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Written Submission

to

HKSAR Legislative Council's Subcommittee on the

Rights of Ethnic Minorities in advance of a meeting on 7 May 2018

regarding

Difficulties Encountered by Ethnic Minorities in Applying for the Hong Kong Special Administrative Region Passport

Submitted on 4 May 2018

1. Introduction

- 1.1. 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.
- 1.2. PathFinders' beneficiaries are typically so-called ethnic minority (**EM**) and/or linguistic minority (**LM**) - meaning that they are not native-level Cantonese speakers - women and children. Linguistically isolated, they live apart and often at or below the poverty line and struggle to navigate and fully to access basic public services including housing, health care, schooling and identity documentation.
- 1.3. The commonly used term of EM is misleading in the HKSAR context. EM is not a defined term and is therefore socially divisive. Whereas the term 'race' is defined in the Race Discrimination Ordinance (Cap. 602)¹ as "*race*" (種族), *in relation to a person, means the race, colour, descent or national or ethnic origin of the person.*" Fundamentally, the term EM needs to be defined in order to have a rigorous discussion that includes all relevant parties.
- 1.4. The children discussed here are no different from other children living in Hong Kong. They are simply children. They should not be treated differently for any purposes based on their language skills or indeed their race or ethnicity.
- 1.5. According to Hong Kong SAR Government's (**HKSARG**) '*Poverty Situation Report on Ethnic Minorities 2016*'², 8.1% of Hong Kong's population comprised of EMs, being some 575,400 people, including 320,700 Foreign Domestic Workers (**FDWs**). That figure is expected to increase in the coming years.
- 1.6. Between 2011 and 2016, the so-called EM population in Hong Kong grew at an average rate of 5.8% a year compared to the 0.5% growth rate for the HKSAR population as a whole. The most growth going forward is expected in the number of so-called EM/LM children under 15 years of age³
- 1.7. Many of these Hong Kong-born and so-called EM children, acquire a right of abode either by following their parents' immigration status or through the seven year

¹ RDO: <https://www.elegislation.gov.hk/hk/cap602> accessed 4 May 2018

²<https://www.povertyrelief.gov.hk/pdf/Hong%20Kong%20Poverty%20Situation%20Report%20on%20Ethnic%20Minorities%202016.pdf> accessed 4 May 2018

³ Puja Kapai. The Status of Ethnic Minorities in Hong Kong: 1997-2014. Hong Kong: Faculty of Law, The University of Hong Kong, 2015.

https://docs.wixstatic.com/ugd/5242b7_f0e1461b55b54f66b8af8c1badfb6ff7.pdf accessed 4 May 2018

residency requirement. Typically, they will attend school and college in Hong Kong, speak and write Cantonese to a high standard, participate in local culture and go on to work and contribute to Hong Kong both economically and culturally.

- 1.8. This linguistic and cultural assimilation is entirely consistent with second and third generation migrant families the world over, for example in New York, London and San Francisco. And so for the majority, as for other next generation migrants around the world, Hong Kong is absolutely their home. They may never or rarely visit their parents' or grandparents' countries of origin and will likely have only limited understanding of the language or culture there.
- 1.9. And yet, despite being born, raised and educated here and knowing no other home, acquiring Chinese nationality through naturalisation and thus the ability to apply for a HKSAR passport, remains a difficult and largely opaque process.
- 1.10. For children who are abandoned by their parents, the situation is extremely precarious and difficult to navigate.

2. Example

- 2.1. The situation of one of PathFinders' employees (Ms X) is not untypical. Ms X's father came to Hong Kong from Pakistan as a young adult in 1969 and Ms X's mother arrived from Pakistan in 1986 and they got married in Hong Kong. Both parents acquired Hong Kong Permanent Residency status as did Ms X.
- 2.2. Apart from occasional holidays, Ms X has spent her entire life in Hong Kong. She was educated to university level in Hong Kong. She speaks fluent Cantonese. Ms X was one of the first registered social workers in Hong Kong of non-Chinese-race. We are using the word 'race' as defined by the RDO - please see footnote 1 above.
- 2.3. Ms X is committed to living in Hong Kong. She works here and pays her taxes here. Her siblings live here. She regards herself as and from Hong Kong. Despite this, under current provisions, Ms X is excluded from acquiring Chinese nationality as of right.
- 2.4. The only opportunity open to Ms X was to apply for naturalisation as a Chinese National, which she did in around 2014.
- 2.5. When Ms X submitted her application at the Immigration Department (**IMMD**), the Immigration Officer asked her in Cantonese to explain her reasons for applying for naturalisation. Later, Ms X received a letter from the IMMD asking her to submit more documents which she did.

- 2.6. After waiting for over a year, IMMD rejected Ms X's application without explanation. On enquiry, IMMD told Ms X that she could try again if there was a change in her circumstances such as if she got married or her financial situation changed.
- 2.7. Our understanding is that between 2008 and 2010, only five people were granted naturalisation.

3. Recommendations

PathFinders makes the following recommendations in relation to the acquisition of HKSAR passports by so-called EMs:

- 3.1. Define the term EM and/or change the nomenclature to 'Non-Chinese Nationals' or similar and explain clearly how the term is to be used within the immigration and HKSAR passport acquisition process;
- 3.2. Confer HKSAR passports on all children who are abandoned in Hong Kong and/or whose parents are absent and/or unable to act on their child's behalf;
- 3.3. Provide clearer and detailed criteria for applying for HKSAR passports; and
- 3.4. Ensure free, independent legal advice is available to HKSAR passport applicants who were born in HKSAR.

HKSAR passports should be granted to everyone who contributes to Hong Kong's prosperity, diversity and culture. They have demonstrated that Hong Kong is their home. Thank you for considering PathFinders' submission and recommendations. We welcome further consultation and discussion



Kay McArdle
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About PathFinders Limited

PathFinders is a Hong Kong-registered, 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.

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