

By email only:

Standard Working Hours Committee: swhc@swhc.org.hk

PathFinders Limited
Submission to Hong Kong's Standard Working Hours Committee in response to its Public
Consultation on Working Hours Policy Directions (Second-stage Consultation)
<http://www.swhc.org.hk/en/consultation/index.html>

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About PathFinders

PathFinders is a Hong Kong charity assisting pregnant, migrant women, mainly foreign domestic workers (**FDWs**), and their Hong Kong-born children. To date, PathFinders has helped over 3,740 of Hong Kong's most vulnerable babies, children and women;

PathFinders welcomes this public consultation and the opportunity to make observations and recommendations to Hong Kong's Standard Working Hours Committee (**Committee**).

Submission Headlines

The purpose of this submission is to express PathFinders' opinion about the impact of standard working hours on Hong Kong's FDWs and specifically their impact on the pregnant, migrant women and mothers we help at PathFinders – and, by extension, the impact on their unborn babies;

We recommend that this Committee ensure that FDWs, and specifically pregnant FDWs, are included in its deliberations on Standard Working Hours (**SWH**). Further, that any Standard Working Hours Scheme (**SWHS**) be extended to FDWs, and specifically pregnant FDWs;

A. **FDWs in Hong Kong**

1. **Economic Contribution**

FDWs are employed by around 10% of Hong Kong's households. Without FDWs, many employed men and women would need to stay at home and/or work part-time to take care of their children, of their elders and to do housework. Alternatively, they would need to employ local domestic workers at significantly higher rates of pay;

The Asian Migrant Centre estimates that FDWs contribute at least HK\$13.8 billion annually to Hong Kong's economy, being almost one percent of Hong Kong's GDP.¹ FDWs' contributions should be recognized. FDWs should be protected against exploitation and overwork as for any other employed person in Hong Kong. There is no reasonable excuse for excluding any employees, including FDWs, from SWH protections;

2. **Current working situation**

¹ Asian Migrant Centre (2005). Asian Migrant Yearbook 2005, p. 132. Available at: http://media.wix.com/ugd/c2180c_0ed72c7dc2f3434e98051727c5291bcf.pdf

² 'Modern Slavery In East Asia', February 2016, Farsight, pg. 44. Available at: <http://seefar.org/wp-content/uploads/2016/02/Farsight-Modern-Slavery-in-East-Asia.pdf>
http://media.wix.com/ugd/c2180c_0ed72c7dc2f3434e98051727c5291bcf.pdf

~~PF submission – Issue and concerns – UN Committee on the rights of the child – 2013Sep. Available at: _____~~

Domestic work can often involve irregular/unfixed hours of work. Consequently, such work can also present challenging working conditions. A 2016 survey² found that 24% of FDWs in Hong Kong consider working hours and conditions as the most distressing and stressful part of their job. Fourteen-hour workdays are common. FDWs are still too often expected to be on call 24/7. The same study also indicates that the prevalence of employment practices associated with human trafficking is high. It is both common knowledge and widely accepted that regulated working hours can prevent or limit situations of forced labour;

Forcing FDWs to work long hours harms their mental and physical well-being. Working hours, and breaks, are an especially crucial consideration for the women PathFinders helps, both during and after pregnancy. This is especially the case for women who undertake ongoing and physically demanding labour including housework, shopping, lifting children and elders. These women deserve the same care and treatment during pregnancy as all other pregnant women in Hong Kong;

Based on PathFinders' experience,³ in the rare cases where the employer of an FDW continues to employ the FDW once the pregnancy is announced or discovered, the absence of any limit or guidance on maximum working hours presents significant challenges for the employer and the FDW, as well as, most critically, for the future health and wellbeing of the unborn and developing baby;

B. Recommendations

1. To implement the “Big Frame” and “Small Frame” for FDWs

1.1 To provide clear direction in relation to working hours for pregnant employees, especially for pregnant FDWs

Big Frame: All Pregnant Employees: PathFinders supports a legislated approach to implementing the regulation of working hours for all employees in Hong Kong (the “Big frame”).⁴ We urge this Committee specifically to include provisions for all pregnant employees. Enough resting time for pregnant employees is essential for sustaining and maintaining the physical and mental health of both unborn baby and mother. Setting a reference point on standard working hours during pregnancy will assist employers and employees in determining what is the reasonable and appropriate number of working hours during pregnancy;

