

By email (sc_hs101_16@legco.gov.hk) only to:

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 Thursday 20 April 2017

on

'Proposal for Establishing a Commission on Children'

Submitted on 19th April 2017

Background:

PathFinders is a Hong Kong-registered charity with tax-exempt status.

We ensure that the most vulnerable children born in HK and their migrant mothers, are respected and protected.

The focus and purpose of this submission is to give a voice to the otherwise voiceless babies and children we serve at PathFinders.

Since its inception in 2007, PathFinders has helped over 4,400 babies and their migrant mothers in Hong Kong. The majority of the mothers are current or former migrant domestic workers. Given that 1 in 7 women of reproductive age in Hong Kong is employed as a foreign domestic worker, it should be both anticipated and expressly provided for that some will have children while employed here. In 2016, 88% of these babies' biological fathers were in Hong Kong.

Of the 1,400 newborns and toddlers up to 2 years' of age that PathFinders has helped to date, almost 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.

PathFinders' cases include those where:

- the child has been abused and neglected, is living in a brothel and left to roam the streets alone;
- where the mother of siblings is in a coma and the father serving a long prison sentence; and
- where a newborn baby has been left at a hospital and the mother and father are nowhere to be found.

In each case, these babies and children are utterly poor in every sense of the word.

One or neither parent is around and/or is incapable of being an adequate parent, be that for health, financial or lifestyle reasons.

PathFinders then acts as the voice of these exceptionally vulnerable children to ensure each has shelter and care, an identity and, longer term, a viable permanency plan. Pathfinders' case managers also sometimes act as the child's Next Friend in wardship proceedings to ensure that the voice of the child is represented and that the child's best interests are prioritised when the court exercises its wardship jurisdiction.

The United Nations Convention on the Rights of the Child, sets out the basic rights that every child is entitled to.¹ Yet among the babies PathFinders assists, there are many who, because of their mother's immigration status, have no access to key basic survival support including, medical and social welfare, identity documentation and humanitarian support such as shelter, food and clothing.

These babies do not choose the situation they are born into but Hong Kong's current government policies

¹ The United Nations Convention on the Rights of the Child.

https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=1.162361848.531269785.1492495035

and guidelines fail either adequately or at all to protect them. There is no safety net for these children and they are overlooked by society.

There is no other NGO or government body specifically serving these children. PathFinders receives no government funding.

6 Proposals for a Children's Commission

While PathFinders welcomes the commitment by Chief Executive-elect, Ms Carrie Lam, to establish a Children's Commission in Hong Kong, we are concerned that under the current proposals the Commission could be little more than an inter-departmental government advisory body lacking independent powers of scrutiny or investigation and that it might lack transparency and accountability.

1. Protect all Children in Hong Kong and specifically those outside the Mainstream

The Children's Commission should ensure that the rights of **all** children in Hong Kong are protected and respected. That should specifically include the children PathFinders helps.

The Children's Commission must also speak not only for the general population under 18, but also for those who fall outside the mainstream; those too young to speak, those in care or with special needs and those whose parents are migrants, asylum seekers or in jail, in hospital or otherwise absent.

It should act as a forum not only for the views of all children in Hong Kong, but also those working in the children's sector including teachers, NGOs and other professionals. In PathFinders' experience, the absence of effective channels to consult and communicate directly with children and relevant professionals, can too often lead to the needs of the most vulnerable children, such as those in care, being overlooked.

For children in care whose parents are unable to safely parent them yet who refuse to give consent for permanency planning, the consequences can be heartbreaking. PathFinders' babies and children have been left in orphanages or foster homes without stable primary care givers and a happy loving family for years and years. This is unacceptable and unfair. It is well-established that long periods in institutional care significantly and negatively impact the child's social, emotional and psychological well being.

An independent Children's Commission should listen and work with the whole children's sector, and ensure that no child is overlooked.

2. Have Clearly Defined Objectives in line with Global Best Practice

While the specific form, function and powers of Children's Commissions around the world vary, their objectives can be collectively categorised into three main pillars:

- collaboration and liaison with government;
- education and awareness raising; and

- advocacy and investigation.²

PathFinders believes that the above objectives can only be achieved by having a fully independent body with specific powers to oversee the welfare of the most vulnerable children in society including migrants, those born to migrants and those in care and in detention with their parents;

3. Have Independent Powers to Investigate and Influence

The Children's Commission should have the power independently to review all relevant law and policy relating to children and to conduct independent investigations into complaints and allegations of all types of abuse from children, their carers and other relevant professionals. A independent structure similar to the ICAC might be considered.

4. Create and Enforce Child Protection Guidelines

Ensure that all professionals working directly with vulnerable children do comply with child protection guidelines.

5. Child Sector Workers' Criminal Checks, Registers and Tracking

Similar to the Hong Kong Law Society in relation to solicitors, hold a register of all those authorised to work in the childcare sector (similar to the licensing system for construction workers); track and communicate those who are prohibited from working in the childcare sector. Require all those working in the sector, paid or unpaid, to undergo criminal checks. This is a good opportunity to introduce a more regulated child care sector.

6. Monitor, Train, Collaborate and Support the Courts and Judiciary in Executing their functions when dealing with Children

The Commission should be empowered to drive the creation and constant improvement of:

- guidance to the courts and judiciary regarding their role and jurisdiction as well as best practice in relation to wardship proceedings. These provisions should articulate clearly that the jurisdiction is not adversarial but inquisitorial with the court as quasi-parent.
- Specialist Family Courts where those professionals dealing with child-related proceedings receive intense training about child development, interviewing and cross-examining children, child abuse, domestic violence.

Thank you for considering our comments and recommendations. We are happy to discuss them further.

² International Perspectives on Disputes about Children and Child Protection, Vol. 2: Conflicting Perspectives on how best to Implement Children's Rights by Anne Scully-Hill.

In addition to me, you are also welcome to contact PathFinders' key team members in relation to this submission whose details are as follows:

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Very best,



Kay McArdle

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