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Clerk to Subcommittee on Children’s Rights
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Hong Kong

PathFinders Limited

Written Submission

to

The Hong Kong SAR’s Legislative Council’s Subcommittee on Children’s Rights

in advance of a meeting on Tuesday 21 February 2017

about

‘Review of Residential Child Care Services’

Submitted on 20 February 2017

Introduction:

PathFinders is a Hong Kong-registered charity with tax-exempt status that assists pregnant, migrant workers, mainly current or former foreign domestic workers (**FDWs**), and their Hong Kong-born children. Given that 1 in 7 women of reproductive age in Hong Kong is employed as a foreign domestic worker, it should be anticipated and provided for that some will reproduce while employed here.

The focus and purpose of PathFinders' submission today is to give a voice to the babies and children born in Hong Kong to these women. These children are some of the most vulnerable children in Hong Kong.

Since inception in 2007, PathFinders has helped over 1,400 newborns and toddlers up to 2 years' age of whom over 140 were in such a vulnerable, abandoned and/or otherwise isolated predicament that they would, but for PathFinders, have been at significant risk of abuse, neglect and/or trafficking. There is no other NGO serving these children. PathFinders receives no government funding.

Main concerns with regard to residential child care services:

PathFinders acknowledges that Social Welfare Department (**SWD**) has developed a guiding document for children in care, the Central Referral System for Residential Child Care Services (**CRSRC**), and welcomes the underlying intentions of this document. However PathFinders is concerned that the document alludes to permanency planning only as an appendix item. Additionally and in particular, PathFinders' concerns relate to:

1. **Permanency Planning:** Despite being included only as an appendix, the CRSRC states correctly that permanency planning for children in care is of paramount importance. PathFinders agrees with this statement since the permanency plan impacts a child for life;

Permanency planning is a process, with specific, time-bound stages, that ensures a permanent environment that caters for the child's developmental needs while also developing nurturing relationships with the parents or carers;

CRSRC Paragraph 2.4 requires social workers to adopt a permanency planning approach and yet fails to stipulate a time-bound approach or deadlines. Further, CRSRC Paragraph 2.5 calls for "regular case reviews" but again no specific, time-bound deadlines are stipulated. This vagueness prevents children in care from receiving the best possible and swiftly actioned care. Further, permanency is not referred to again in the document until the appendices;

The absence of timelines has led to children staying in institutional care for years without any prospect of reunification, guardianship or adoption. The 'regular case reviews' referred to, when and if they do happen, do so without the involvement of, or consultation with, the multi-agency professionals involved in the welfare of the children. It appears that once the initial intervention (where a child is removed from their

parents/carer) is executed, it is anyone's guess as to when the next step will be completed by. This is unacceptable. The impact is that children languish in institutional care because there is no time bound planning, there is failed/delayed execution of that planning and there is no monitoring/control or enforcement of the action steps. This means that there is nothing to stop children from remaining for years in the residential child care system;

Looking at residential child care system in other developed societies, such as in the UK, an officer independent of the Social Welfare Department referred to as an 'Independent Reviewing Officer' is charged with reviewing all the plans for children in care. That officer has authority to question, challenge and make recommendations for welfare care planning and does so within a clear set of timelines. For example, any child entering the care system whether with parental consent or following an application for an order or police protection must have an initial "Looked-After Children's" review within 20 days of entering care, after which a review is held after 3 months and then after 6 months. At the 3 month review, the Independent Reviewing Officer is presented with a welfare care plan which includes care options in order of preference for the child. This plan is drawn up by the allocated social worker and social work team;

Because welfare care planning is of such pivotal importance to a child's welfare (and to avoid drifting and to plan for healthy development of security and attachment) some Local Authorities in the UK have set up a further system of checks whereby a Permanency Planning Panel also reviews children's welfare care plans and progress;

Unfortunately, in Hong Kong, the CRSRC does not specify timelines for resolution of child cares and there is no consequence of failure to act in the child's best interests;

2. **Data Collection and Analysis:** Missing, outdated and non-comprehensive data makes it difficult to review current provision of this service, although CRSRC document paragraphs 7.2.4 and 7.2.5 requires the CRSRC to do exactly that. Incomplete data means that a comprehensive and holistic view of the problems facing a child in residential child care cannot be assessed. Data should include figures of admitted and discharged children but also essential other information such as the number of placements a child goes through, for how long in each placement, how long a child stays in residential care and other relevant information;

The government through collection of data from the Social Welfare Department can evaluate policy and research related to outcomes for children who are looked after at any point in their lifetime. In the UK for example, permanence is a central component of social care policy and therefore data collection and indicators were built into the system to show any breakdowns in permanent exit from care (eg adoption, special guardianship etc) and of permanence within the social care system;

