

LegCo Panel on Constitutional Affairs

Meeting on 18 November 2013

2:30pm

Concluding Observations by the United Nations Committee on the Rights of the Child on the Second Report of the Hong Kong Special Administrative Region under Convention on the Rights of the Child

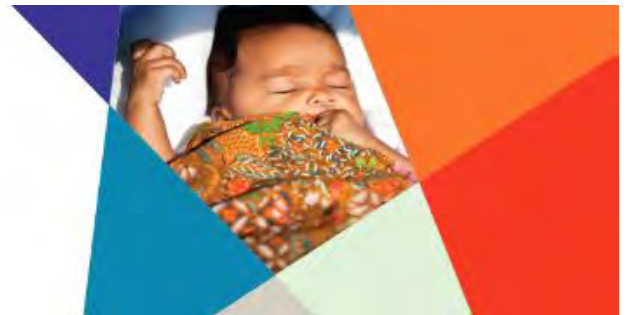
Submission by:

PathFinders

7 November 2013

ABOUT THE ORGANISATION

- § Pathfinders Limited was founded in late 2007 and is a registered charity in HK
- § PathFinders was born through an understanding of the impossible situation facing undocumented migrant women who have lost their jobs, overstayed their visas and are pregnant
- § All too often, these women and their children fall through the safety nets established by government organisations and social services, descending into a world where they become easy prey



1. The Issues

- 1.1 PathFinders assists migrant women who have become pregnant and/or given birth to children in Hong Kong. The majority of them are Foreign Domestic Workers ("FDWs") from Indonesia and the Philippines.
- 1.2 Based on our experience, **children born to migrant women are among the most deprived children in Hong Kong.** In the majority of cases, the cycle of deprivation begins when the mother becomes pregnant.
- 1.3 While FDWs are entitled to maternity leave under the Employment Ordinance and access to maternal health services in Hong Kong, there is limited protection of such rights. In practice, when a FDW becomes pregnant, she commonly suffers unlawful dismissal from her employment, thereby becoming homeless immediately, losing her income and accommodation, her right to live in Hong Kong and her access to essential social welfare support services including maternal health care.
- 1.4 Once a FDW has been unlawfully dismissed from her employment due to pregnancy, it is common for her to overstay her employment visa because of her fear of returning home pregnant often with a mixed race child often conceived out-of-wedlock. **FDWs who overstay their employment visas fall through the cracks of Hong Kong's social welfare safety net because as overstayers, they are not legally entitled to remain in Hong Kong. Babies born to mothers who overstay inherit their mothers' undocumented status. These mothers are unable to nurture and protect their children.**
- 1.5 With the aim of ensuring that migrant children born in Hong Kong receive a fair start in life, PathFinders empowers their mothers to make informed child-centred decisions, so they can find a dignified path towards a safe and legal future. **Our philosophy is to help the mother to help the child. PathFinders helps both mother and child to regularise their legal status with the Immigration Department** (by helping them "surrender" and become recognizance holders while their immigration status is investigated) **and to access medical care, food and shelter which the Hong Kong social welfare safety net does not provide for.** We also ensure that every child born in Hong Kong obtains a birth certificate and that their mothers know how to use the birth certificate to register their child when they return to their home country so that their children can benefit from the social welfare and educational services offered in their home country.
- 1.6 In summary, the risks for migrant children born to FDWs in Hong Kong include the following:
 - (A) ***Inadequate protection and enforcement of their mothers' rights when pregnant:*** Their mothers are often unlawfully dismissed from their employment because of their pregnancy. Typically these mothers do not have savings in Hong Kong to deal with emergencies and, once they become unemployed, they become homeless and are unable to afford accommodation and food, do not have access to services of Social Welfare Department, food bank, International Social Services assistance, financial assistance, and have no money to cover even their most basic daily needs.

Further, they have two weeks to find a new job, after which time they need to leave Hong Kong. However, it is virtually impossible for a pregnant FDW to find a new job. Her pregnancy, combined with a fear of returning home pregnant with a mixed race child conceived out of wedlock, often results in the mother overstaying her visa and remaining illegally in Hong Kong. Once a mother has overstayed her visa, her child, when born, assumes the same immigration status as his/ her mother - they become undocumented. Undocumented children are vulnerable to lack of nurture, abuse and trafficking.

