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PathFinders Limited
18 November 2015

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.

Ombudsman's Press Release: http://ofomb.ombudsman.hk/abc/en-us/press_releases/detail/63



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PathFinders' website: <http://www.pathfinders.org.hk/public/>

PathFinders' submissions: <http://www.pathfinders.org.hk/public/services/accesstojustice/>

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A. Summary

The situation of PathFinders' babies, children and their migrant mothers is shocking, upsetting, ever-increasing, complex and can be extremely challenging to unravel and solve.

We welcome and recommend further collaborative, cross-sector discussion and consultation.

PathFinders' cases typically involve employment, immigration, insurance, accommodation, birth registration (in Hong Kong and in the country of origin of the parent(s)), documentation, criminal, health and cultural considerations to name but a few.

Most PathFinders' children are born to migrant workers, predominantly former or current foreign domestic workers (FDWs).

The fathers can be the woman's husband, boyfriend, employer or employer's family or friends, refugees, criminals including rapists – the full spectrum of male society is represented. For one systemic reason or another, many of these babies do not acquire identity documents. The situation needs to be addressed.

Vulnerable people, and especially babies and children, should be protected. Babies born in Hong Kong to migrant workers who have over-stayed their visas are some of the most vulnerable in Hong Kong. They are neither recognized nor supported by our otherwise robust social welfare system. Even when recognized, they face insurmountable hurdles and discrimination, such that their plight, indeed their very existence is ignored or sidelined.

We refer to the concluding observations of the Committee of the United Nations' Convention on the Rights of the Child for Hong Kong: (http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx).

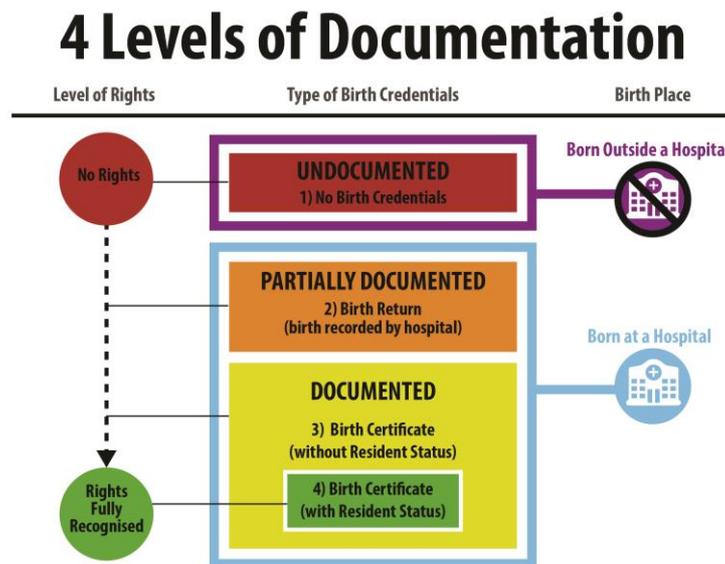
They includes recommendations regarding the registration of births and specifically for migrant children. They also emphasise the need to ensure that the best interests of the child are 'fully reflected and incorporated in key child-related acts and policies.'

Since PathFinders started, we have assisted over 828 pregnancy and newborn cases. Of those:

- i. 475 (60%) women had overstayed their visas;
- ii. Some 226 babies and children became Hong Kong residents in their own right or through being adopted by a Hong Kong family;
- iii. 91 newborns and toddlers (0-2) would, but for PathFinders, have been at significant risk of abuse, neglect and/or trafficking; and
- iv. PathFinders has helped babies and children born and/or living in Hong Kong to obtain birth certificates in Hong Kong and/or in the mother's home country as follows:

2014: 215 (of whom 57 became HK residents/were adopted)
2013: 167 (of whom 49 became HK residents/were adopted)
2012: 174 (of whom 52 became HK residents/were adopted)

Typically the babies and children PathFinders assists fall into the last three categories of Hong Kong identity documentation below. A few cases fall into the first category and once PathFinders finds them, we take them to the Birth Registry as soon as possible.*



(* diagram courtesy of RTHK)

B. 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 under Section 88 of the Inland Revenue Ordinance, Inland Revenue file number 91/10272 and is incorporated in Hong Kong under CR No. 1289039.

PathFinders was founded in 2008 after rescuing two babies born in poverty to migrant women in Hong Kong. What started as a critical intervention for two children quickly paved the way for an organization forming a net under the cracks in Hong Kong’s social and legal safety systems.

To date, PathFinders has helped over 3,100 babies, children and women in Hong Kong.

