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PathFinders' Submission to UN Working Group regarding Good Practices in the Elimination of Discrimination against Women with Regard to the Right to Health and Safety

[Reference: <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/GoodpracticesintheeliminationofDAW.aspx>]

I. About PathFinders:

PathFinders is a Hong Kong incorporated and registered charity with tax-exempt status.

PathFinders' mission is to ensure that the most vulnerable children born in Hong Kong and their migrant mothers, are respected and protected. Please see PathFinders' 2014 Annual Report for more information:

<http://www.pathfinders.org.hk/public/2015/07/our-2014-annual-report/>

To date, PathFinders has helped over 2,800 babies, children and women. The majority of PathFinders' adult clients are female Foreign Domestic Workers ("**FDWs**").

FDWs form a critical part of the Hong Kong Special Administrative Region ("**HKSAR**"). They play a vital role in maintaining the HKSAR's position as a global economic hub. They provide their employers with the choice and freedom to create dual-income households, to access a leisure opportunities and to save on household and family care services. Their spending is of direct economic benefit to the HKSAR as are the savings incurred by the employer and state in being able to outsource the welfare costs of child and elder care at rates below the standard minimum wage levels for other employees.

PathFinders supports its clients by:

1. Providing emergency humanitarian response and support (including shelter, food and clothing), access to medical care and access to legal support, documentation and assistance;
2. Once the crisis is over, by delivering practical and professional skills and education workshops and by conducting community outreach days to educate FDWs about their health, legal and maternity rights; and
3. Researching, collaborating and speaking for change towards a better future for PathFinders' clients within the HKSAR and in their countries of origin.

PathFinders receives no government funding.

PathFinders' recommendations for this Working Group's consideration are marked in bold below.

II. Overview:

One in 7 women of child-bearing age in the HKSAR is employed as a FDW.¹ Of the 330,325² FDWs in Hong Kong, over 80% are women in their prime reproductive years. It can, and should, therefore, reasonably be anticipated that some will become pregnant, planned or otherwise.

It is a sad reality that FDWs can face a desperate conundrum if pregnant in the HKSAR. Limited real protection, at law and in practice, leaves pregnant FDWs financially and practically vulnerable. Social and cultural stigmas exacerbate these problems.

The HKSAR benefits from an impressive, heavily subsidised, public healthcare system. While employed, FDWs have access to this system the same as any other lawful resident. However, unlike other residents, this access then ceases within two weeks of their employment being terminated. This is because they cease to be ‘eligible persons’ even when the employer has terminated the employment unlawfully³ and/or where sexual and/or other physical forms of violence are reported to the police.

These pregnant, homeless, unemployed women, and their infants, can only then access the public healthcare hospital system in an emergency⁴ but will be charged penalty rates they simply cannot afford.

III. Good practices & recommendations:

1. Access to Healthcare

The right to perinatal care is enshrined in CEDAW and in the World Health Organization guidelines. Commitments by State Parties to guarantee these rights have further been affirmed in the Program of Action of the International Conference on Population and Development (1994) as well as in the Beijing Platform for Action (1995).

While the HKSAR enjoys a world-class public healthcare system, unlawfully terminated, pregnant FDWs are not entitled to public healthcare services, except in an emergency. Nor are their babies. They do not receive perinatal care and they and their babies go unimmunized. Regular first-world standard perinatal care is not classified as emergency care thereby putting both mother and child at risk. Unimmunized children also present a health

¹ See Table 1.1 & 1.1A, 2013 Figures at Women and Men Key Statistics by Hong Kong Census and Statistics Department at <http://www.statistics.gov.hk/pub/B11303032014AN14B0100.pdf>
Women of Child-bearing age between 15-49 See World Health Organization definition <http://www.who.int/reproductivehealth/topics/infertility/definitions/en/>

² Hong Kong Immigration Department, April 2015

³ See Hospital Authority Ordinance Gazette Reference G.N. 5708 Part 1 (i) at <http://www.gld.gov.hk/egazette/pdf/20131739/egn201317395708.pdf>

⁴ See Samaritan Fund Eligibility Criteria (b) at http://www.ha.org.hk/visitor/ha_visitor_text_index.asp?content_id=212018

risk to the broader HKSAR population: the HKSAR is especially densely populated and humid, with a recent history of public healthcare scares and outbreaks.

