

By email only: [iccpr\\_consultation@cmab.gov.hk](mailto:iccpr_consultation@cmab.gov.hk)

Team 5  
Constitutional and Mainland Affairs Bureau  
Central Government Offices  
12/F, East Wing  
2 Tim Mei Avenue  
Tamar, Hong Kong

**PathFinders Limited**

**Comments on Outline of Topics [‘Outline of Topics’] to be covered in the Fourth report of the Hong Kong Special Administrative Region (HKSAR) in the light of the International Covenant on Civil and Political Rights [ICCPR]**

Submitted on 12 January 2018

## Introduction

PathFinders is a Hong Kong-registered charity with tax-exempt status and is an organisation in Special Consultative Status with the United Nations Economic and Social Council since 2017.

PathFinders works to ensure that the most vulnerable children born in Hong Kong and their migrant mothers are respected and protected.

From inception in 2007 to date, PathFinders has helped over 5,200 babies born in Hong Kong and their migrant mothers. The majority of the mothers are current or former foreign domestic workers (**FDWs**) from Indonesia and the Philippines. In 2017, around 80% of the children PathFinders helped were conceived in Hong Kong.

Given that 1 in 7 women of reproductive age in Hong Kong is employed as a FDW, it should be anticipated and expressly provided for (at contract, visa, policy and ideally also at legislative levels) that some will have children while employed here.

PathFinders welcomes this public consultation and the opportunity to draw attention to the lives of the people we help and their entitlements under the ICCPR. These extremely vulnerable babies, children and women have yet to be mentioned by the Hong Kong Special Administrative Region Government (**HKSARG**) in its reports to the United Nations Human Rights Committee. We hope that PathFinders' comments below enable a positive change in that regard.

PathFinders welcomes further collaboration and consultation.

## Outline

### **Part 1: INTRODUCTION:** from page 3

An introduction to the typical cycle of deprivation for the children and mothers PathFinders serves every day.

### **Part 2: ADDITIONAL TOPICS:** from page 5

We turn to the specific Articles of the ICCPR and suggest additional topics ['Additional Topic'] to be included in the HKSAR Government's report

## Part 1: INTRODUCTION

### Typical cycle of deprivation for PathFinders' children and mothers

1. Based on PathFinders' experience, children born to migrant women are among the most deprived and vulnerable children in Hong Kong. In the majority of cases, the cycle of deprivation begins as early as when the mother, usually a FDW, becomes pregnant.
2. FDWs are protected from employment termination and pregnancy discrimination under the Employment (EO) and Sex Discrimination Ordinance (SDO), and are eligible for statutory maternity leave and maternal health care in public hospitals. However, there is an acute lack of awareness of those rights and obligations among FDWs, their employers and employment agents. There is no clear guidance from the HKSAR Government (HKSARG) as to how the pregnancy and maternity of a FDW is to should be successfully and lawfully managed to the benefit and protection of all impacted parties and in particular the unborn and newborn child. More particularly, the absence of clear guidance/policy as to whether or not the so-called live-in rule (the "live-in rule") is to apply during statutory leave periods is especially troublesome. And thus, when an FDW becomes pregnant, she all too often suffers unlawful dismissal or is forced to resign from her employment because of the uncertainty surrounding each parties' rights and obligations.
3. Once a pregnant FDW's employment is terminated, she and her unborn child are immediately rendered homeless. It is common for the FDW to overstay her employment visa for various reasons: she may fear being ostracised and discriminated against if she returns home pregnant with a mixed race child conceived out-of-wedlock, or it may simply be too late in her pregnancy for her to fly home. These women then quickly fall through the cracks of Hong Kong's otherwise world class social welfare safety net because, as overstayers, they are not entitled to access essential support services including maternal health care. Babies born to mothers who overstay inherit their mothers' illegal, undocumented status. These mothers, now typically destitute, are unable to nurture and protect their children - in PathFinders' most critical cases, these babies and very young children fall prey to abuse, neglect and human trafficking.
4. Some women apply for a *non-refoulement* claim for themselves and their children under Hong Kong's Unified Screening Mechanism (USM), while others are able to obtain a tourist visa to legally remain in Hong Kong while they pursue legal claims for unlawful dismissal and/or pregnancy discrimination. However, they all continue to encounter difficulties in accessing essential social services in particular birth registration, immunisations, other medical services and education.
5. PathFinders also encounters cases where the child is a Hong Kong Permanent Resident (HKPR) with the right of abode in Hong Kong because his or her biological father is Hong Kong Chinese or a HKPR. In 2017, 22% of the babies PathFinders assisted are now HKPRs. The situation of these children and their mothers (who are often their primary and/or only carer) is precarious and far