² ‘Modern Slavery In East Asia’, February 2016, Farsight, pg. 44. Available at: <http://seefar.org/wp-content/uploads/2016/02/Farsight-Modern-Slavery-in-East-Asia.pdf>

³ PF submission - Issue and concerns - UN Committee on the rights of the child_2013Sep. Available at: http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders_UNCRC_2013Sep.pdf

⁴ LC Paper No. CB(2)1049/15-16(01). Available at: http://www.legco.gov.hk/yr15-16/english/panels/mp/mp_swh/papers/mp_swh20160315cb2-1049-1-e.pdf

Small Frame: All Pregnant FDWs: PathFinders recommends that the proposed statutory regime includes specific directions about the working hours of FDWs generally and, in any event, for pregnant FDWs specifically (the “Small Frame”).⁵ Under Hong Kong’s laws, maternity and discrimination protections already apply to FDWs; by extension, it makes sense to ensure that SWH protections apply to pregnant FDWs (indeed, to all pregnant women and their unborn babies), thereby ensuring that all unborn and developing babies are guaranteed the same, fair start in life;

Small Frame: All FDWs: With little or no contractual bargaining power, FDWs need statutory protections to ensure their wellbeing at work. The FDW Standard Employment Contract (Form ID 407) can be amended to include specific reference to SWH legislation. Guidelines for FDWs, the agencies and employers should also be introduced;

1.2 Good Practices in other jurisdictions

This Committee seeks to exclude FDWs from SWH protection. It has sought to explain and justify this exclusion by relying on the fact that other jurisdictions exclude their domestic workers from SWH protection because the nature of domestic employment varies significantly from other forms of employment. We disagree with this approach;

If Hong Kong’s SWH legislation will apply to local domestic workers, it can, indeed should, apply to FDWs. The very nature of their work is the same;

Further, Canada, South Africa, Uruguay and France include domestic workers within their labour laws and provide them with SWH protection. These examples, summarised below, demonstrate that it is possible to include domestic workers within the remit of SWH legislation;

PathFinders recommends that the HKSAR further review the feasibility of applying SWH legislation to Hong Kong’s FDWs;

i) Canada

Live-in domestic workers are included in its labour law.⁶ For example: In Ontario, the Employment Standards Act, 2000 (ESA) stated the standards on hours of work of domestic workers;

⁵ LC Paper No. CB(2)1049/15-16(01). Available at:

http://www.legco.gov.hk/yr15-16/english/panels/mp/mp_swh/papers/mp_swh20160315cb2-1049-1-e.pdf

⁶ Ontario Ministry of Labour Domestic Worker Fact Sheet: Does the ESA cover domestic workers? Available at: https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_domestics.php

Employment Standards Act, 2000, S.O. 2000, c.41 s.17 (1):

In general, no employer shall require or permit an employee to work more than:

- (a) Eight hours in a day or, if the employer established a regular work day of more than eight hours for the employee, the number of hours in his or her regular work day; and
- (b) 48 hours in a work week;⁷

The working time can be flexible, as stated in S.O. 2000, c. 41 s. 17 (2), employers and employee can negotiate and reach an agreement about the working hours per day/week. Any such agreement should be in writing. Domestic workers are eligible for overtime pay, as for other workers;

ii) South Africa

South Africa's laws regulate the working hours and overtime payment of domestic workers;

The Basic Conditions of Employment Act, Chapter 2, section 9.1

For normal hours (excluding overtime), a domestic worker may not be made to:

- (a) work more than 45 hours a week
- (b) work more than 9 hours per day for a 5-day work week
- (c) work more than 8 hours a day for a 6-day work week⁸

For overtime work, a domestic worker may not work more than 15 hours' overtime per week. Also, he or she may not work more than 12 hours on any day, including overtime. And overtime must be paid at one and a half times the employee's normal wage or an employee may agree to receive paid time-off;⁹

By virtue of the above, the South African government has protected domestic helpers from exploitation by setting maximum working hours and by specifying the salary for overtime work;

iii) Uruguay

⁷ Employment Standards Act, 2000, S.O. 2000, c. 41

https://www.ontario.ca/laws/statute/00e41?_ga=1.119267276.475511318.1467602125#BK31