Around 340,000 FDWs, the majority of whom are female, form an integral part of Hong Kong’s families and communities. We calculate that one in every seven women in Hong Kong of child-bearing age is a FDW. The fact that some of these women will reproduce while employed should not be a surprise. However, guidelines and policies about how FDW pregnancies and babies should be handled and cared for successfully and lawfully is lacking. The result is confusion and concern for both employer and employee at a contractual, emotional

and employment level. And extreme danger and health risks for the mother and baby, and potentially the greater Hong Kong population.

Despite Hong Kong having maternity and discrimination protections enshrined under both domestic and international laws, these women and their babies seldom benefit from those protections. Yet, when a FDW becomes pregnant, they are too often unlawfully dismissed by their employer.

Afraid and unsure of their options, these mothers-to-be end up in highly precarious situations endangering their own well-being and that of their baby.

These women are homeless, penniless, jobless, denied access to healthcare and many of them overstay their visas because both physically and practically they cannot leave. They may contemplate self-induced abortion and even suicide.

The babies then born to these migrant women are among the most vulnerable and deprived children in Hong Kong. Born in extreme and unsupported circumstances, sometimes outside the public healthcare system, they grow up in slums and other environments detrimental to their development and future. These babies have either no, or seriously compromised, access to critical and essential services including a legal identity, immunisations and medical care, shelter and education.

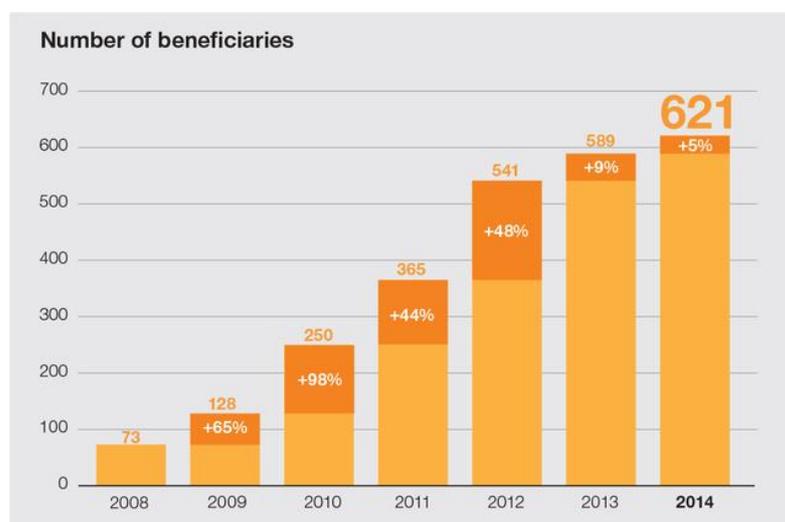
In this fragile state, these babies and their mothers easily fall prey to the most dangerous and frightening sectors of our society. They are easily exploited to devastating effect.

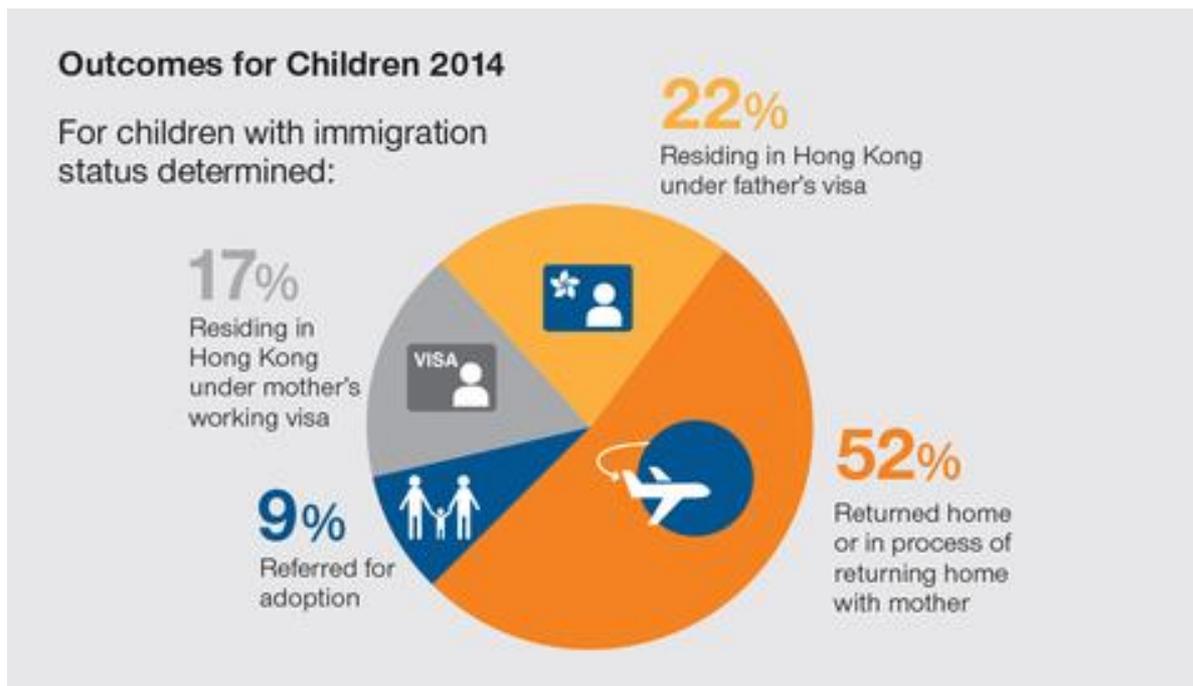
It is typically under these circumstances that they approach PathFinders for help.