3. **Placement:** Not having any timeframes for children in care has contributed to there being a serious backlog in Hong Kong's residential child care system;

4. **Inclusiveness:** The social worker assigned through the CRSRC is typically is not invited to attend review meetings and should be;

5. **Provision for Linguistic/Ethnic Minority and other Marginalised Groups:** Linguistic/Ethnic minority and marginalised families face particular problems and are too often stigmatised and excluded from typical social welfare and healthcare systems. Specific guidance is required to ensure that their cases are dealt with properly and in a culturally and linguistically sensitive and appropriate manner. Their inclusion should be specifically mentioned when developing policy for residential child care;

PathFinders is aware that children who are born in Hong Kong but without a right of abode here are currently considered as 'non-eligible' persons and so have no access to Hong Kong's social welfare safety net, education system and our otherwise world-class public healthcare system. And yet these vulnerable children have the same needs as all other children here. All children in need should be cared for, regardless of their legal status - this is accepted international practice and endorsed by the UN¹;

6. **Exploring Extended Family Options:** There also appears to be a lack of commitment to exploring extended family options for care of linguistic/ethnic minority and undocumented children. These cases are too often still described to PathFinders as 'troublesome' and creating 'too much work' because the child's extended family is outside Hong Kong. Dealing with these cases requires concerted local as well as international collaboration with the Immigration Department, the Police, Interpol, embassies/consulates, International Social Services, the Red Cross and in-country NGOs, government departments/networks. And so currently, linguistic/ethnic minority and undocumented minority children will typically stay in Hong Kong's residential child care system despite having a willing, capable and proper extended family member outside Hong Kong. This is grossly unfair on the children;

Sample Case: Child Stuck in Residential Child Care Services

The following sample case illustrates the difficulties faced by a child client of PathFinders;

The Social Welfare Department's (SWD) referring caseworker appeared content with just a basic short-term child care plan where the child was being looked after, had a place to live, and was being fed but, crucially, without sufficient effort or focus being placed on securing a realistic permanent care plan for the boy child, called F, who had been in residential care for close to 3 years without a viable permanency plan in place;

F was born in a public hospital in Hong Kong. His mother discharged herself two days later, leaving F in the hospital. Both parents later re-surfaced and took care of F. However, both parents had criminal records and a history of drug

¹ UN Convention on the rights of the Child <https://www.unicef.org/rightsite/files/uncrcchildfriendlylanguage.pdf>

abuse. F's case was determined to be one of child neglect after methamphetamine was found in his urine when he was 7 months' old. The parents were deemed to be unfit and a Multi-Disciplinary Case Conference (**MDCC**) was held. This was some two years ago. F is now almost 5 years old;

Present at the MDCC were representatives from International Social Services (which provides in-kind and social support to asylum seekers on behalf of SWD), the hospital, PathFinders, SWD and the Police Department. At the MDCC, the following was noted:

1. Both parents had admitted to taking methamphetamine on numerous occasions;
2. F was found to have traces of methamphetamine in his urine;
3. Both parents had criminal records;
4. The parents had missed most of F's medical appointments scheduled by the hospital, had neglected to collect medication prescribed for F and had made no effort to ensure he received the medication;
5. They did not have a set routine for F in terms of eating and sleeping, and had left F alone in their flat;
6. Both parents had failed to attend numerous appointments at the Immigration Department and at the Birth Registry, F's birth was still not registered and he had no identity papers or nationality;
7. The parents had an argumentative relationship and the mother alleged that she had been subjected to domestic violence by the father;
8. Both parents had significant debts; and
9. It was noted that neither parent was able to keep a hygienic environment for F and they were negligent and careless about feeding him.

The outcomes from the MDCC were that:

1. All parties agreed that this was a case of child neglect and there was a high risk of it becoming a child abuse case;
2. All parties highly recommended that a one-year Care and Protection Order (**CPO**) be sought;
3. For F's safety and protection, all parties strongly recommended residential child care for F;
4. PathFinders recommended that arrangements be made for F to obtain a birth certificate as soon as possible;
5. PathFinders recommended that arrangements be made for F to receive the necessary standard childhood immunisations as soon as possible; and
6. All parties recommended that the parents attend drug rehabilitation as well as counseling to improve their parenting skills;

After the MDCC, a one-year CPO was put in place and F was transferred from the hospital to an institution as a 'temporary measure';

F was then diagnosed with developmental delays. Since the institution caring for him did not have access to the specialist support needed, F's case was transferred to SWD's Family and Children Protective Special Unit (**FCPSU**) and F was transferred to another institution better able to support his development. However, FCPSU has refused to allow F to be taken to a pro bono private specialist doctor (found and secured by PathFinders) to undertake a developmental assessment. The FCPSU cited the reason for this refusal as an absence of permission to do so from the biological parents - if this is indeed the reason for declining such help, this is unacceptable - the SWD is already the child's guardian and has power to give such permissions!