PathFinders urges the government of the HKSAR:

- 1. to ensure pregnant FDWs are treated the same as every other employee, both at law and in practice;**
- 2. to raise public awareness and to provide training about maternity rights to all relevant parties;**
- 3. to review the access of FDWs to the public healthcare system;**
- 4. to conduct a public healthcare risk assessment specifically in relation to this vulnerable population of newborns, women and children.**
- 5. to require the Women’s Commission of the HKSAR (a statutory body and the institutional mechanism tasked to “take a strategic overview over women’s issues, develop a long-term vision and strategy for the development and advancement of women, and advise the Government on policies and initiatives which are of concern to women.”⁵) to research and report on the health and welfare status of FDWs and babies born to them in the HKSAR.**

2. Sexual and Reproductive Health Rights

Sex education and safe, effective, affordable family planning services are vital to a woman’s sexual and reproductive health rights.

In 2015, the Family Planning Association of Hong Kong (“FPAHK”) enhanced its service offering for FDWs. FPAHK conducted 8 language and culturally appropriate education sessions with PathFinders’ clients about sexual health and family planning, and participated in PathFinders’ community health education festival for migrant workers. FPAHK also provided PathFinders with 9,900 information brochures, translated into Bahasa Indonesian (around 60% of PathFinders’ clients are Indonesian) about birth control methods, emergency contraception and unplanned pregnancy, and a further 9,900 leaflets in English.

With one in 7 women of child-bearing age in the HKSAR working as a FDW⁶, PathFinders urges the FPAHK and women’s health clinics to address further their service provision to FDWs by making services more easily accessible and user-friendly to FDWs, for example opening service hours on Sundays when the majority of FDWs have their statutory weekly rest day. Additionally, increased knowledge dissemination is required to the migrant and FDW communities about the FPAHK and women’s health clinic services that are available, the terms on which they are available and how to access them.

⁵ See http://www.women.gov.hk/colour/en/about_woc/introduction.htm

⁶ See Table 1.1 & 1.1A, 2013 Figures at Women and Men Key Statistics by Hong Kong Census and Statistics Department at <http://www.statistics.gov.hk/pub/B11303032014AN14B0100.pdf>
Women of Child-bearing age between 15-49 See World Health Organization definition <http://www.who.int/reproductivehealth/topics/infertility/definitions/en/>

3. Equality and non-discrimination using public health services

In 2014, 52% of FDWs in the HKSAR were from the Philippines and 46% were from Indonesia.⁷ Language and cultural characteristics of migrants, FDWs and their children need to be considered and services and programmes developed and tailored appropriately.

The discrimination these women and children face is, in part, due to a lack of understanding of their cultural and linguistic needs. In PathFinders' experience, a client's visit to hospitals and family planning centres is greatly improved when the client is accompanied by a trained PathFinders' medical professional or social worker. Further, at centres where PathFinders clients and staff have been regular visitors since October 2014, the quality of service and level of cultural understanding of hospital staff and medical professionals has notably improved.

PathFinders is aware of occasional, non-mandatory, free sensitivity training sessions for social workers and police staff organized by non-governmental organizations, about the needs of female migrant workers and ethnic minority women.⁸ In addition, PathFinders has encountered instances of high quality professional service from well-trained and considerate staff at Queen Mary hospital, the major medical research and training centre of Hong Kong University.