PathFinders works with pregnant, migrant women and mothers to help them become self-sufficient and to plan for a future in the best interests of their child. We help our beneficiaries gain access to the services available to them and which they may not be aware of. We invest our resources in filling critical social, health and welfare services gaps.

PathFinders receives no government funding. Our programmes are wholly reliant on the generosity of individuals, foundations and the corporate community.

In 2015 caseload is already up 22% on last year. Our caseload trend is set out below;





The Hong Kong government, including public hospitals, does not make available any statistical information in relation to the number of FDWs becoming pregnant and/ or the number of children born to FDWs in Hong Kong.

PathFinders estimates that there may potentially be over 6,000 pregnant FDW women, mothers and their children in Hong Kong.

Of the pregnant women and mothers PathFinders has assisted, approximately 65% of them had overstayed their visas (thus becoming undocumented) prior to approaching us for service.

Year on year the number of women and children seeking assistance from PathFinders has grown aggressively and we expect to serve over 650 babies, women and children in 2015.

C. The Situation Impacting PathFinders' Babies, Children and Women

PathFinders:

- a. works to ensure that every vulnerable child born in Hong Kong obtains a birth certificate and that their mothers know how to use the birth certificate to register their child should they return to their home country. This is crucial and enables the children to benefit from the social welfare and educational services offered in their home country and, once grown up, to participate in voting, be lawfully married, etc. All things that only a person who is registered as existing can do; and
- b. helps both mother and child to regularise their legal status with the Immigration Department. PathFinders helps the babies, children and women to 'surrender' and they typically become 'recognizance' holders while their immigration status is investigated

D. The risks for the babies and children born to FDWs in Hong Kong

A child's right to be documented is impaired – no free access to Birth Certificate:

For penniless, migrant mothers, paying HK\$140 for a Birth Certificate can be impossible. There is no easily accessible or well-communicated government mechanism in place to review her specific situation and if appropriate apply for a waiver of the cost of issuing a Birth Certificate. And so PathFinders funds and ensure our clients obtain Birth Certificates. However, a change in the system is necessary to permanently close this gap.

No entitlement to social services:

Children born to FDWs who do not have a valid employment contract, (regardless of whether they are “documented”), have no residency rights in Hong Kong. The only exception to this is when their biological father is a Chinese or a Hong Kong Resident and is willing to sign at the Birth Registry to attest to the fact that he is the biological father.

Without residential status, these Hong-Kong-born children are not entitled to receive any social security support, medical care including basic immunisations, after-birth health check-ups or education.

Inadequate protection and enforcement of their mothers' rights when pregnant:

Typically these mothers do not have savings to deal with emergencies and, once they are fired, they become homeless (a ‘live-in’ rule attaches to their employment). They are unable to afford accommodation and food, do not have access to Social Welfare Department’s services, food bank, International Social Services assistance, financial assistance, and have no money to cover even their most basic daily needs.

Once fired, they have two weeks in which to find a new job, after which time they need to leave Hong Kong. It is virtually impossible for a pregnant women, let alone a FDW, to find a new job. Many are too pregnant to fly. Her pregnancy, combined with a fear of returning home pregnant perhaps with a mixed-race child conceived out of wedlock or by force, often results in the mother overstaying her visa and remaining illegally in Hong Kong. Once a mother has overstayed her visa, her child, when born, assumes the same immigration status as the mother - they are undocumented.

Undocumented children are extremely vulnerable to lack of nurture, malnutrition and disease, abuse, neglect, abandonment and trafficking.

