanied or unaccompanied child's claim for asylum is refused, the Home Office is obliged to consider the impact of that decision on the child and to determine whether the child should nevertheless be allowed, in one way or another (e.g. Discretionary Leave to Remain of usually up to 30 months, or Indefinite Leave to Remain), to remain in the UK, whether temporarily or permanently.⁴⁹ The decision-maker should consider the child's individual circumstances and experiences in the UK alongside information about the conditions the child would face in the country of return⁵⁰.

The relevant questions⁵¹ to be considered include the following:

- Is it reasonable to expect the child to live in another country?
- What is the level of the child's integration into this country?
- How long has the child been away from the country of the parents?
- Where and with whom will the child live if compelled to live overseas?
- What will the arrangements be for the child in that other country?
- what is the strength of the child's relationship with a parent or other family members that would be severed if the child moves away or stayed in the UK?

Relevant factors to consider⁵² include the child's physical and mental health and medical needs, level of education, emotional and behavioural development, family and social relationships, self care skills, the child's views, the child's age and maturity, experience of mental or emotional trauma, compassionate factors, the duration of absence from the home country and level of integration in the UK, whether the child is settled in education in the UK and the disruption caused to those arrangements by a decision to refuse outright, the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background,

⁴⁶ *Ibid*, p. 5

⁴⁷ UK Home Office, Children's asylum claims, 9 October 2017,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650514/children_s-asylum-claims-v2_0.pdf, pp. 11, 21

⁴⁸ *Ibid*, pp. 25-26

⁴⁹ *Ibid*, p. 57

⁵⁰ *Ibid*, p. 57

⁵¹ *Ibid*, p. 63

⁵² *Ibid*, p. 64

the child's right to preserve their identity, including nationality, name and family relations, the availability of care arrangements, the safety and security of the living arrangements, and the socio-economic conditions, and the availability of education, work or training opportunities in the country of return.⁵³

Further safeguards include that the decision-maker be required to obtain information from "statutory agencies and people with a genuine, relevant involvement in the child's life" such as the child's local authority social worker regarding his or her current circumstances (e.g. his or her age, any mental and physical health issues that might be a barrier to removal, degree of maturity and self care or living skills), his or her care plan with reference to information on the reception arrangements in the country of return. The child should also be informed about the exchange of information through their legal representative and consulted depending on his or her age or maturity⁵⁴.

Best practice- Canada

In Canada, the Immigration and Refugee Board of Canada ("IRB") recognises the CRC's requirements that measures be taken to ensure that a child seeking refugee status receives appropriate protection. For asylum-seeking children who are accompanied by their parents, IRB states that their claims are usually heard jointly with the parents but that a separate refugee determination is made.⁵⁵

Problem 4: Inadequate humanitarian assistance or support for meaningful enjoyment of CRC and other Convention rights

Asylum-seeking children in HK are provided with basic humanitarian assistance for food, accommodation, education, transportation and public health services. Assistance items include food (HK\$1,200⁵⁶ E-token per month), accommodation (rent allowance at HK\$1,500⁵⁷ and \$750⁵⁸ for each adult and child respectively)⁵⁹; utility allowance (HK\$300⁶⁰ per month), transportation allowance (HK\$200-\$420⁶¹ per month) and other basic necessities (in-kind). According to HKSAR Government's paper to the Legislative Council, for special cases with extra needs, the amount of assistance may be adjusted subject to an

⁵³ Note however this assessment is to be balanced against the need to provide effective immigration control. There is a positive duty in section 55 to safeguard and promote the welfare of children, so any balancing act must account for this heightened test. If a decision is made that removal is not in the best interests of the child, a decision must be made about whether the child's best interests are outweighed by the need to uphold immigration control. However, if it is concluded that the need to uphold the immigration control is greater, reference must be made to a senior manager prior to a final decision being made- *Ibid*, p. 65