We are now two years on from the above MDCC. As far as PathFinders is aware, F is still residing in an institution

and no permanency plan has been decided. F's parents, after having gone missing for over 20 months have recently been found. The parents refuse to sign a consent allowing F to be freed for adoption, despite having failed to fulfill the parenting requirements set for them at the MDCC. The parents had not even visited F until very recently when one of them visited F in the institution;

Despite PathFinders' close involvement in the case, FCPSU now refuses to disclose to PathFinders any information about F, his parents' visits and SWD's/FCPSU's future plans for F;

SWD seems reluctant to progress care planning for children even when parents do not comply with welfare plans or are absent from the child's life. SWD remains inexplicably optimistic about the role/function of birth parents and appears to take the view that at whatever point in a child's life the parents decide to turn up again saying they want to be a parent again, then the parents have priority. No one seems to have an eye out for the best interests of the child or to truly act as the voice of the child;

In cases where parents do not give consent for children to be provided with alternative permanent care arrangements, SWD should be more proactive in seeking Court orders to enable this;

Recommendations:

PathFinders recommends that:

1. The CRSRC document is reviewed and updated immediately, benchmarked internationally, and has, as its foundation (not as an appendix), time-bound permanency planning. The SWD must then ensure this document is studied by frontline staff and referring officers and is used as the basis for care going forward;
2. The new CRSRC must prioritise the rights of the child over the rights of the parent to ensure that children are placed in residential child care when it is in their best interests, as judged by the SWD and Multi-Disciplinary Case Conference (**MDCC**), and not only when parents/ legal guardians have consented;
3. Participation in MDCC, follow-up and review meetings should be expanded to include all professionals, government departments and key non-governmental actors involved with, or having an understanding of, the welfare of the child in question and must include the social worker assigned through CRSRC. The reality in Hong Kong is that without a single body of child law or indeed a children's commission, the NGOs play a significant role in safeguarding vulnerable children and should properly be involved and consulted with;
4. Establishing a permanency plan for children at risk should be the paramount objective of the CRSRC, and this should feed into the MDCC and work in parallel with that body;
5. The CRSRC should be updated and specifically state that residential child care is open to all children in need on Hong Kong soil, regardless of their citizenship and documentary status;
6. The SWD should launch a robust foster care recruitment plan that taps into all the linguistic, ethnic and national groups in the city. This, along with specialist training and diversity training of the current foster

network will improve at-home care opportunities for looked-after children and, in turn, expand the capacity of Hong Kong’s currently over-burdened residential child care services;

7. Current practice in other countries should be reviewed to establish best practices and to set clear and practical procedures to guide permanency planning and residential child care. For example, in the UK, a strict timetable of case reviews and actions is set out and the UK Children and Families Act of 2014 and enforces a 26-week deadline in all care supervision and other family proceedings.² Similarly, in the US, the federal government has developed a concurrent system of family support and permanency planning to minimise delays in establishing a safe and permanent future for the child³;
8. A single, comprehensive Children’s Ordinance should be introduced specifically to cater for the rights and needs of all children in Hong Kong, including those in the care system, ethnic/linguistic minorities, asylum seekers and those with special needs. Only in this way will it be possible to have legally enforceable definitions, procedures and systems in place to protect those at most risk⁴;
9. Research and feedback, qualitative and quantitative, should be conducted into the numbers of children in residential child care, their composition, experience, and views of the children and their carers should be routinely conducted and published; and
10. A specialist Children’s Commission should be appointed with the aim of ensuring that all children in Hong Kong are protected and respected and to act as the voice of the child. Further, to be tasked with ensuring that Hong Kong fulfills its local and international legal obligations.

Thank you for considering our submission. We are happy to discuss and to take questions.



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² Children and Families Act 2014: <http://www.legislation.gov.uk/ukpga/2014/6/section/14/enacted>

³ Child Welfare Permanency Planning: <https://www.childwelfare.gov/pubPDFs/concurrent.pdf>

⁴ PathFinders’ response to the November 2015 Public Consultation Invitation issued by the Labour and Welfare Bureau Department regarding the Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access as set out in the Children Proceedings (Parental Responsibility) Bill
<http://www.pathfinders.org.hk/public/wp-content/uploads/PF-Public-Consultation-Submission-to-Labour-and-Welfare-Bureau-on-Proposed-Child-Bill-7-April-2016-FINAL-PDF.pdf>