

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:

9 March 2015 at 2.30pm at Conference Room 2, Legislative Council Complex



**Written Submission by PathFinders Limited
Submitted on Monday 2 March 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 3,100 babies, children and women in Hong Kong. PathFinders receives no government funding.

II. The Issue:

Women's and children's rights not to be harmed, violated, neglected or abused are enshrined in the international conventions to which Hong Kong is a signatory and embedded in Hong Kong's domestic laws;

However, the population PathFinders serves – pregnant, migrant women, many of whom are foreign domestic workers ['FDWs'] does not always benefit from these protections and nor do their Hong Kong-born children.

For Women:

Women who have experienced or who are being subjected to domestic and/or sexual violence ['SV/DV'] approach PathFinders in two main contexts:

1. The first is during the FDWs' employment: we have cases where the employer, the employer's spouse, boyfriend, parents and other third parties have physically abused the women in the employer's home oftentimes including cases of rape, stabbing, beating and involving indecent and lurid acts; and
2. The second context is after the FDW's employment has been unlawfully terminated by the employer for the sole reason that the woman is pregnant. Once this termination of employment occurs, these women become part of Hong Kong's homeless poor. They are penniless, jobless denied access to healthcare – and either pregnant or with a very young child. In this fragile and vulnerable state, they fall prey to the most dangerous and frightening elements of society. They and their babies are exploited to devastating effect. This includes extreme violence and abuse.

For Babies and Children:

The babies and children PathFinders sees being subjected to domestic and sexual violence come to us because they are neglected, abandoned, brought to us by a friend or stranger or because PathFinders' identifies the signs of abuse;

Babies born to migrant women are among the most vulnerable and deprived children in Hong Kong. They fall through the cracks of Hong Kong's social and legal safety nets, born outside the healthcare system, growing up in environments detrimental to their development and future and have no access to critical, life services including a legal identity, immunizations and medical care, shelter and education. In 2013, fully 45% of PathFinders' babies and children were legally entitled to be, and became, Hong Kong residents.

III. PathFinders' Shelter Services-related Recommendation and Requests:

For PathFinders' beneficiaries who are experiencing SV/DV, accessing shelter services and the accompanying counseling and support is typically complicated by a variety of factors including:

1. A fear of interacting with official or formal individuals/organisations given that they may be undocumented or overstayers, living in illegal dwellings, have children who are similarly undocumented and quite possibly without any legal status, have been involved in illegal activity and have prior negative experiences with officials or service providers;
2. A lack of knowledge within the migrant and FDW community about what services are available and how to access those services; and
3. Prior attempts in accessing governmental or quasi-governmental services where they encountered race and/or gender discrimination, language barriers and an absence or lack of sufficient cross-cultural understanding and sensitivity.

In ensuring that this marginalised group enjoys equal access to shelter and the attendant services and support typically provided in shelters, PathFinders' view is that those developing or providing shelter services need to do so recognising and responding to the unique situation facing PathFinders' women and children;

PathFinders' caseworkers have routinely observed a lack of inter-departmental or inter-governmental collaboration, communication and cooperation that is crucial for assisting the affected women and children in accessing shelter, particularly given the multi-dimensional nature of their situations;

A PathFinders' woman or child experiencing DV/SV is also likely to be experiencing immigration issues, homelessness or an unsafe living situation, financial difficulties, lack of medical care or lack of access to medical care due to their immigration status, possible or pending criminal charges, the absence of a support network within Hong Kong, and mental and other health issues;

A concerted effort on the part of all engaged agencies to recognise these complexities will help lift the barriers currently blocking the welfare of the babies, women and children PathFinders serves;

Another issue that needs to be considered and options generated for improvement is the general lack of knowledge within the migrant and FDW communities as to what services are available, the terms on which they are available and how to access them. Much more can and should be done;

Those providing shelter services needs to identify better and more appropriate modes of accessing this group, including using grassroots community outreach, visiting and talking to people in their known gathering places, leveraging ethnic minority media outlets including online, print and radio, reaching out to and cooperating with the grassroots NGOs, agencies and consulates who service these groups and by engaging in cross-departmental dialogue about how to improve services for this group, keeping in mind their unique needs and characteristics;

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 experience, in part, is due to a lack of understanding of their cultural and

linguistic needs. Sensitivity training not only for service providers but also for those who may come into contact with these women and children in crisis should be:

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

This type of training could be provided to officials within the police, immigration, medical and welfare service sectors and should ideally be developed in collaboration with the relevant and appropriate cultural and community liaisons, consular officials and NGO organisations;

Finally, it is key that underlying and related laws, policies and procedures be reviewed in light of the unique situations faced by these women and children.

IV. PathFinders' Systemic Recommendations and Requests:

We outline below some of the systemic issues confronting this vulnerable population and that play, to varying degrees, a role in placing PathFinders' women and children in situations of crisis and which, ultimately, determine whether they will be successful first in reaching out for help and also being able to access shelters and shelter-related services.