from settled as there is currently no mechanism by which these children's mothers can remain in Hong Kong long-term. The tragic result is that either the child is forced to separate from his or her mother so that he or she can stay in Hong Kong, thereby compromising the child's right to a family life, or the child is forced to return to his or her mother's home country thereby depriving him or her of their rights to remain and receive education in Hong Kong.

6. PathFinders also encounters a small but significant number of cases where children are abandoned by their parents or where both parents are incapable of caring for the child because of drug or alcohol abuse. In our experience and opinion, the relevant government department(s) does/do not always prioritise the best interests of the child over those of the parents, and/or has/have failed to devise a permanency plan to protect the children from further harm. Please refer to PathFinders' following submissions, hyperlinks to which are in footnotes below:

6.1 *Mechanism for Handling Abuse Cases Relating to Children from High Risk Families and follow-up to the Child Fatality Review Report* (23 May 2016)<sup>1</sup>

6.2 *Support Measures for Children from Drug Abusing Families* (15 December 2016)<sup>2</sup>

6.3 *Review of Residential Child Care Services* (16 January 2017)<sup>3</sup>

6.4 *Review of Residential Child Care Services* (20 February 2017)<sup>4</sup>.

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<sup>1</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PF%20Submission%20on%20mechanism%20for%20handling%20child%20abuse%20from%20high%20risk%20families%20FINAL%20PDF%2023%20May%202016.pdf>

<sup>2</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-SubCommitteeChildrensRights-22Dec2016-meeting.pdf>

<sup>3</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/MDCC-Written-Submission-FINAL-16-Jan-2017.pdf>

<sup>4</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/Written-Submission-to-HKSAR-LegCo-Subcommittee-on-Childrens-Rights.pdf>

## Part II

In this section, we follow paragraph 12 of the HKSARG's Outline of Topics by suggesting additional topics (**Additional Topic**) to be included in the HKSARG's report.

### Article 2: Ensuring to all individuals the rights recognised in the Covenant

#### Article 2: Additional Topic 1: Rights of children born in Hong Kong and their migrant mothers

7. PathFinders is concerned that the rights endowed under the Covenant to children born in Hong Kong and their migrant mothers here are neglected by the HKSARG. The explanation typically provided is that they are not entitled to ICCPR/similar domestic protections because they are not Hong Kong residents. In our experience, children born in Hong Kong to migrant women do not enjoy the same rights as other Hong Kong children, particularly in regard to birth registration, access to medical and social services and education.
8. Rights under ICCPR should be guaranteed equally to all children born in Hong Kong, without discrimination on any ground, and regardless of their/parents' immigration status and without reference to their mother's/father's current/former job type. The Human Rights Committee (HRC) stated in its General Comments on the ICCPR No. 15 "*Position of Aliens*" that State parties "*should give attention to the position of aliens, both under their law and in actual practice*" (para 4).
9. In light of the above, PathFinders invites the HKSARG comments on:
  - a. The specific legislation and measures implemented to ensure children and their migrant mothers are guaranteed their rights under ICCPR without discrimination on any ground;
  - b. In the absence of a Human Rights Commission as recommended by the HRC, the efforts taken to ensure coordination among government agencies to ensure the needs and rights of all Hong Kong-born children and their migrant mothers are identified and adequately protected.

#### Article 2: Additional Topic 2: Rights of HKPR child born to migrant mothers

10. As discussed in para 5. above, a significant proportion of children born to migrant women are in fact HKPRs, but are often forced to relinquish their rights in Hong Kong or their right to family life because their mothers are not allowed to remain in Hong Kong.
11. PathFinders therefore invites the HKSAR Government to comment on the efforts and measures to enable these HKPR children to enjoy rights guaranteed under the ICCPR equally as other children, in particular their family rights (Article 24).