⁵⁴ *Ibid*, p. 58

⁵⁵ Immigration and Refugee Board of Canada, Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues, 18 January 2016, <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/GuidDir/Pages/GuideDir03.aspx>, Introduction

⁵⁶ US\$153, <https://www.xe.com/>, accessed on 31 May 2018

⁵⁷ US\$191, <https://www.xe.com/>, accessed on 31 May 2018

⁵⁸ US\$95, <https://www.xe.com/>, accessed on 31 May 2018

⁵⁹ Rental deposits (a maximum of HK\$3,000 or an amount equivalent to two months of the rent, whichever is the less) and property agent fees (HK\$750 or an amount equivalent to the rent for half a month, whichever is the less) are also covered.

⁶⁰ US\$38, <https://www.xe.com/>, accessed on 31 May 2018

⁶¹ US\$25-53, <https://www.xe.com/>, accessed on 31 May 2018

assessment of the actual situation based on justifications and documental proofs provided. It also states that counseling services are available⁶².

Nevertheless, it is submitted that the assistance is far from adequate to ensure children are able to meaningfully enjoy their rights under the CRC and other international Conventions which HK is a signatory to.

a) Right to timely birth registration

Article 7 of the CRC provides that a child shall be “registered immediately after birth and shall have the right from birth to a name [and] the right to acquire a nationality”. This right is also provided for under Article 24 (2) of ICCPR which has been incorporated into domestic legislation in HK. However, in reality non-refoulement claimant parents encounter extraordinary difficulty in obtaining a birth certificate for their child⁶³.

For parents who possess a travel document or HK Identity Card, they can make an appointment by telephone or online with the Births Registry no more than ten days ahead. A birth certificate is typically issued on the day of the appointment.⁶⁴ Parents are required to attend the birth registry only once.

However, for non-refoulement claimant babies, parents are unable to make a prior appointment for attending the Births Registry (which is part of the Immigration Department) because they do not hold a travel document or HK Identity Card, and instead hold just a recognizance paper. They are therefore required to attend the Births Registry at least twice to make an appointment and to attend the initial appointment. Further, at the initial appointment, the birth certificate will not be issued as in ordinary cases as the Births Registry first must obtain the parent(s)' files from other sections of the Immigration Department to ascertain the immigration status of the parent(s). In PathFinders' experience, it typically takes up to fifty days before the birth certificate is issued.

Obtaining a birth certificate is also complicated by the absence of information in languages other than Chinese or English and the absence of free translation services. Many applicant parents do not understand Chinese or English, and receive no

⁶² HKSAR Government (Security Bureau, Immigration Department, Social Welfare Department), Paper to Legislative Council House Committee Subcommittee on Children's Rights: Non-refoulement claimants who are minors in Hong Kong, July 2017, https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/papers/hs10120170724cb4-1432-1-e.pdf, para 7

⁶³ For PathFinders' previous submissions on this issue, please see:

- Written Submission to HKSAR Legislative Council's Subcommittee on Children's Rights regarding Refugee Children, 18 July 2017, <http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Written-Submissions-on-Rights-of-Refugee-Children.pdf>
- PathFinders' Response to The Office of the Ombudsman's Public Request for Views in Examining the Adequacy and Effectiveness of the Mechanism of the Immigration Department for following up on Unregistered Births, 18 November 2015, <http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-November-2015-18-Ombudsman-Investigation-Unregd-Babies-FINAL-PDF.pdf>

⁶⁴ Immigration Department, Registration of a Birth, https://www.immd.gov.hk/eng/services/birth-death/Registration_of_a_Birth.html

language-appropriate guidance about how to obtain a birth certificate for their child. Translation services are only available at a cost - an expense non-refoulement claimants can ill-afford.