No access to public health care, particularly perinatal care:

Perinatal care is critical to all unborn and new born babies. Even if a mother, who was formerly a FDW, is able to extend her visa to legally remain in Hong Kong (which can happen when a mother pursues claims for unlawful dismissal through the Labour Department and/or for discrimination through the courts) and is therefore considered to be “documented”, she will still have no access to government-subsidised public perinatal care or CSSA.

Under current government policy, these “documented” former FDWs who are pregnant can only access medical care through public hospitals in emergency circumstances (such as when she is in labour) and then will be charged penalty/private hospital rates they cannot afford. This deprives the unborn or newborn baby of the right to be born in a safe environment. This, in turn, reflects poorly on

our community. In addition, this lack of early and timely perinatal care can be extremely risky to the unborn or newborn baby and the mother.

E. 13 Recommendations for Consideration

1. That a government-led, cross-sector working group be established to develop strategy, protocols, community-communications and campaigns to ensure that every child born in Hong Kong is counted and has an legal identity by, say, the end of 2016 and then on an ongoing basis. The intention is to establish and record the child's existence as soon as possible and ideally time-bound to within 12 months from birth. Establishing residency in Hong Kong is not the primary focus. We recommend that the working group include representatives from:

- Government: Immigration Department and Birth Registry, Social Welfare Department, Labour and Welfare Department, Police, Hospital Authority, Central Policy Unit, etc;
- Consular representatives (affected citizens); Indonesia, Philippines, Sri Lanka, Thailand, Bangladesh, Burma, etc;
- Consular representatives (human trafficking stakeholder): e.g. United States of America which collects data about human trafficking in Hong Kong and globally for the annual TIP report);
- Agencies and NGOs: International Organisation for Migration; UNICEF; Hong Kong Committee on Children's Rights, PathFinders, etc;
- Academics: Law and Public Policy Departments at CUHK, HKU, City U, HKIEd; and
- Family Court and Judiciary

2. One easy fix would be for public hospitals to provide the parent, free of charge, a printed copy of the 'birth return' already produced by the hospital. In PathFinders' experience the hospitals sometimes delay sending the birth return to the Birth Registry if the hospital bill remains unpaid. This punishes the child unduly when there are alternative ways to ensure payment can be recovered. This copy 'birth return' could then serve as an interim birth certificate and form of identity and must be accompanied with linguistically appropriate birth registration instructions;

3. That the Hong Kong government, specifically public hospitals, do research, record, require and make publicly available longitudinal information about the number of pregnant FDWs and the number of children known to be, and have been, born to FDWs in Hong Kong;

4. For babies born outside a hospital, whose births are currently investigated by the General Investigations Unit of the Immigration Department, set a time limit of one month to complete the investigation. Currently the investigation takes around 3 months and severely hampers the child's ability to obtain critical new born vaccinations;

5. For all births, make the booking of the online Birth Registry appointment independent from whether or not the hospital has completed/returned return the Birth Return;

6. For registering births to children not parented by the woman's husband, no longer require the husband's name documents unless the woman declares otherwise.

7. For a recognisance holder, it currently takes around 2-3 months to obtain a birth certificate for her child. Recommendation is to allow a recognisance holder to obtain the birth certificate within 4 weeks;
8. Ensure that all FDWs, including those who have been dismissed from their employment when pregnant, obtain access to essential perinatal health services at Public Hospitals and that their children have access to post-birth medical follow up while they remain in Hong Kong;
9. Where any parent lacks the financial means to pay for a birth certificate, instigate a system to review the situation and apply a fee waiver or subsidy accordingly and in a timely manner. Ensure that this is well-communicated;
10. Provide an amnesty period of, say, 6-12 month for all parents to register their children, without fear of reprisal against the babies and children;
11. Hong Kong Police Force have community liaison officers for ethnic minority groups. Extend this service to other government services including those impacting undocumented babies, children and parents. As Hong Kong becomes more and more international, this will be necessary in any event to ensure our whole population is adequately identified and provided for;
12. That anti-child trafficking measures are imposed at all HKSAR entry-egress points requiring additional certification to prove that a child travelling is indeed accompanied by a parent or other properly authorised person. This is especially important in Hong Kong where children do not necessarily carry the name of their mother.
13. Provide clear, practical guidelines and policies to all stakeholders (Government Departments, employers, agencies, FDWs) about how successfully and lawfully to manage all aspects of pregnancy, birth and maternity. This guidance to keep the best interests of the unborn and new born children as its core.

F. CLOSE

Thank you in advance for considering our submission. We welcome further communication and collaboration.

Please contact us should have any questions or require further information.

Very best,



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