### Article 3 - Equal rights of men and women

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.

**Article 3: Additional Topic 1: FDWs' rights in employment**

12. As mentioned in para 2. above, the cycle of deprivation for PathFinders' clients often begins when the FDW's employment is terminated as a result of her pregnancy becoming known to her employer.
13. The HRC in its General Comments No. 32 states that States parties should "*review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by prohibiting discrimination by private actors in areas such as employment*" (para 31).
14. PathFinders therefore invites the HKSARG to comment on the measures it has taken to protect pregnant FDWs from discrimination by their employers, in particular through:
  - a. Enforcement of labor and other laws to protect pregnant FDWs from unlawful termination of employment and discrimination both during and after pregnancy, whether by way of civil or criminal proceedings;
  - b. Education of key stakeholders (employers, agencies, government departments etc) and collaboration with consulates and the Governments of FDWs' sending countries; and
  - c. Whether, as recommended in the Human Rights Committee Concluding Observations on the third periodic report of Hong Kong (para 21)<sup>5</sup>, HKSARG is considering reviewing or clarifying the so-called live-in rule and its waiver/application to pregnant FDWs and FDWs on statutory maternity leave.
15. Please refer to PathFinders' following public submissions, the hyperlinks to which are in the footnotes below:
  - 15.1 *Review of Statutory Maternity Leave* (17 July 2017)<sup>6</sup>
  - 15.2 *Equal Opportunities Commission Discrimination Law Review* (31 October 2014)<sup>7</sup>
  - 15.3 *Implementation of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* in Hong Kong (January 2014)<sup>8</sup>

**Article 3: Additional Topic 2: Violence against women**

16. The HRC in its General Comments No. 32 states that State parties should provide information on "*national laws and practice with regard to domestic and other types of violence against women,*

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<sup>5</sup>[http://www.cmab.gov.hk/doc/en/documents/policy\\_responsibilities/the\\_rights\\_of\\_the\\_individuals/Advance\\_Version\\_2013\\_ICCPR\\_e.pdf](http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/Advance_Version_2013_ICCPR_e.pdf)

<sup>6</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Written-Submission-on-Review-of-Statutory-Maternity-Leave-18-July-2017.pdf>

<sup>7</sup> <http://www.pathfinders.org.hk/public/wp-content/uploads/PF-DLR-2014-Submission-PDF.pdf>

<sup>8</sup> [http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders\\_UNCEDAW\\_2014Jan.pdf](http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders_UNCEDAW_2014Jan.pdf)

including rape” (para 11). PathFinders women clients include FDWs who have been raped, and/or physically abused, including by their male employers or members of the employer’s family or network.

17. We invite the HKSARG to comment on measures taken to protect these women (including those whose employment has been terminated), including but not limited to giving access to safe abortion. Please refer to PathFinders’ submission on *Strategy and Measures to Tackle Domestic Violence and Sexual Violence* (2 March 2015)<sup>9</sup>.

#### Article 3: Additional Topic 3: Trafficking of women and children

18. As stated in 3. above, pregnant FDWs who overstay their visa and go underground for fear of being prosecuted, put themselves and their child at immense risk, including at risk of trafficking and/or forced labour.
19. In accordance with Paragraph 12 of General Comments No. 32, PathFinders invites the HKSARG to comment on measures taken to identify and measure the extent of the problem, to eliminate the same and to protect those migrant women and their children.

#### Article 3: Additional Topic 4: Pregnant women and women with young children deprived of liberty

20. In accordance with Paragraph 15 of General Comments No. 32, PathFinders invites the HKSAR Government to comment on measures and facilities (including medical and health care) implemented to ensure that pregnant women who are deprived of their liberty do receive humane treatment and respect for their inherent dignity at all times, and in particular during birth and while caring for their newborn. Please refer to PathFinders’ submissions on *Rights of Children in Correctional Home and Correctional Institution* (23 May 2017).<sup>10</sup>

