

HKSAR Legislative Council

Panel on Welfare Services

Subcommittee on Strategy and Measures to Tackle Domestic Violence and Sexual Violence

http://www.legco.gov.hk/yr14-15/english/panels/ws/ws_dv/general/dv1415.htm

**For Hearing:
20 July 2015 at 10.00 am at
Conference Room 2, Legislative Council Complex**



**Written Submission by PathFinders Limited
Monday 20 July 2015**

Chairman and Sub-committee Members,

I. About PathFinders:

PathFinders' mission is to ensure that the most vulnerable children born in Hong Kong and their migrant mothers, are respected and protected. To date, PathFinders has helped more than 2,800 babies, children and women in Hong Kong. PathFinders receives no government funding.

II. The Issue:

Foreign domestic workers [**'FDWs'**] who are victims of violence in a domestic setting normally approach PathFinders in one of two situations. During employment, PathFinders has cases where the employer, the employer's spouse, boyfriend, parents and other third parties have physically abused the FDW at the employer's residence, where she is required to stay. This violence includes beating, stabbing, indecent and lurid acts as well as rape. The second situation in which FDWs do so is after the employment relationship has ended and they no longer live and work at the same residence as the attacker because they fear for their safety.

PathFinders' experience is that FDWs who are victims of violence who remain in employment are reluctant to report the attacker to the police because they fear what the consequences might be for their employment. While these FDWs remain in employment, they have an income, housing and continue to benefit from government-subsidized healthcare and other welfare services.

The story is almost the reverse for FDW victims who leave their employment as a result of 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. In turn, these conditions discourage FDWs from pursuing the investigation and prosecution of their attackers.

PathFinders comes into contact with both groups when the violated FDW either is or is concerned that she may be pregnant. Both groups are in urgent need of support.

III. Our beneficiaries and where they need support

During the past three and a half years, PathFinders' clients reported 31 incidences of emotional, physical and sexual violence that occurred in a domestic setting. The attacker was either the employer or another household member the FDW was required to serve. The figure under-represents the scale of the problem for three reasons:

1. PathFinders' beneficiaries are but a small segment of the FDW population, constituting less than two per cent;
2. PathFinders notes that FDWs generally possess a low level of awareness about laws on violence and do not always know whether certain forms of violence constitute crimes under Hong Kong's criminal codes; and
3. Beneficiaries tend to focus only on the violence that ended the employment relationship and prompted them to contact PathFinders in order to obtain assistance and support. They tend not to report to Pathfinders the violence they endure during the employment relationship.

PathFinders recorded seven incidences in which an employer or another household member committed an act of sexual violence against our beneficiaries. These statistics complement police figures, which show that the police investigated 16 rape cases in the same period, because six out of seven PathFinders beneficiaries reported sexual violence to the police. In addition to the well-known reasons why women choose not to report sexual violence to the police such as embarrassment and shame, PathFinders beneficiaries told us that they decided against filing a police report because of the resulting pregnancy. Three FDWs who alleged that they were raped by their employers (and who, because of that rape, became pregnant) chose to focus on availing themselves of PathFinders' crisis intervention and welfare services to help them deal first with the severe consequences of the rape rather than pour what little energy they had remaining to address the criminal injustices of their situation.

These victims experienced poverty, alienation and hardship as a direct result of sexual violence in a domestic setting. If they wanted to stay in employment and continue using government-subsidized health services following the assault, they would have had to continue living with the attacker. Immigration Department policy and standard employment contract require them to live in. But when and precisely because these women feared for their safety, they left their home and job in Hong Kong, they lost their ability to earn an income for themselves and their families, lost their employment visa and all social and welfare system rights associated with that visa.

These women were pregnant in a foreign country far away from their usual home and social support networks, which increased their reliance on resources that would otherwise have been available to them in Hong Kong if they had not been sexually assaulted by their employer.

