

By email only: sc_hs101_16@legco.gov.hk

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

HKSAR's Legislative Council's Subcommittee on Children's Rights

in advance of a meeting on 4 November 2017

regarding

Human Rights of Children Under Poverty

http://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/agenda/hs10120171104.htm

Submitted on 3 November 2017

Introduction

PathFinders welcomes this public consultation and the opportunity to draw attention to the rights of children born in Hong Kong to migrant workers, in particular to Foreign Domestic Workers (FDWs). These children are often undocumented and stateless, and live in extreme poverty without access to healthcare, education or welfare support, despite being born in Hong Kong.

We make specific reference to PathFinder’s previous submissions on similar issues, available online at <http://www.pathfinders.org.hk/public/policy-submissions/> (also summarised on page 6 of this submission) and Hong Kong’s obligations under those international treaties to which it is party.

We recommend that this Committee ensures that all children born in Hong Kong, including those whose mothers are/were FDWs, be included in its deliberations of the human rights of children under poverty. Further, that any document, paper or policy produced by this Committee regarding the human rights of children under poverty, include all children born in Hong Kong, regardless of the mother’s occupation and regardless of whether those children are documented or undocumented.

Universal application of policy

Many FDWs are illegally fired from their jobs when they become pregnant. They lose their homes and all means of support. They are denied access to healthcare. Many overstay their visas. In the women’s home countries, having a mixed-race child out of wedlock is heavily stigmatised and so some seek asylum for themselves and their children under Hong Kong’s Unified Screening Mechanism (USM) to ensure a safer future.

PathFinders’ experience in supporting over 5,000 of these babies, children and women has been deeply troubling. Delays in processing USM claims and the lack of access to basic services for the children of women who have overstayed visas or are on ineligible visas means that these vulnerable babies and children are denied health care, social support and other basic rights that they should be receiving and which are guaranteed to them under the UN Convention on the Rights of the Child (CRC)¹ - to which Hong Kong is a party.

UN Conventions to which Hong Kong is party

In addition to the CRC, Hong Kong is signatory to two further conventions relevant to the rights of children and to the rights of children under poverty:

1. International Covenant on Civil and Political Rights²
2. International Covenant on Economic, Social and Cultural Rights³

Convention on the Rights of the Child (CRC)

¹ International Convention on the Rights of the Child: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

² International Covenant on Civil and Political Rights: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

³ International Covenant on Economic, Social and Cultural Rights: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

This Convention is based on the Universal Declaration of Human Rights and emphasises universality, as per Article 2:

‘States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.’

Furthermore, the CRC requires parties to ensure the development of the child within the family (Article 9) if at all possible. Complying with this will require the Hong Kong SAR government to guarantee the rights of the child under poverty within the family and to consider the family unit holistically.

The CRC also guarantees the child's right to health care (Article 24), education (Article 28), and protection from economic exploitation and from being made to work (Article 32) – all of which are undermined by poverty.

International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESC)

Both of the above conventions identify the family as *‘the natural and fundamental group unit of society and is entitled to protection by society and the State.’* The ICCPR, under Article 24, requires all States Parties to provide registration for all children born, immediately, and to allow them a nationality. This is vital in Hong Kong since, without being registered children cannot claim any welfare support. The ICESC, in Article 10, calls for protection of children from economic and social exploitation, regardless of their ethnicity/ nationality and legal status.

Recommendations

Inclusivity is key if the HKSAR wishes to tackle the problems facing ALL children under poverty in Hong Kong and to fulfill its obligations under the UN treaties under which it is bound.

It is recommended that:

- i. Any and all laws, policies and measures regarding the human rights of children in Hong Kong be applied universally and should not be dependent of the visa status of a parent;
- ii. HKSAR Government should guarantee the provision of health and education services, and protection from exploitation, for all children under poverty, including those born to migrant workers/ FDWs/ asylum seekers/ refugees and other minorities;
- iii. All babies and children born to FDWs be issued with a birth certificate, free of charge, ideally within 3 months from the date of birth. Married migrant women in particular often face delays in registering the birth of their children as they are required to provide evidence of their marriage. Often the documentation is in their home country and not easily accessible.

Birth Registry should, therefore, relax the requirement for married women to provide proof of their marriage and allow them to register the child without the father's name should they wish to.