#### Article 3: Additional Topic 5: Privacy

21. PathFinders encounters cases where their employers infringe the FDW’s right to privacy. For example, by forcing them to do a pregnancy test or by filming them in their rooms. The District Court case of *Waliyah*<sup>11</sup> is a case in point. Such invasion of privacy is often unrecognized and unreported because of the imbalance of power exacerbated by the live-in rule.
22. In accordance with paragraph 20 of the General Comments No. 32, PathFinders invites the HKSAR Government to comment on the laws and private actions that interfere with the equal enjoyment by FDWs of the right to privacy, and on the measures taken to eliminate such interference and to

<sup>9</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PF-LegCo-SV-DV-SubComm-2-March-2015-FINAL-PDF.pdf>

<sup>10</sup> <http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-OralSubmission-23.05.2017.pdf>

<sup>11</sup> [2017] 1 HKLRD 1082

afford women protection from any such interference. Please also refer to PathFinders' submission on the *Live-in rule during Maternity Leave (18 July 2017)*<sup>12</sup>.

**Article 3: Additional Topic 7: Recognition of family**

23. As stated in General Comments no. 23, State parties should accept various forms of family, including migrant worker couples living apart, unmarried couples and their children, and single parents and their children, and to ensure the equal treatment of women (para 27). As mentioned in para 2. above, the HKSAR Government has not provided guidance to FDWs, employers or agencies as to how a FDW pregnancy and maternity is, at a practical and logistical level, to be successfully and lawfully managed. Points urgently needing written clarification include whether FDW mothers are exempted from the live-in rule during maternity leave (and other leaves often taken at/around the same time as maternity leave including sick leave and annual leave). There is currently no recognition that the FDW mother and her children are in fact a family unit.
24. PathFinders therefore invites the HKSAR Government to comment on what measures of support are in place to enable a FDW mother to discharge both her parental functions and her obligations as an employee - and for the employer and agency to be able to discharge their lawful obligations.

**Article 3: Additional Topic 8: Ethnic minority women**

25. FDWs come mainly from Indonesia and the Philippines and as such they are considered ethnic minority women in Hong Kong. PathFinders therefore invites the HKSAR Government to comment on how their policies (or lack thereof) regarding pregnant ethnic minority women, and especially FDWs, are in compliance with the equal rights of all women under ICCPR.

**Article 7 - No torture or inhuman treatment and no experimentation without consent**

**Article 7: Additional Topic 1: Treatment of asylum seekers and refugee children**

26. According to the HRC's General Comments No. 20, the obligation under Article 7 includes an obligation not to return a person to another country where there will be a danger of of torture or cruel, inhuman or degrading treatment (para 9).
27. In relation to the treatment of asylum seekers and refugee children, PathFinders invites the HKSAR Government to comment on:
- a. Measures taken to ensure they are registered at birth expeditiously;

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<sup>12</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Written-Submission-on-Review-of-Statutory-Maternity-Leave-18-July-2017.pdf>

- b. Whether there is any provision under the current Unified Screening Mechanism (**USM**) whereby a child's claim is or can be considered separately and independently of the parent's;
- c. The level of humanitarian support provided to them and their mothers; and
- d. Access to education.

28. Please refer to PathFinders' submissions on *Rights of Refugee Children* (18 July 2017)<sup>13</sup> for more details.

#### Article 10 - Rights of persons deprived of their liberty

##### Article 10: Additional Topic 1: Babies and Children in Detention

29. In addition to the rights discussed at 20. above, Article 10 states that *"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."* In PathFinders' *Submissions to the Legislative Council's Subcommittee on Children's Rights* in May 2017<sup>14</sup>, we highlighted a 2014 case involving a Thai female inmate in a Hong Kong correctional institution whose son was born while she was incarcerated and remained there with her for the first three years of his life. Please refer to these submissions for PathFinders' recommendations as to how the Prison Rules<sup>15</sup> can be improved to ensure the babies and children we help at PathFinders can be better supported, both in prison and after leaving prison.

#### Article 14 - Equality before courts

##### Article 14: Additional Topic 1: Access to justice for migrant workers and their Hong Kong-born children

- 30. According to the HRC's General Comments No. 32, access to administration of justice must be guaranteed to all individuals in the territory or jurisdiction of the State parties *"regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons"* (para 9). There are different elements to access to justice.
- 31. First, legal assistance must be made available to all as it often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way (para 10).
- 32. Second, tribunals must be competent, independent and impartial (paras 19 and 21).