- (B) ***A child's right to be documented is impaired – no free access to Birth Certificate:*** For penniless, migrant mothers, paying HK\$140 for a Birth Certificate can be beyond her financial ability. There is no government mechanism in place to review her situation and if appropriate waive the cost of issuing a Birth Certificate. PathFinders funds and ensure our beneficiaries obtain Birth Certificates. However, a change in the system is necessary to permanently close this gap.
- (C) ***No access to public health care, particularly perinatal care:*** Perinatal care is critical to all unborn and new born babies. Even if a mother, who was formerly a FDW, is able to extend her visa to legally remain in Hong Kong (which can happen when a mother pursues her claim for unlawful dismissal through the Labour Department) and is therefore considered to be "documented", she will have no access to government-subsidised public perinatal care.

Documented former FDWs who are pregnant can only access medical care through public hospitals in emergency circumstances (such as when she is in labour). This deprives the unborn or newborn baby of the right to be born in a safe environment which reflects poorly on the humanity of the public system in Hong Kong. In addition, this lack of early and timely perinatal care can be extremely risky to the unborn or newborn baby and the mother.

A former FDW will be given a hospital bill of not less than HK\$90,000 after giving birth which she would not receive but for the fact that she has been unlawfully terminated. This outstanding debt will likely taint her record with the government thereby limiting her future employment opportunities in Hong Kong which in turn limit her ability to support her child financially.

- (D) ***No entitlement to social services:*** Children born to FDWs who do not have a valid employment contract, (regardless of whether they are documented or undocumented), have no legal rights to residency in Hong Kong. The only exception to this is when their biological father is a Chinese or a Hong Kong Resident and is willing to sign at the Birth Registry to attest to the fact that he is the biological father. Without residential status, these children are not entitled to receive any social security support, medical care including basic immunizations, after-birth health check-ups or education.

2. The size of the Issue

- 2.1 According to the Immigration Department of Hong Kong, there are 311,844 female FDWs working in Hong Kong as at the end of May 2013 with roughly 50% originating from the Philippines and 50% from Indonesia. The majority of these migrant women are in their prime reproductive age¹.
- 2.2 The Hong Kong government, including public hospitals, does not make available any statistical information in relation to the number of FDWs becoming pregnant and/ or the number of children born to FDWs in Hong Kong.
- 2.3 PathFinders estimates that there are over 6,000² pregnant FDW women, mothers and their children in Hong Kong today. Since our establishment in 2008, PathFinders has assisted more than to 1,800 pregnant FDWs women, mothers and their children. Approximately 70% of PathFinders beneficiaries have been of Indonesian heritage. Further, of the pregnant women and mothers PathFinders has assisted, approximately 70% of them overstayed their visas (thus becoming undocumented) prior to approaching us for service. Year on year the number of women and children seeking assistance from PathFinders has grown aggressively and we expect to serve over 500 beneficiaries in 2013.

3. Challenges (C) PathFinders faces in providing services to this population and suggested Recommendations (R) for improvement:

- C.1 Access to public perinatal health care services:** Once a FDW has been unlawfully terminated from her employment because of her pregnancy, she is no longer entitled to receive public health care. Her child, when born, has no right to receive post-birth medical follow up, including basic immunizations.

We believe that all children born in Hong Kong have a right (1) to be born in a safe environment and (2) to receive the basic immunizations and post-birth medical follow up to protect their long term health and that of the broader Hong Kong population. PathFinders is concerned that if the Hong Kong public health care system fails to provide the most basic care to this population, a broader health care concern may arise.

- R.1 Ensure that all FDWs, including those who have been dismissed from their employment when pregnant, obtain access to essential perinatal health services at Public Hospitals and that their children have access to post-birth medical follow up while they remain in Hong Kong.*

- C.2 Lack of free access to Birth Certificate:** Every child born in Hong Kong should be documented and entitled to receive a Birth Certificate. If a mother lacks the financial means to pay for it, a system should be in place to review her situation and provide a waiver / subsidy accordingly.

¹ Wang, Hongbo. 2011. The Use of Foreign Domestic Helpers in Hong Kong: A Discrete Analysis. Presentation for International Conference on Social Inequality and Mobility in Chinese Societies: Towards a Comparative Study" December 17, 2011.

² PathFinders Limited, 2012. Number of pregnant Foreign Domestic Workers in Hong Kong as at end of 2012.

R.2 Ensure that all children born in Hong Kong obtain a Birth Certificate and if the mother has financial difficulties, ensure there is an appropriate mechanism to review and provide a waiver of fees.

C.3 Lack of Data: There appears to be a lack of data on the magnitude and types of issues faced by this population.