- iv. HKSAR Government review the level of humanitarian support for asylum-seeker babies and children, in particular to increase the transportation allowance for school children and their parents, and to provide in-kind or financial assistance for education-related expenses such as textbooks, stationery, school uniform etc;
- v. HKSAR Government take steps to improve access to education for USM-claimant children and in particular to fully fund kindergarten places for them, ensure admission is non-discriminatory and either waive or provide funds to pay the deposit required to secure the place ;
- vi. HKSAR Government remove the obstacles to access to General Out Patient Clinics (GOPC) and Specialist OutPatient Clinics (SOPC) services; and
- vii. HKSAR Government review and consider its participation in The Bali Process⁴ so as to ensure that the most vulnerable of babies born in poverty in Hong Kong are at a minimum registered as existing.

Conclusion

Whatever the outcome of these consultations, the government of the HKSAR will have failed at tackling the rights of children in poverty if undocumented children are not included in Hong Kong's response. Inclusivity is at the basis of the Universal Declaration of Human Rights and all the treaties that stem from it, including the Convention on the Rights of the Child. Therefore, universality must apply. The human rights of all children in Hong Kong suffering under poverty are at issue, not only documented children.

Thank you for taking the time to consider PathFinders' submission.



Kay McArdle
CEO, PathFinders

About PathFinders

⁴ <http://www.baliprocess.net/news/concept-note-bali-process-civil-registration-assessment-toolkit/>

PathFinders' mission is to ensure that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected. We believe that every child deserves a fair start in life. PathFinders Limited is an approved charitable institution incorporated in Hong Kong. It receives no government funding. PathFinders was founded in 2008 after rescuing two babies born in poverty to migrant women in Hong Kong. Since then, PathFinders has helped over 5,000 people of whom over 2,200 are babies and children born in Hong Kong.

More information: www.pathfinders.org.hk/public

PathFinders' Contacts:

CEO: Kay McArdle: kay@pathfinders.org.hk

Director of Social Work and Healthcare: Jessica Chow: jessica@pathfinders.org.hk

Office: (+852) 5500 5486

PathFinders' previous submissions relating to The Human Rights of Children

All PathFinder's previous submissions relating to the Human Rights of Children are available online at <http://www.pathfinders.org.hk/public/policy-submissions/>.

Those relating specifically to Children Under Poverty are listed below:

Date	Title	Forum	Link
July 2017	Rights of Refugee Children	HKSAR Legislative Council's Subcommittee on Children's Rights	Verbal: http://www.pathfinders.org.hk/public/wp-content/uploads/PF-submission-Rights-of-Refugee-Children.pdf Written: http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Written-Submissions-on-Rights-of-Refugee-Children.pdf
April 2017	Proposals for Establishing a Commission on Children	HKSAR Legislative Council's Subcommittee on Children's Rights	Verbal: http://www.pathfinders.org.hk/public/wp-content/uploads/LegcoOralSubmission20170420.pdf Written: http://www.pathfinders.org.hk/public/wp-content/uploads/PathFindersLegCoCRSubCommittee-5thWrittenSubmissiononProposalsforEstablishingaChildrensCommission19April-2017FINAL.pdf
March 2017	Children's Expectations on the Government	HKSAR Legislative Council's Subcommittee on Children's Rights	Verbal: http://www.pathfinders.org.hk/public/wp-content/uploads/SpeechSubmissionon253ChildrensExpectationsoftheGovernment-EnglishandChinese.pdf Written: http://www.pathfinders.org.hk/public/wp-content/uploads/2017-03-24-PathFinders-written-submission-Childrens-Expectation-of-Government.pdf
April 2017	Public Consultation	HKSAR Labour and Welfare	Written: http://www.pathfinders.org.hk/public/wp-content

February 2016	on Proposed Children Proceedings (Parental Responsibility) Bill	Bureau Special Panel Meeting	ent/uploads/PF-Public-Consultation-Submission-to-Labour-and-Welfare-Bureau-on-Proposed-Child-Bill-7-April-2016-FINAL-PDF.pdf Verbal: http://www.pathfinders.org.hk/public/wp-content/uploads/PF-Panel-on-Welfare-Services-Child-Custody-and-Access-ORAL-INTERVENTION-KMcA-edits-20-FEBRUARY-2016.pdf
February 2016	Human Rights of Children in the Context of International Migration	UN Committee on the Protection of Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child	Written: http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Hong-Kong-SAR-Submission-to-UN-CMW-CRC-Joint-General-Comments-29-February-2016-FINAL.pdf
November 2013	Report on HKSAR under the Convention on the Rights of the Child'	HKSAR Legislative Council Panel on Constitutional Affairs	Verbal: http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders_UNCRC_LegCo_2013_Nov.pdf
March 2013	Convention on the Rights of the Child	UN	Written: http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders_UNCRC_2013Sep.pdf