PathFinders urges that mandatory sensitivity training be provided not only for service providers but also for all officials who come into contact with these vulnerable women and children to:

- 1. deal with them in a non-judgmental, culturally sensitive way, in their own language and/or with the help of a suitably trained interpreter; and**
- 2. detect indicators of abuse that may present differently due to cultural and/or language differences.**

PathFinders recommends that HKSAR government inter-departmental collaboration, communication and cooperation be improved given the multi-dimensional issues PathFinders' clients face, many of which are seemingly dealt with in isolation by government departments who function without reference to each other. Of particular importance for PathFinders' clients are the interactions between the Labour Department, the Immigration Department, the Birth Registry, the judicial system (police, courts, prisons), the Hospitals Authority and the Labour and Welfare Bureau.

⁷ Hong Kong Immigration Department, 2014 Statistics

⁸ See http://www.rainlily.org.hk/en/our_act/new_act/page/3/?p_id=6176&lang=en

4. Services for Victims of Sexual and Domestic Violence

PathFinders' experience is that FDWs who are victims of domestic and/or sexual violence in their employer's household (where they are required to live) are reluctant to report the attacker to the police because they fear what the consequences might be for their employment and welfare and they are too frightened to leave. While these FDWs remain in employment, they have an income, housing and continue to have access to government-subsidized healthcare and other welfare services.

The situation is almost the reverse for those FDW victims who leave their employment as a result of such violence. They lose their income, are denied access to government-subsidized health and welfare services and are either homeless or must rely on friends or charity for shelter, food and other humanitarian support. In turn, these conditions discourage FDWs from reporting and pursuing the investigation and prosecution of their attackers.

PathFinders comes into contact with both groups (still employed and those who have run away) when the violated FDW either knows she is, or suspects she may be, pregnant. Both groups are in urgent need of support.

PathFinders recommends the following:

- 1. Educate FDWs that sexual and domestic violence is a crime: design and implement a culturally and linguistically appropriate communication plan to educate FDWs, employment agencies and employers that violence in all its forms is a crime in Hong Kong;**
- 2. Review, clarify and enhance forms of victim support: communicate clearly-publicized guidelines about what forms of victim support including criminal compensation are available for FDWs;**
- 3. Enable reporting through other media: develop and publicize media, including social media and SMS avenues that operate 24 hours, through which FDWs can report allegations of rape and other criminal acts of violence to the police and other appropriate crisis intervention services. In PathFinders' experience, the isolation imposed by the live-in requirement, especially where the employer/household is the abuser, can prevent FDWs from ever filing a complaint in person;**
- 4. Review and revise immigration policy: allow FDWs who are victims of sexual violence and who become pregnant to remain in Hong Kong on a visa that categorizes her as a resident for the specific purpose of accessing public health and welfare services.**
- 5. Where an FDW (such as the recent case of Erwiana⁹) lodges a complaint of domestic/sexual violence against her employer and/or a connected party, relax or waive the live-in requirement pending completion of the police investigation and prosecution. In this situation, officials and service staff should respond in the same way as in a case of domestic violence and make available for these FDWs the same**

⁹ See press coverage of Erwiana Sulistyarningsih at South China Morning Post <http://www.scmp.com/news/hong-kong/article/1724621/hong-kong-employer-who-abused-indonesian-maid-erwiana-jailed-six>

level of victim protection and support as other victims of family and domestic violence. Additionally, develop alternative safe-shelter options for the interim period specifically for FDWs.

5. Access to Justice to Secure the Right to Health and Safety

In PathFinders' experience, pregnant FDWs are often unlawfully dismissed from their employment purely because they are pregnant. This unlawful act has the impact of compromising their security.

As a result of this unlawful termination of employment, they and their unborn or new-born infant are homeless and without food or income. They are highly vulnerable to trafficking and/or abuse.