To date, government departments, agencies and other related organizations including the Immigration Department, Social Welfare Department, Public Hospitals and the Family Planning Association have not made any information on this issue available, such as the number of FDWs seeking family planning services and of what type, or the number of children born to FDWs in Hong Kong. Requests by PathFinders for this type of information has resulted in the department/ agency stating that such data is not collected. Without reliable information, PathFinders faces uncertainties in both planning for the development of our services and in advocating for appropriate government departments and agencies to support and protect this vulnerable community of women and children.

R.3 Encourage the HKSAR Government departments and their agencies to collect relevant data to assess the needs of this community including the number of pregnancies and the number of migrant children born in Hong Kong. This may also include information on the services sought by FDWs such as family planning services, maternity services, number of unlawful dismissal due to pregnancy, number of criminal prosecutions arising as a result of unlawful dismissal by reason of pregnancy and number of births of children born to FDWs.

C.4 Lack of respect and societal support: There is an overall lack of societal respect, understanding and support for FDWs basic rights. This arises, in our opinion, from racist attitudes, a lack of understanding and fears that there are insufficient social services resources. This inhibits FDWs from understanding and asserting their rights. In particular, FDW employers and employment agencies often ensure FDWs are not aware of their rights, particularly their right to maternity leave.

R.4 Educate the FDWs, FDW employment agencies and employers of FDWs on laws relevant to FDWs, in particular, FDWs' entitlement to maternity leave and the unlawfulness of terminating an FDW's employment contract because she is pregnant. The HKSAR Government may request employers to attend training on the rights and obligations as an employer of a FDW as a precondition of approval by the Immigration Department of the FDW contract. Similarly, it can be a precondition of FDWs working in Hong Kong that they attend also training in their native language on their rights and obligations as a FDW.

PathFinders has seen innovative work being done in Singapore in connection with training employers (<http://www.mom.gov.sg/services-forms/passes/work-permit-fdw/Pages/eop.aspx>) as part of Singapore's focus to comply with the United Nations Convention 189 on Domestic Workers.

C.5 Approach and attitude of Government Service Providers: This lack of respect, societal understanding and support of FDWs rights extends to government service providers, including Public Hospitals and other government departments whose front line staff are often insensitive,

ignorant or unable to respond accurately and in a culturally sensitive or language-appropriate manner, to FDWs' request to access services. Front line workers often turn away FDWs who are entitled to receive services or make it difficult for FDWs to understand the process to obtain services. This is unacceptable.

R.5 Enable and guarantee access to government services.

This includes understanding cultural sensitivities faced by pregnant FDWs or FDWs with children by providing translators and/ or training of front line staff to improve their knowledge on FDWs rights, communication skills and reduce the risk of misunderstanding. Also educating front line staff about how they can obtain information about the rights of FDWs including the services available to them.

Hong Kong Police Force have community liaison officers for ethnic minority groups and perhaps this service can be extended to other government services.

Please note PathFinders' 2013 submission to the United Nations Committee on the Rights of the Child is attached.

CONTACT INFORMATION



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If you have any questions, please contact:

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To: UN Members of the Committee on the Rights of the Child

Chair, Ms. Kirsten Sandberg, kirsten.sandberg@jus.uio.no

Rapporteur, Ms. Maria Herczog, herczogmaria@me.com

To: Hong Kong Committee on Children's Rights

Executive Secretary, Ms Billy Wong, hkccr8@childrenrights.org.hk

Dear Madames,

Further to the visit of Ms. Sandberg and Ms. Herczog to Hong Kong and to our recent discussions with Ms. Wong, we are pleased to provide a summary of issues concerning vulnerable migrant children in Hong Kong. We hope that the United Nations Committee on the Rights of the Child ("**the Committee**") will consider these issues within its review of the HKSAR Government's 2nd Periodic Report to the Committee.