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<sup>13</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Written-Submissions-on-Rights-of-Refugee-Children.pdf>

<sup>14</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-OralSubmission-23.05.2017.pdf>

<sup>15</sup> Cap 234A: [https://www.elegislation.gov.hk/hk/cap234A?xid=ID\\_1438402869554\\_004](https://www.elegislation.gov.hk/hk/cap234A?xid=ID_1438402869554_004)

33. Third, the administration of justice must be expeditious and not subject to any unreasonable delay (para 27).
34. In light of these elements, PathFinders invites the HKSARG to comment on:
- Measures taken to ensure the Hong Kong-born children of migrant mothers have access to pro bono legal advice and assistance and to publicly-funded legal assistance;
  - Measures taken to provide legal representation and remedies to children born in Hong Kong and especially to those who have returned to their mother's home countries but still have a legal claim against their biological fathers who are based in Hong Kong, and also for those children who are involved in care and protection cases;
  - Measures taken to ensure the impartiality of tribunals and courts that handle cases involving ethnic minorities and FDWs, in particular in the Labour Tribunal where legal representation is not permitted and claimants often unduly pressured by the Presiding Officers to settle their claims without understanding their legal rights.

**Article 17** - *Protection of privacy, family, home, correspondence, honour and reputation*

35. Please refer to our submissions on privacy in the context of **Article 3** at paragraphs 23-24 above.

**Article 23** - *The family - a vital component of society*

**Article 23: Additional Topic 1:** *ensuring the unity of vulnerable migrant families*

36. The HRC in its General Comments No. 19 stated that “[i]n view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States parties should ... indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice” (para 2). Further, the “possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons” (para 5).
37. A common family unit that PathFinders encounters daily is that of a single mother and her child. For those children who are HKPRs as stated in paragraph 5. above, PathFinders invites the HKSARG to comment on what measures are taken to ensure the unity of such families, given that the mothers often do not have the right of residence in Hong Kong unless they continue to be employed as an FDW. Also to clarify, specifically in the family unit referred to in this paragraph, under what circumstances/conditions the HKSARG will tolerate a mother staying in Hong Kong with her child and/or when the HKSARG will extend the mother's permission to remain.

38. Further, for mothers and children who are USM claimants, PathFinders invites the HKSAR Government to comment on what measures are taken to ensure these families enjoy family life under Article 23, for example whether specific allowance is given to enable them to carry out activities as a family.

#### Article 24 - Rights of children

##### Article 24: Additional Topic 1: Equal protection regardless of immigration status

39. According to General Comments No. 17, in order for every child to receive protection required by his status as a minor under Article 24, State parties are required to take special measures (including economic, social and cultural) to protect children (paras 1 and 3). Further, legislation and practice should ensure that measures of protection are aimed at removing all discrimination in every field particularly as between children who are nationals and children who are aliens (para 5).

40. PathFinders welcomes the HKSARG's inclusion in its Outline of Topics under this Article, the topics of Children's Commission, Services for the child, Convention on the Rights of the Child (CRC) and representation of children in care and protection cases (para. 44 of the HKSARG's report). We further invite the HKSAR Government to comment on:

- a. How the right of children born to migrants would be guaranteed and protected by a Children's Commission; on this please refer to PathFinders' submissions on *Proposal for Establishing a Commission on Children* (19 April 2017)<sup>16</sup>; and
- b. The special measures adopted to protect children of migrants, including but not limited to the areas of birth registration, access to medical and social services and access to education, in compliance with the CRC. On this, please refer to PathFinders' submission to the *UN Committee on the Rights of the Child* (September 2013)<sup>17</sup>.

##### Article 24: Additional Topic 2: Right to birth registration

41. Under article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. PathFinders assists mothers who routinely encounter difficulties and delay in obtaining a birth certificate for their children because of costs and stringent documentation requirements. PathFinders therefore invites the HKSARG to comment on the measures taken to ensure the immediate registration of children born to migrants in HKSAR. Please refer to PathFinders' recommendation on this issue in our *Response to The Office of the Ombudsman's*

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<sup>16</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PathFindersLegCoCRSubCommittee-5thWrittenSubmissiononProposalsforEstablishingaChildrensCommission19April-2017FINAL.pdf>

<sup>17</sup> [http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders\\_UNCRC\\_2013Sep.pdf](http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders_UNCRC_2013Sep.pdf)

*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)*<sup>18</sup>.

