

**PathFinders' Comments/Feedback to Anti-Human Trafficking Task Force on  
HKSAR Government's Anti-Trafficking Action Plan  
1 May 2018**

PathFinders welcomes the HKSAR Government's commitment to combating trafficking in Hong Kong and the introduction of the Action Plan. Human Trafficking is a particularly difficult crime to detect and prosecute, not least because it trades on the vulnerabilities of its victims.

For the Action Plan to be effective, clear and specific guidance and protocols are required, especially around victim identification and protection.

**Children and Trafficking**

1. All children exhibit unique and specific vulnerabilities in relation to trafficking. Ensuring that they are protected from being trafficked must, therefore, be accorded the highest priority;
2. The sub-set of ultra-vulnerable children born to migrants and migrant workers, including Foreign Domestic Workers (FDWs), flounder here and require special and proactive intervention, protection and support;
3. Babies born to FDW/migrant mothers who overstay their visas (often through no fault of their own) automatically inherit their birth mothers' illegal, undocumented status without being provided with independent scrutiny of their immigration status or, indeed, legal representation. In our experience over the last decade, around 10% of the babies we help are at severe risk of abuse, neglect and human trafficking;
4. Children leaving HKSAR with someone of the same race are especially vulnerable to trafficking. It is currently alarmingly easy to leave Hong Kong with a child that is not yours and/or does not carry your name provided you look roughly of the same ethnicity. Border controls are essential to combat cross-border human trafficking and must also be child-focussed;
5. Child-centred victim protection and support should be extended to all children in HKSAR, regardless of residency, national or HKSAR immigration documentation.

**Recommendations**

1. Introduction of a fit-for-purpose anti-human trafficking legal framework according all children the highest priority;
2. Adoption of measures to ensure that no child in Hong Kong is without an identity and ideally also national documentation. This should include a further investigation (the last was in 2015 by the Office of the Ombudsman<sup>1</sup>) into the delays in the issuance of Birth Certificates and mechanisms to ensure the time-bound issuance of Birth Certificates to all children born

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<sup>1</sup> [http://ofomb.ombudsman.hk/abc/files/DI\\_391\\_press\\_release\\_eng.pdf](http://ofomb.ombudsman.hk/abc/files/DI_391_press_release_eng.pdf) accessed 2 May 2018

here. We reiterate our November 2015 comments<sup>2</sup> and can provide updated case numbers of the undocumented and/or stateless children PathFinders has assisted, upon request;

3. Create and train a team capable of working with the sub-set of ultra-vulnerable children born to migrants and migrant workers, including Foreign Domestic Workers (FDWs), and who require special and proactive intervention, protection and support;
4. Enhance HKSAR's Border Controls to identify proactively children potentially at risk and to ensure that children who can speak do indeed speak to immigration officers alone. Anti-child-trafficking measures should be imposed at all entry and exit points in line with international best practice. Training should also be provided for train and plane attendants to spot potential child trafficking victims. No child should enter or leave Hong Kong either alone or with a non-parent adult without documented permission allowing them to move that child. This is especially important in Hong Kong where a child does not necessarily carry the same family name as their mother;
5. The HKSAR's Official Solicitor<sup>3</sup> should take a much greater lead in representing children and other vulnerable victims;
6. In court proceedings concerning ultra-vulnerable children, specialist NGOs should be proactively found and invited to act as intervenors<sup>4</sup> and as amicus curiae<sup>5</sup> to ensure that their experience and expertise is brought to bear when making decisions in the best interests of these children;
7. Children's claims for asylum should be considered separately and free legal representation provided as of right;
8. Inclusion of detailed references to children in trafficking identification tools and training of frontline staff;
9. Development of a holistic support and protection system for child victims with health, welfare, education and legal services across government and civil society all working together;
10. Facilitation of the transfer of data between government departments and NGOs should be either free of Personal Data (Privacy) Ordinance (Cap. 486) constraints, or subject to exception rules, when dealing with children and other vulnerable populations. The same should apply to data requested via Access to Information<sup>6</sup> requests where the life wellbeing of a child is at risk.

## CLOSE

Thank you for considering PathFinders' submission and our 10 recommendations above.

**Kay McArdle, CEO, PathFinders Limited**

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<sup>2</sup><http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-November-2015-18-Ombudsman-Investigation-Unregd-Babies-FINAL-PDF.pdf> accessed 2 May 2018

<sup>3</sup> <https://www.oso.gov.hk/eng/solicitor/who.html> accessed 2 May 2018

<sup>4</sup> [https://en.wikipedia.org/wiki/Intervention\\_\(law\)](https://en.wikipedia.org/wiki/Intervention_(law)) accessed 2 May 2018

<sup>5</sup> [https://en.wikipedia.org/wiki/Amicus\\_curiae](https://en.wikipedia.org/wiki/Amicus_curiae) accessed 2 May 2018

<sup>6</sup> <http://www.access.gov.hk/en/home/index.html> accessed 2 May 2018

### **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 5,400 people of whom over 2,300 are babies and children born to migrant, ethnic minority women in Hong Kong.

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

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