1. The Issues

- 1.1 PathFinders assists migrant women who have become pregnant and/ or given birth to children in Hong Kong. The majority of them are Foreign Domestic Workers ("**FDWs**") from Indonesia and the Philippines.
- 1.2 Based on our experience, **children born to migrant women are among the most deprived children in Hong Kong**. In the majority of cases, the cycle of deprivation can begins when the mother becomes pregnant.
- 1.3 While FDWs are entitled to maternity leave under the Employment Ordinance and access to maternal health services in Hong Kong, there is limited protection of such rights. In practice, when a FDW becomes pregnant, she commonly suffers unlawful dismissal from her employment, thereby losing her income, her right to live in Hong Kong and her access to essential support services including maternal health care.
- 1.4 Once a FDW has been unlawfully dismissed from her employment due to pregnancy, it is common for her to overstay her employment visa because of her fear of returning home pregnant with a mixed race child conceived out-of-wedlock. **FDWs who overstay their employment visas fall through the cracks of Hong Kong's social welfare safety net because as overstayers, they are not legally entitled to remain in Hong Kong. Babies born to mothers who overstay inherit their mothers' non-legal undocumented status. These mothers are unable to nurture and protect their children.**
- 1.5 With the aim of ensuring that migrant children born in Hong Kong receive a fair start in life, PathFinders empowers their mothers to make informed child-centred decisions, so they can find a dignified path towards a safe and legal future. **Our philosophy is to help the mother to help the child**. We help both mother and child to regularise their legal status with the Immigration Department (by helping them "surrender" and become recognizance holders while their immigration status is investigated) and to access medical care, food and shelter. We also ensure that every child born in Hong Kong obtains a birth certificate and that their mothers know how to use the birth certificate to register their child when they return to their home country so that their children can benefit from the social welfare and educational services offered in their home countries.
- 1.6 In summary, the risks for migrant children born to FDWs in Hong Kong include the following:
 - (A) **Inadequate protection of their mothers' rights when pregnant**: Their mothers are often unlawfully dismissed from their employment because of their pregnancy. Typically these mothers do not have savings in

Hong Kong to deal with emergencies and once they become unemployed, they are unable to afford accommodation and food. Further, they have two weeks to find a new job, after which time they need to leave Hong Kong. However it is virtually impossible for a pregnant FWD to find a new job. Her pregnancy combined with a fear of returning home pregnant with a mixed race child conceived out of wedlock, often results in the mother overstaying her visa and remaining illegally in Hong Kong. Once a mother has overstayed her visa, her child, when born assumes the same legal status as his/ her mother - they become undocumented. Undocumented children are highly vulnerable to lack of nurture, abuse and human trafficking.

- (B) **No access to pre-natal care:** Even if a mother, who was formerly a FDW, is able to extend her visa to legally remain in Hong Kong (which can happen when a mother pursues her claim for unlawful dismissal through the Labour Department) and is therefore considered to be "documented", she will have no access to maternal pre-natal care. Documented former FDWs who are pregnant can only access medical care through public hospitals in emergency circumstances (such as when she is in labour). This lack of early and timely maternal health care can be extremely risky to the unborn or newborn baby and his/ her mother.
- (C) **No entitlement to social services:** Children born to FDWs who do not have a valid employment contract, (regardless of whether they are documented or undocumented), have no legal rights to residency in Hong Kong. The only exception to this is when their biological father is a Chinese or a Hong Kong Resident and is willing to sign at the Birth Registry to attest to the fact that he is the biological father. Without residential status, these children are not entitled to receive any social security support, medical care including basic immunizations or education.

2. The size of the Issue

- 2.1 According to the Immigration Department of Hong Kong, there are 311,844 female FDWs working in Hong Kong as at the end of May 2013 with roughly 50% originating from the Philippines and 50% from Indonesia. The majority of these migrant women are in their prime reproductive age and it has been estimated that approximately half are unmarried¹.
- 2.2 The Hong Kong government, including public hospitals, do not keep any statistical information in relation to the number of FDWs becoming pregnant and/ or the number of children born to FDWs in Hong Kong.
- 2.3 PathFinders estimates there are over 6,000 pregnant FDW women, mothers and their children in Hong Kong today. Since our establishment in 2008, PathFinders has assisted over 1,700 pregnant FDW women, mothers and their children. Approximately 70% of PathFinders beneficiaries have been of Indonesian heritage. Further, of the pregnant women and mothers PathFinders has assisted, approximately 70% of them overstayed their visas (thus becoming undocumented) prior to approaching us for service. Year on year the number of women and children seeking assistance from PathFinders has grown aggressively and we expect to serve over 700 beneficiaries in 2013.

3. Challenges (C) PathFinders faces in providing services to this population and suggested Recommendations (R) for improvement:

- C.1 Access to maternal health care services:** Once a FDW has been unlawfully terminated from her employment contract because of her pregnancy, she is no longer entitled to receive maternal health care from a Public Hospital. Her child, when born, has no right to receive ongoing medical care, including basic immunizations. We believe that all children born in Hong Kong have a right to be born in a safe environment and receive the basic immunizations to protect their long term health.