**Article 24: Additional Topic 3: Right to acquisition of nationality**

42. Article 24 paragraph 3 provides for the right of every child to acquire a nationality. The birth registration difficulties of children born to migrants in HKSAR (see 41. above) directly impedes their ability to obtain a nationality since having a birth certificate is typically a major prerequisite for acquiring nationality.
43. PathFinders invites the HKSARG to comment on the measures taken, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. We note that the measures adopted to ensure that children have a nationality should always be referred to in reports by State parties (para 8, General Comments No. 17). Please also refer to PathFinders' submission to HKSARG's *Legislative Council's Subcommittee on Children's Rights in advance of a meeting on 4 November 2017 regarding Human Rights of Children Under Poverty*<sup>19</sup> regarding birth registrations and specifically to our comments regarding the Bali Process<sup>20</sup> at recommendation vii on page 4.

**Article 24: Additional Topic 3: Protection of migrant children who are neglected and/or abandoned**

44. PathFinders welcomes HKSARG's inclusion in its Outline of Topics under this Article the topic of representation of children in care or protection cases. As stated above, PathFinders encounters cases where migrant parents and/or the family seriously fail in their duties, ill-treat or neglect the child and yet no action or sufficiently prompt action was taken by the relevant government department whether through applying to be or allowing a third party to apply to be the ward of the child, or dispensing with the parental consent in order to put the child up for adoption.
45. In accordance with paragraph 6 of General Comments No. 17, PathFinders invites the HKSARG to comment on efforts and measures taken to protect these children, and also whether it is aware of such cases involving children born to migrants in Hong Kong and how the best interests of the child has been and/or should be assessed.

**Article 24: Additional Topic 3: Refugee and Asylum Seeker children**

46. Please refer to our comments in relation to Article 7 above.

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

<sup>19</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PF-Submission-to-SubCm-Childrens-Rights-children-under-poverty-FINAL.pdf>

<sup>20</sup><http://www.baliprocess.net/news/concept-note-bali-process-civil-registration-assessment-toolkit/>

**Article 24: Additional Topic 4: Immigration**

47. In the case of a HKPR child as highlighted at 5. above, PathFinders is concerned that the best interests of the child is not always and/or sufficiently taken into consideration by the relevant government department when deciding whether to allow the child's mother to stay in Hong Kong with the child. PathFinders invites the HKSARG to comment on whether, how, and to what extent the relevant authorities take the child's best interest into consideration when making decisions regarding the mother's ability to remain in Hong Kong with her HKPR child.

**Article 26 - Right to equal protection before the law**

48. Please refer to our comments above regarding Article 3 (paras 12-25 above) and Article 14 (paras 30-34 above).

**Article 27 - Right of ethnic minorities**

**Article 27: Additional Topic 1: right of ethnic minority children**

49. PathFinders invites the HKSARG to comment on the measures taken by it to ensure that ethnic minority children born in Hong Kong do have access to birth registration, medical and legal services as well as education.

**Conclusion**

Inclusivity is at the basis of the Universal Declaration of Human Rights and the treaties that stem from it, including the ICCPR. The government of the HKSAR will have failed in protecting the rights of migrant children and their mothers if they are not included in HKSAR Government's upcoming ICCPR fourth report

On behalf of the babies, children and women we help, thank you for taking the time to consider this submission. PathFinders welcomes further collaboration and consultation.



Kay McArdle  
CEO, PathFinders Limited.

### **About PathFinders**

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 over 5,200 people of whom over 2,200 are babies and children born in Hong Kong.

More information: [www.pathfinders.org.hk/public](http://www.pathfinders.org.hk/public)

### **PathFinders' Contacts:**

CEO: Ms. Kay McArdle: [kay@pathfinders.org.hk](mailto:kay@pathfinders.org.hk)

Director of Social Work and Healthcare: Ms. Jessica Chow: [jessica@pathfinders.org.hk](mailto:jessica@pathfinders.org.hk)

Office: (+852) 5500 5486

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