⁸ Republic of South Africa. Basic Condition of Employment Act. Available at:

<http://www.labour.gov.za/DOL/downloads/legislation/acts/basic-conditions-of-employment/Act%20-%20Basic%20Conditions%20of%20Employment.pdf>

⁹ Republic of South Africa Labour Department (2012). Domestic Worker what you should know. Available at

<http://www.labour.gov.za/DOL/downloads/documents/useful-documents/basic-conditions-of-employment/domesticworker2012.pdf>

In 2012, Uruguay was the first jurisdiction to ratify the ILO Domestic Workers Convention No. 189;¹⁰

In Uruguay, under Law no.18.065 (Domestic Work) Article 2, the maximum working hours for domestic workers are 8 hours per day up to 44 hours per week;¹¹

iv) France

French labour laws apply to domestic workers. The standard working hours of domestic workers should be 35 hours per week. The working day may not exceed 10 hours. The maximum working day may be extended to 12 hours under a collective agreement. In principle, no more than 48 hours a week may be worked;¹²

2. To implement the SWH recommendations of International Labour Organisation (ILO) Convention No. 189 and other applicable international treaties by enacting local SWH legislation to apply to FDWs

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families provides that migrant workers "*shall enjoy treatment not less favourable*" than that of the local workforce. Excluding FDWs from SWH protections would exclude 4.5% of Hong Kong's population. That population currently comprises over 340,000 individual workers. PathFinders urges the Committee to reconsider this proposed stance and to include domestic workers, both local and foreign, with locally ratified SWH legal protections;

In 2014, in its review of Hong Kong, the United Nations' Committee for the Elimination of all Forms of Discrimination against Women, expressed its concerns that Hong Kong's FDWs continue to be subjected to abuse and unfavourable working conditions including long working hours; "*it recommended Hong Kong fulfills the requirements under ILO Convention No.189 concerning decent work for domestic workers.*"¹³ Further, ILO C189 calls for adopting "*measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work and*

¹⁰ Human Right Watch (2012). Uruguay: First to Ratify Domestic Workers Convention. Available at: <https://www.hrw.org/news/2012/05/01/uruguay-first-ratify-domestic-workers-convention>

¹¹ Republica Oriental Del Uruguay. Ley Nº 18.065. "Artículo 2º (Limitación de la jornada).- Establécese la limitación de la jornada laboral de las/os trabajadoras/es domésticas/os en un máximo legal de ocho horas diarias, y de cuarenta y cuatro horas semanales." Available at: <https://sip21-webext.parlamento.gub.uy/temporales/leytemp2134279.htm>

¹² Labour Law in France. Available at <http://www.cfe-eutax.org/taxation/labor-law/france>

¹³ Concluding Observations of the Committee on the Elimination of Discrimination against Women , 2014, (para 64, 65): [http://www.lwb.gov.hk/UNCEDAW/documents/CEDAW%20Concluding%20Comments%203rd%20Hearing%20\(HK%20Part\).pdf](http://www.lwb.gov.hk/UNCEDAW/documents/CEDAW%20Concluding%20Comments%203rd%20Hearing%20(HK%20Part).pdf)

*overtime compensation (..)*¹⁴ PathFinders urges this Committee to urge HKSAR's Government to consider ratifying ILO Convention No. 189. Failing ratification of C189, to urge the Government to enshrine within domestic legislation the same protections recommended under ILO C189, and specifically those relating to SWH protections.

Close

We re-iterate our concerns regarding pregnant, migrant FDWs and the impact that no SWH protection has on their unborn babies during the woman's pregnancy. Every child deserves a fair start in life.

We specifically encourage this Committee to seize this opportunity and ensure that the unborn babies of all working women are protected by implementing SWH protections for all employed, pregnant women in Hong Kong, including FDWs.

We thank this Committee for considering PathFinders' submission.

Please contact us should you wish to discuss our comments and/or require clarification.

Very best,



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¹⁴ Domestic Workers Convention, 2011 (No. 189) (Article 10). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189, see as well Domestic Workers Recommendation, 2011 (No. 201). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R201