R.1 Ensure that all FDWs, including those who have been dismissed from their employment whilst pregnant, obtain access to essential maternal health services at Public Hospitals and that their children have access to ongoing care while they remain in Hong Kong.

¹ Wang, Hongbo. 2011. The Use of Foreign Domestic Helpers in Hong Kong: A Discrete Analysis. Presentation for International Conference on Social Inequality and Mobility in Chinese Societies: Towards a Comparative Study" December 17, 2011.

C.2 Lack of Data Collection: There is a lack of government data on size and types of issues faced by this population. To date, departments, agencies and other related organizations including the Immigration Department, Social Welfare Department, Public Hospitals or the Family Planning Association have not published any information on issues such as the number of FDWs seeking family planning services and of what type, or the number of children born to FDWs in Hong Kong. Requests by PathFinders for this type of information has resulted in the department/agency stating that such data is not collected. Without reliable information, PathFinders faces many uncertainties in both planning for development of our services and in advocating for appropriate government departments and agencies to support and protect this vulnerable FDW community.

R.2 Encourage the HKSAR Government departments and their agencies to collect relevant data to assess the needs of this community including the number of pregnancies and the number of children born in Hong Kong to FDWs. This may also include information on the services sought by FDWs such as family planning services, maternity services, number of unlawful dismissal due to pregnancy and number of births of children born to FDWs.

C.3 Lack of Societal Support: There is an overall lack of societal understanding and support for FDWs rights. This arises from racist attitudes and fears that there are insufficient social services resources to share. This inhibits FDWs from understanding and asserting their rights. In particular, FDW employers and employment agencies often ensure FDWs are not aware of their rights, particularly their right to maternity leave.

R.3 Educate the FDWs, FDW employment agencies and employers of FDWs on laws relevant to FDWs, in particular, FDWs' entitlement to maternity leave and the unlawfulness of terminating an FDW's employment contract because she is pregnant. The HKSAR Government may request employers attend an educational session on the rights and obligations as an employer of a FDW as a precondition of approval by the Immigration department of the FDW contract. Similarly, it can be a precondition of FDWs working in Hong Kong that they attend an educational session on their rights and obligations as a FDW.

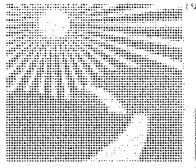
C.4 Attitude of Government Service Providers: This lack of societal understanding and support of FDWs rights extends to government service providers, including Public Hospitals and other government departments whose front line staff are often insensitive, ignorant or unable to respond to the needs of FDWs. Front line workers often turn away FDWs who want to access services or make it difficult for FDWs to understand the process to obtain services.

R.4 Reduce barriers to accessing government services and understanding cultural sensitivities faced by pregnant FDWs or FDWs with children by providing translators and/ or training of front line staff to improve communication and reduce the risk of misunderstanding. Also educate front line staff on how they are able to easily obtain information about the rights of FDWs including the services available to them.

C.5 Home Country Culture: The majority of FDWs from Indonesia and the Philippines, countries which are relatively more conservative and patriarchal than Hong Kong, and who are generally known to be less supportive of women understanding and asserting their rights. A common observation in Hong Kong is that the increase of Indonesian FDWs over the past 10 years has been largely fuelled by the fact that Indonesian women are considered to be more obedient and accepting of their circumstances. Local Hong Kong NGOs including the Mission for Migrant Workers have noted that the reported incidence of FDWs being underpaid and abused by their employers has risen significantly in recent years.

Further, rural communities in Indonesia are not accepting or tolerant of single mothers, children born out-of-wedlock and mixed-race children. As a result of this FDWs who become pregnant out of wedlock in Hong Kong often fear returning home. This fear traps them into making decisions which are not in the best interest of their children, such as overstaying their visas in Hong Kong and becoming undocumented.

R.5 Indonesian and the Philippines government to review this social issue and collect relevant information and statistics, such as number of migrant children born overseas and returned home with their FDWs mothers. Social welfare policies, women empowerment programs and re-integration programs should be established in FDWs' home country to assist these mothers and children better re-integrate to their local society and to assist local communities to have an accurate and unbiased understanding of the issue so they are better prepared to welcome migrant children (often mix-raced and born out-of-wedlock) to return to home country and local community and to grow up in a supportive environment.



PathFinders™
Migrant Children Matter

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Please do not hesitate to contact us if you need further information or clarification in relation to the above.

We support your efforts to protect and promote the rights of children and wish you every success in doing so.

Kind regards

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