PathFinders urges the HKSAR government:

- 1. to set out explicitly within the Immigration Department's standard Foreign Domestic Helper employment contract that they FDWs are entitled to pregnancy and maternity leave and protections, and**
- 2. to educate employers and employment agencies that it is both a civil and criminal offence to terminate the employment of female employees solely on the grounds of pregnancy and that these employees include FDWs.**

The Equal Opportunities Commission ("EOC") is a HKSAR statutory body charged with eliminating discrimination, promoting equal opportunities, helping people understand their rights and obligations under Hong Kong's anti-discrimination legislation and providing redress for discrimination.¹⁰ There is legislation dealing specifically with sex and pregnancy discrimination and this protection against discrimination applies to employed FDWs.

However, the complaint-driven approach of the Equal Opportunities Commission creates some challenges for FDWs. It does not sufficiently recognize and/or accommodate and/or make provision for the fact that the FDWs not be capable of filing a complaint due to a lack of awareness of their rights, or that the FDWs may be culturally predisposed to non-confrontation, or that the FDWs receive pressure from their employers to resign from their job because the employer or the agency tells them (wrongly) that being pregnant is a terminable offense in the FDW employment context. These circumstances invariably impact the ability, competence and, therefore, the extent to which vulnerable victims of discrimination can successfully avail themselves of the legal protections which do exist.

Even if a pregnant FDW is aware of her maternity rights and obligations, when she receives pressure from her employer to resign from her job, the EOC suggests that the worker lodge a complaint with the EOC. However, filling in a complaint form and gathering evidence of

¹⁰ See

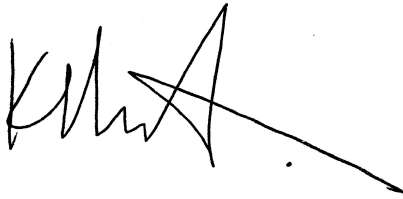
<http://www.eoc.org.hk/eoc/graphicsfolder/showcontent.aspx?content=vision%20and%20mission>

discrimination are often simply beyond the knowledge and skill of an FDW, especially when she is pregnant and, quite often, homeless and penniless.

PathFinders urges:

- 1. the EOC to take more of a leading/intervenor role to support this vulnerable population and then, as appropriate, to initiate investigation, civil claims and criminal prosecutions as appropriate.**
- 2. the EOC and the Labour Department to collaborate more in connection with maternity claims as well as the prosecutions of employers terminating the employment of pregnant employees unlawfully;**
- 3. the Women’s Commission, EOC and HKSAR government departments as appropriate, to create an office, ombudsman, or similar, tasked with watching over, and ensuring the welfare of the FDW population and affected parties (consulates, employers, agencies);**
- 4. the HKSAR government to review FDWs’ practical ability to access the civil and criminal justice systems. A FDW who has been unlawfully terminated and is making civil and/or criminal claims against her former employer may not be granted the ability to work (if she is pregnant, it is almost impossible for her to find a job) or, alternatively, be provided with housing and social security payments to cover her living and visa extension expenses pending hearing or trial. This lack of practical support severely impedes and, indeed, often disables this group from making claims in practice. The reality is that they cannot afford to stay in Hong Kong to pursue their legal claims.**
- 5. the HKSAR government to waive the costs of visa extensions for FDWs who seek legal redress. We urge the HKSAR government to ensure that those seeking legal redress have effective access to humanitarian and welfare support and interpretation services, at all stages of redress, including specifically the conciliation process at the Labour Department and in preparing for criminal proceedings.**
- 6. the HKSAR government to open the Labour Tribunal office on a Sunday (the most popular weekly statutory rest day for FDWs) and to employ full-time Indonesian and Tagalog speaking officers to process claims.**
- 7. The HKSAR government to review the Labour Tribunal’s claims’ adjudication process to ensure FDWs are not inappropriately pressured to settle and/or required to sign draconian and unfair settlement agreements in a language other than their mother tongue.**

Thank you for considering our submission. Should this UN Working Group have questions, require further information or clarification, please contact: Rachel Ganly, Research and Communications Fellow, PathFinders at rachelganly@pathfinders.org.hk or Cindy Scarborough, Access to Healthcare Programme Manager, PathFinders at cindy@pathfinders.org.hk.



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