Based PathFinders' experience, we have the following comments and recommendations for this sub-committee's consideration specifically in connection with the FDW and child populations PathFinders serves:

1. **Awareness of SV/DV Rights and Obligations:** Increase the level of awareness and training among FDWs as well as the community more generally as to what sexual and domestic violence are, what FDWs/Others' rights and obligations are and what culturally and linguistically appropriate services and support networks are available to them;
2. **Enhanced SV/DV Reporting:** Develop and communicate widely multiple SMS/social media mechanisms for live-in FDWs to report domestic/sexual violence, thereby minimising the need first to escape from the employer's home before reporting;
3. **Accommodation:** Where a FDW lodges a complaint of domestic/sexual violence against her employer and/or a party connected to the employer, relax or waive the Immigration Department's live-in requirement pending completion of the police investigation and prosecution. Develop alternative safe-shelter options for the interim period specifically for FDWs;
4. **Legal Advice and Immigration Considerations:** Develop a policy of giving victims a fresh chance to resolve their immigration status rather than prioritising the prosecution of victims for immigration offences (whether or not they choose to give evidence). Provide legal support to the victim when she is deciding whether or not to press for prosecution. We have cases where the police and/or interpreter pressurize the victim into dropping the case because it is too time-consuming, inconvenient and/or makes their reporting metrics look bad. Police are typically the frontline in situations of domestic and sexual violence and, as such, play a significant role in how the situation will unfold including whether the victim pursues a criminal case and reaches out to other services. In many cases, police actions will

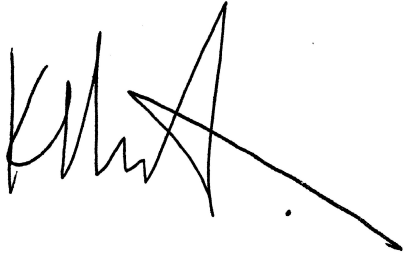
also play a part in the victim's recovery as a sense that one has been heard and is receiving justice is key to overcoming the trauma they have experienced;

5. **Specialist SV/DV Investigation Unit for Adults:** While there already exists a specialist police Child Abuse Investigation Unit, there is no similar unit for adult victims of SV/DV. The Family Conflict and Sexual Violence Policy Unit (FCSVU) is prevention/education-based. A specialised unit within the police serve that not only deals with but also is prepared and equipped to deal with ethnic minorities experiencing violence, would go a long way to ensuring that affected women and children access shelter and shelter services. Assign all sexual and domestic violence investigations to these specially trained units as soon as possible and within a fixed time limit. Many victims are afraid of the police and the investigations are often conducted in an intimidating and traumatic manner. Ensure that police and translators are specially trained and qualified to support the victim at all stages of the process in both a linguistically and culturally sensitive manner. Ensure that when interpreters are used, they are similarly trained and equipped to dealing with SV/DV and do not, either advertently or inadvertently, play a part in further traumatising the victim and/or prevent them from seeking out the services available to them;
6. **Dropped or Abandoned Prosecutions:** Track and report the number of cases where women decide not to press for prosecution and why. Independently review that report. As for 3. Above, provide the victim with legal advice. We have experienced a culture of disbelief in the justice system and some related government and other support services in relation to our clients, and inappropriate pressure on victims to withdraw their complaints;
7. **Victim Support:** Develop and communicate clearly-publicized guidelines about what victim support is available, to whom (free of charge and ideally regardless of immigration status) and when at every stage from investigation to prosecution to trial including specifically for PathFinders' clients whether and to what extent medical support, counseling, visa costs, flights and accommodation support will be provided up to and including trial;
8. **Victim's Charter:** Actively track, report and independently review the use, application and effectiveness of the police Victim's Charter;
9. **Special Evidence Gathering and Giving Measures:** Offer special measures so that victims (women and especially children) are not required to repeat their stories unnecessarily and can give their evidence in the least traumatic manner e.g., giving video recorded evidence-in-chief, providing screens in court, etc. Consider introduction of investigation rules and prosecution practice directions requiring the ongoing and active consideration of special measures and victim support in court. Consider specialist courts for SV/DV matters (as in the UK and in several other jurisdictions) to ensure a consistent, victim-aware approach in both the court process and sentencing;
10. **Treatment of Victims:** In all cases the interviewers should at a bare minimum behave professionally and politely towards victims. PathFinders has cases where ethnic minority women victims are spoken to in a demeaning, discriminating and derogatory way. Heightened cultural sensitivity and diversity training at all levels of the justice system would be welcomed;
11. **Children:** Develop specific child abuse, protection, identification and prosecution guidelines, requiring mandatory training (repeated at regular intervals) for police, social workers, child care homes, judicial system (from police through to courts) and all other impacted professionals;
12. **Employer Blacklist:** In relation to FDWs, maintain a blacklist of abusive employers and all household and connected family members. Communicate that list to the Immigration Department so that any further employment of a woman from this highly vulnerable population is prohibited and incidence of recidivist employers is minimized if not eliminated. The Immigration Department may also consider conducting criminal checks on FDW

employers and household members as pre-requisite of employment.

13. **Employment Agencies:** As the key advisor hub for most FDWs in Hong Kong, educate and inform employment agencies about what to do when a FDW complains to them of SV/DV. Track number of cases being reported via an agency. Track cases not reported by agencies where the victim asserts she has indeed reported the SV/DV to her agency.

Thank you for considering our submissions.



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About PathFinders:

Advocacy: <http://www.pathfinders.org.hk/public/services/advocacy-program/>

General information: www.pathfinders.org.hk