The Immigration Department's policies concerning the right to remain in Hong Kong following the last day of employment and how to take up a new job, also prevent FDWs from taking law enforcement and/or legal actions to report their attackers and/or to mitigate their losses. In particular, the policies reduce the victim's options in the following areas:

Healthcare

Once the FDW's employment visa status terminates, their immigration status prevents them from accessing government-subsidized health and welfare services. Their employment visa expires 14 days following the day on which the employment relationship ends. Within the 14 day period, the FDW can use government-subsidized health and welfare services. Where sexual and other physical forms of violence are reported to the police, that law enforcement agency will typically make arrangements for the victim to receive medical treatment. The FDW can also independently make appointments to see a range of general and specialist medical practitioners. The cost of doing so is typically HK\$45 for a general practitioner and HK\$100 to see a specialist or doctor in the Accident & Emergency Department.

At 14 days following the last day of employment, the Immigration Department cancels the employment visa and issues the FDW with a visitor visa. As a result, the FDW becomes an ineligible person for access to government-subsidized health services despite the fact that she may be in need of ongoing medical treatment following sexual or other assault.

PathFinders' three clients who became pregnant are a case in point. To attend an appointment with a general practitioner, the FDW must pay \$HK385. To see a doctor in the Accident & Emergency Department she is typically charged HK\$990. The cost of specialist services increases to HK\$1,110. These increases in cost impose an additional barrier for FDWs to obtain timely medical treatment. Moreover, the cost of a pre-natal check-up, which enable medical practitioners to treat and prevent health problems relating to the mother and unborn child, should be free as should giving birth. Instead, these women, defined as ineligible for public health and welfare services purposes will also have to pay upwards of HK\$90,000 to give birth in hospital.

Employment

These women are further penalized by prospective employers who do not want to hire pregnant FDWs despite the theoretical protection against pregnancy discrimination afforded by the Sex Discrimination Ordinance. A standard pre-employment medical check-up includes a urine test for pregnancy, which employers and employment agencies use to select candidates for FDW employment. In practice, employers and employment agencies will not even interview the job-seeker if she is pregnant because of the employment risks, costs and inconveniences associated with engaging a pregnant employee. In recognition of the importance employers place on medical tests, the employment contract requires employers to reimburse FDWs for the expense. This partly compensates FDWs for undergoing an examination that provides peace of mind to employers but in reality also has the consequence of preventing a pregnant FDW from finding a new job.

The Immigration Department and Labour Department do not require FDWs to submit to a medical test as part of their employment visa application. In reality, however, the Immigration Department has enabled employment agencies to make it a pre-condition of employment by virtue of its notarization policy. The Immigration Department requires that foreign/sending country consulates notarize the employment contracts of their citizens before the applicants and their agents may submit them for processing. This administrative practice has enabled these consulates to require their citizens to use the services of employment agencies they accredit. The Indonesian consulate does this and their accredited employment agencies frequently require FDWs to present or undergo a medical test before they will introduce them to potential employers. PathFinders' beneficiaries report that these employment agencies actively encourage pregnant FDWs to start their job search only after they have given birth or the agency offers to find an accommodating employer in exchange for an illegal fee.

IV. Recommendations

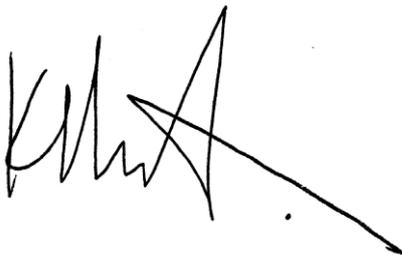
Based on PathFinders' experience providing support services to pregnant FDWs who are victims of violence in a domestic setting, we make the following five priority recommendations to enhance the support services for FDWs:

1. **Educate FDWs about violence as 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:

- i. while they are in employment;
 - ii. during the 14 day period following the last day of work; and
 - iii. after they become a visitor;
3. **Enable reporting through other media:** Develop and publicize media, including social media and SMS avenues, 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; and
 5. **Provide support to find employment:** Assist the victim FDW to find alternative employment if she wants to work following violence that ended the previous employment relationship.

Thank you for considering our submissions.



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About PathFinders:

General information: www.pathfinders.org.hk

Submissions: <http://www.pathfinders.org.hk/public/services/accesstojustice/>

