

Submission from PathFinders

Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China

Panel on Security: Hearing of the Hong Kong Special Administrative Region's third report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

11 June 2016: Oral Intervention

My name is Linny Ng. I represent PathFinders, a Hong Kong charity assisting pregnant, migrant women, mainly foreign domestic workers (FDWs), and their Hong Kong-born children.

In 2015, PathFinders helped close to 800 babies, children and women.

Every year, between 40-60% of PathFinders' mother beneficiaries apply for non-refoulement protection.

In 2016 to date, 94 of our 241 beneficiaries, both women and babies, have filed claims.

We reiterate the importance of the Convention, which we caution against withdrawing from. The Convention provides a well-articulated and understood mechanism for redress.

We note that even absent the Convention, international precedent and additional conventions apply to Hong Kong because non-refoulement is an established rule of customary international law, as acknowledged in *C v. Director of Immigration*.¹

We welcome the Administration's ongoing efforts to comply with the Convention. We have two recommendations:

First: More adequately to assess USM claims made by Indonesian single mothers and their Hong Kong-born children. Upon their return to Indonesia, these women and their children are at risk of persecution, violence, and inhumane treatment from their communities and the authorities. Because the children were born out of wedlock, they are labeled as illegitimate and their mothers as wanton, thereby bringing shame upon their family and leading to discrimination and unfair treatment in Indonesia.² Moreover, illegitimate children may be used as evidence of adultery, which is a criminal offence under Indonesian law and carries a maximum five-year imprisonment.³ The National Child Protection Commission (KPAI) estimates that some 50% of children in Indonesia do not have birth certificates; and since a birth certificate is required to access education and healthcare, withholding one can be considered as a violation of a child's human rights.⁴ More specifically, girls in Indonesia are at risk of female genital mutilation (FGM), with its attendant and horrific physical and emotional ramifications,

¹ (CACV 132-137, 2008), <http://www.hkliv.hk/cgi-bin/sinodisp/eng/hk/cases/hkca/2011/159.html>

² 'Just me and my baby' (*The Jakarta Post*, 25 February 2009).

³ Jakarta Globe, "Indonesia's New Criminal Code Outlaws Adultery, Cohabiting Couples, Dark Magic" <<http://jakartaglobe.beritasatu.com/news/indonesias-new-criminal-code-outlaws-adultery-cohabiting-couples-dark-magic/>>.

⁴ <http://www.antaraneews.com/en/news/80263/illegitimate-child-rights-and-its-problems-in-indonesia>

including severe bleeding and infertility.^{5 6} In 2016, UNICEF reported that 49% of Indonesian girls aged 0-14 have undergone FGM (2010-2015).⁷

Second: More adequately to address human trafficking and forced labour in Hong Kong. The Global Slavery Index estimated that there are 29,500 modern slaves in our city. This government was ranked alongside North Korea as taking least action to combat modern slavery.⁸ We urge the administration to increase surveillance, legal protections and support systems for trafficked persons, particularly for women and children, who should be treated as victims, rather than immigration criminals.⁹

⁵ <http://www.un.org/en/events/femalegenitalmutilationday/>

⁶ <http://www.un.org/en/events/femalegenitalmutilationday/>

⁷ http://www.unicef.org.hk/wp-content/uploads/2016/02/2016_United-Nations----International-Day-of-Zero-Tolerance-for-Female-Genital-Mutilation.pdf

⁸ <http://www.globalslaveryindex.org/findings/>

⁹ <http://www.legco.gov.hk/yr15-16/english/panels/se/papers/se20151103cb2-142-5-e.pdf>