Further, although the Immigration Department states that birth registration is free, parents must pay HK\$140⁶⁵ to obtain a copy of the birth certificate. For non-refoulement claimants who are not allowed to work, HK\$140 is money that they are again unable to afford. The only free version of the birth registration (Form 3) makes no reference to the child's immigration status, and so is functionally useless for the purposes of registering for social, medical and education support and services.

b) Right to education

Article 28 of the CRC recognizes the right of the child to education with a view to achieving this right "progressively and on the basis of equal opportunity". States parties shall in particular make primary education compulsory and available free to all; encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; make educational and vocational information and guidance available and accessible to all children; and take measures to encourage regular attendance at schools and the reduction of drop-out rates. Similar provisions can be found in ICESCR Article 13. Article 29 of the CRC states the education of the child shall be directed to, inter alia, the development of the child's personality, talents and mental and physical abilities to their fullest potential".

The HKSAR Government allows non-refoulement claimant children to receive free education temporarily while their claims are being determined and if their removal from HK is not imminent⁶⁶. In reality, these children face significant barriers accessing education meaningfully. These problems begin from an early age and place the children at an immediate social and educational disadvantage.

Non-refoulement claimant children struggle to find kindergarten seats. Many schools are unwilling to accept claimants, either because they do not understand the child's entitlement to enrol or because the school does not want non-refoulement claimants and discriminates against them. Consequently, these children often enrol late or fail to find a place at all.

Even where kindergarten places are available, when applying for a place, parents must first pay a mandatory deposit and initial fees before they can even apply for funding. Funding is available for non-refoulement claimant children through third parties, but it is difficult to obtain. The high upfront cost discourages applications or delays admission of the children⁶⁷.

More generally, the HKSAR Government's apartheid policy on and approach to education services for non-Cantonese speaking students means that non-refoulement claimant children often attend school in a racially and linguistically segregated environment.

⁶⁵ US\$38, <https://www.xe.com/>, accessed on 31 May 2018

⁶⁶ Education Bureau, Circular No. 18/2017 Entry of Non-local Children and Children Holding a Form of Recognizance to Schools in Hong Kong, 24 November 2017, <http://applications.edb.gov.hk/circular/upload/EDBC/EDBC17018E.pdf>

⁶⁷ Leung Hillary and Smyth Tegan, No play, no future: The bleak prospects for refugee children in Hong Kong, 18 June 2017, Hong Kong Free Press, <https://www.hongkongfp.com/2017/06/18/no-play-no-future-bleak-prospects-refugee-children-hong-kong/>

The schools they attend have very few Cantonese-speaking ethnic Chinese students⁶⁸. Interestingly the UN Committee on the Rights of the Child raised this problem of segregation in its last List of Issues, but the HKSAR Government's response was that HK's school system is open to all, and attributed the problem to being a "result of parental choice" instead of a design of the HKSAR Government to have a school becoming a "designated school" to enroll more Non-Cantonese Speaking students⁶⁹.

The restricted availability of places in typical local schools also means that for non-refoulement claimant children, at kindergarten and beyond, they must often travel long distances to school. This disadvantage is further compounded by the fact that unlike children of families eligible for the public Comprehensive Social Security Assistance ("CSSA") scheme who receive an adequate school travel allowance, non-refoulement claimant children do not receive a school travel allowance.

Equally, students on non-refoulement claims encounter difficulties in paying for school-related expenses such as school uniforms, meals, or books, because the HKSAR Government's Working Family and Student Financial Assistance Agency only considers applications for relevant fee subsidy on a case by case basis and disburses the grants only several months after the start of each school year.⁷⁰ Further, these students are often financially precluded from attending school trips, and their inability to secure a HK Identity Card means that public libraries and youth centres are inaccessible to them⁷¹. In contrast, HK Resident families on CSSA can claim for these supplies and have full access to all facilities and services.

Finally, non-refoulement claimant children are required to report regularly to the Immigration Department; as often as once a week in PathFinders' experience. The resulting absence from school to fulfil this reporting obligation interrupts the child's schooling. For most young children this reporting is unnecessary as their parents sign on their behalf.

c) Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health

Article 24(1) of CRC recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Article 24(2) further requires States parties to take appropriate measures to inter alia ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care. ICESCR contains similar provisions and require provision specifically "for the healthy development of the child" (Articles 12(1) and (2)(a)).

⁶⁸ Kapai Puja, *The Status of Ethnic Minorities in Hong Kong 1997 to 2014*, 2015, Faculty of Law University of Hong Kong, Chapter 3; Candice Wong, Erica Chin, *Children of asylum seekers deprived of education rights in Hong Kong*, 30 December 2017, *The Young Reporter*, <http://tyr.jour.hkbu.edu.hk/2017/12/30/children-of-asylum-seekers-deprived-of-education-rights-in-hong-kong/>

⁶⁹ HKSAR Government, *The Government of the HKSAR's Response to the List of Issues raised by the United Nations Committee on the Rights of the Child on 10 May 2013* (September 2013), http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/List_of_Issues_201309.pdf, paras 13.1-13.2

⁷⁰ HK Legislative Council Sub-Committee on Children's Rights, *Report*, May 2018, <https://www.legco.gov.hk/yr17-18/english/hc/papers/hc20180525cb4-1118-a-e.pdf>, para 9.3

⁷¹ *Ibid*, para 9.6

In HK, non-refoulement claimants are granted one-off waivers of medical expenses at public clinics or hospitals on a case-by-case basis. However, obstacles continue to exist for children attempting to access health services on an equal basis with others⁷².

First, many of the mothers and children PathFinders helps encounter discrimination and/or are turned away when accessing public health services, largely due, we believe, to a lack of education about and understanding of their cultural and linguistic needs by HKSAR Government department front line staff⁷³.

Second, the registration of non-refoulement claimant children for medical services is problematic, particularly for the babies PathFinders helps. Delay in issuing the birth certificate, as highlighted above, negatively impacts the child's ability to register for medical services. Without proof of the immigration status of the child (i.e. a birth certificate), public healthcare providers cannot be sure of the child's eligibility and registration is often denied.

Further, General OutPatient Clinics ("GOPCs") provide community-based primary care services to the general public. All appointments must be made through the Telephone Appointment System ("TAS"). However, TAS only supports registration if a HKID card or HK birth certificate number is provided. Non-refoulement claimant children who have neither, therefore cannot register and are unable to access the GOPC service. This becomes particularly problematic where specialist treatment is required, Specialist OutPatient Clinics ("SOPCs") require a medical referral letter issued by a general practitioner ("GP"). Attending a private GP clinic is not an affordable option for non-refoulement claimant children, GOPC is the only option. Yet GOPCs are inaccessible.

Third, no transportation allowance is given for medical visits and separate medical fee waivers are necessary for each and every medical appointment⁷⁴.

Finally, PathFinders' clients also experience extreme difficulty in obtaining funding to support children with special needs or to fund specialist medical care not available through the public system, ranging from dental services for post-primary students, to glasses and rehabilitation services for child victims of torture⁷⁵. International Social Services ("ISS"), the agency commissioned by the HKSAR Government to provide humanitarian assistance to non-refoulement claimants, lacks the resources and time to process additional complex medical requests from non-refoulement claimants.

Conclusion and Recommendations

On behalf of the babies and children with non-refoulement claims pending, we make the following recommendations:

Concerning enforceability of the CRC and other international conventions

⁷² Khoe Levina, Barriers to health care access painfully high for asylum seekers, 17 November 2014, South China Morning Post, <http://www.scmp.com/comment/insight-opinion/article/1639771/barriers-health-care-access-painfully-high-asylum-seekers>

⁷³ Save the Children Hong Kong Christian Action--Centre for Refugees and others, Joint Submission to Subcommittee on Children's Rights Re: Rights of refugee children, 24 July 2017, https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/papers/hs10120170724cb4-1458-2-e.pdf, p. 4

⁷⁴ *Ibid*, pp. 3-4

⁷⁵ *Ibid*, p. 4

1. To incorporate the CRC and other international conventions to which HK is a signatory into domestic legislation;
2. To incorporate the spirit, if not the actual wording, of the best interests of the child principle into the relevant sections in the Immigration Ordinance and Immigration Department's administrative guidelines governing the non-refoulement claim process;
3. To withdraw the Immigration reservation to the CRC;

Concerning assessment of non-refoulement claims of children:

4. To publish data relating to processing of claims of infant/child non-refoulement 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 non-refoulement claimants according to their named Risk State, sex and age range;
 - 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 non-refoulement claimants and families with children have been accorded priority screening, and the average screening time for these claimants; and
 - e. The number of substantiated child non-refoulement claimants, both unaccompanied and accompanied, with breakdown in their named Risk State and whether unaccompanied or accompanied.
5. To consider children's USM claims in their own right, independent of and unattached to the claims of their parent(s);
6. To implement a specific guardianship system for foreign children who are not accompanied by their parents and/or where the parents are not protecting the child's rights and best interests and to ensure that those children have access to free legal representation;
7. To provide clear guidance/policy as to whether, in what circumstances and how the claims of children will and will not be assessed and prioritised;
8. To make the welfare of the child the paramount consideration when considering USM claims. Whether the needs of the child are served should be determined irrespective of the child's immigration status;
9. To consider the age of applicants, the effects of stigma on their development, and to improve the transparency and speed of process;

Concerning birth certificates for the children of non-refoulement claimants:

9. To accelerate the processing of birth certificate applications to make them consistent with those of non-non-refoulement claimants;
10. To end the requirement that non-refoulement claimant parents must attend the birth registry more than once to obtain birth certificates for their children;
11. To provide clear guidance about how to apply for a birth certificate in HK for that is accessible to non-Cantonese and non-English speaking parents;
12. To provide fee waivers for parents who cannot afford to pay the fees for copy birth certificates;

Concerning non-refoulement claimant children's access to education:

PathFinders ensures that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected. PathFinders Limited is incorporated in Hong Kong CR No. 1289039 and is an approved charitable institution under s88 of the Inland Revenue Ordinance, file no. 91/10272. PathFinders is listed on WiseGiving. PathFinders Limited is an organisation in Special Consultative Status with the United Nations Special Economic and Social Council since August 2017.

13. To take steps to improve access to education for non-refoulement claimant children and in particular to fully fund kindergarten places for them and ensure admission is non-discriminatory;
14. To remove or reduce the requirement for non-refoulement claimant children to report to Immigration Department;
15. To expand the provision of travel allowances, school supplies, uniforms, library cards and other resources to non-refoulement claimant children;
16. To ensure that all students can attend school in a non-segregated environment;

Concerning access to medical care:

17. Provide mandatory cultural sensitivity training to all public health service providers and to all officials who come into contact with vulnerable ethnic/linguistic minority women and children in order to deal with them in a non-judgmental, culturally sensitive way, in their own language and/or with the help of a suitably trained interpreter; and to detect indicators of abuse that may present differently due to cultural and/or language differences;
18. To improve inter-departmental collaboration, communication and cooperation given the multi-dimensional issues PathFinders' clients face, for example between the Hospital Authority, Immigration Department, Birth Registry, police, courts, prisons, and the Labour and Welfare Bureau;
19. To remove the obstacles to access GOPC and SOPC services;
20. To provide transportation allowance for medical visits and simplify procedures for applying for medical fee waivers; and
21. To simplify the provision of specialist medical care, including dental services for post-primary students, glasses and rehabilitation services for child victims of torture. Whether vital treatment or support is received should not depend upon the discretion of one person.

Implementing the above recommendations would ensure that the hundreds of ultra-vulnerable babies and children we work with at PathFinders receive a fair start in life. Not a better start than other children in HK but at least an equitable start. This start is what they have been promised under the CRC and other international treaties. Every child deserves a fair start in life. All children matter.