

**By email only:** [sc\\_hs101\\_16@legco.gov.hk](mailto:sc_hs101_16@legco.gov.hk)

Clerk to Subcommittee on Children's Rights  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

**Written Submission**

to

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

**in advance of a meeting on 23 January 2018**

**regarding**

**Rights of Children affected by Domestic Violence**

[http://www.legco.gov.hk/yr16-17/english/hc/sub\\_com/hs101/agenda/hs10120180123.htm](http://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/agenda/hs10120180123.htm)

Submitted on 22 January 2018

## Introduction

PathFinders welcomes this public consultation. As recent tragic cases have highlighted, Hong Kong is still failing to protect its children. It is almost two years since PathFinders responded to the tragic facts and circumstances of Yeung Chi-wai's case.<sup>1</sup> Our recommendations then included changes to policies and procedures to protect and increase the focus on the child. Sadly, little has changed in the intervening two years.

How many more children will be left in abusive families before their voices are heard? How many more cases of abuse will go undetected before government departments actually start collaborating to ensure that the needs of the child are considered as much as those of the parents and family?

From inception in 2007 to date, PathFinders has helped over 5,200 babies and children born in Hong Kong, and their migrant mothers. The majority of the mothers are current or former foreign domestic workers.

Our beneficiaries are typically ethnic minorities women and children, living below the poverty line and struggling to access basic public services such as housing, health care, schooling and identity documentation. Within these deprived and stressful living conditions, there is a relatively high incidence of domestic violence. The children in these families are at high risk of being affected by violence and yet there is still no one listening to, or speaking for, these children. PathFinders was started to help these children.

## PathFinders' Case Story and Issues Raised

A significant number of PathFinders' cases involve domestic violence and other forms of abuse. One case in particular highlights the shortcomings and gaps we see in our work:

1. A 3.5 year old boy's lower torso and thighs were seriously scalded when the boy's father poured boiling water over him. At the time, the family was under the care of a government-contracted social services provider and was living in their shelter. The burn occurred when the mother and children went from their shelter to visit the father at the family home.
2. Back at the shelter, during the following days, the social service provider's worker did not notice that the boy had incurred this horrific injury. It is shocking that an injury of this severity went undetected by an organisation officially charged with the child's welfare by our Social Welfare

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<sup>1</sup> Panel on Welfare Services 'Mechanism for Handling Abuse Cases Relating to Children from High Risk Families and follow-up to the Child Fatality Review Report'.

<http://www.pathfinders.org.hk/public/wp-content/uploads/PF%20Submission%20on%20mechanism%20for%20handling%20child%20abuse%20from%20high%20risk%20families%20FINAL%20PDF%2023%20May%202016.pdf>

Department. No systems and procedures were in place to check on the wellbeing of the child and his 6-year old brother;

3. The mother was herself subjected to severe verbal, physical and psychological abuse by her boyfriend. She was rendered terrified and unable to act in the best interests of either child and so the little boy's burn was left untreated for over a week because the mother did not want to get her boyfriend, the child's father, into trouble. Instead, the older brother was told to say, if asked, that it was he who had accidentally spilled the water over his younger sibling. Both boys had often witnessed their mother being physically, verbally and psychologically abused by their father. On one occasion the mother had even lost consciousness after having been strangled and punched in the head and face;
4. The Guardianship of Minors Ordinance (Cap. 13, Section 3)<sup>2</sup> states in its Guiding Principles that that *"In relation to the custody or upbringing of a minor" the "best interests of the minor" be "the first and paramount consideration"* of the court. However, the voice of the child is all too often ignored because in practice, the emphasis we observe within the social welfare system and courts is that of the family unit and so the parents' rights take precedence over those of the child;
5. There is currently no independent mechanism to assess whether there is a conflict between the interests of a parent(s) and their child. There should be;
6. There is also no provision for the independent representation of children, regardless of whether a conflict exists with that child's parent(s) or not. There is no children's solicitor, no children's court, no separate consideration of a child's asylum status or claims under the Unified Screening Mechanism.
7. The Official Solicitor<sup>3</sup> (**OSO**) is empowered to represent children and other vulnerable parties and yet this is not widely known about by the children themselves. Further, the OSO's most recent reports for the period April-September 2017 do not list a single case under the Minor/Guardianship category.<sup>4</sup> Further, the responsibility of looking after our most vulnerable and at risk children should not be delegated to under-resourced and/or subvented organisations and NGOs;
8. It was only when the mother came to PathFinders to seek a new shelter for herself and her two children that the burns were revealed and the child taken to hospital for treatment. We are not

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<sup>2</sup> [https://www.elegislation.gov.hk/hk/cap13!en?xid=ID\\_1438402657347\\_004](https://www.elegislation.gov.hk/hk/cap13!en?xid=ID_1438402657347_004)

<sup>3</sup> <http://www.oso.gov.hk/eng/solicitor/appointment.html>

<sup>4</sup> [http://www.oso.gov.hk/eng/statistics/breakdown\\_new\\_case.html](http://www.oso.gov.hk/eng/statistics/breakdown_new_case.html)

aware as to whether the hospital filed a report flagging any concerns raised by the treating doctor or other hospital staff about the child's burns - if not, a mechanism should be introduced to ensure that cases of serious or repeated injury are escalated for investigation and follow-up;

9. In our opinion, a cursory investigation by the managing social welfare worker would have disclosed the abuse as well as the fact that neither child was attending school and especially the 6-year old. Once the 6-year old child was at school, teachers and school social workers should have been trained and able to spot and report on anything giving cause for concern.
10. It is essential that there is a community-wide, centralised and fully-integrated, child-based approach to detecting, reporting and investigating abuse. All relevant parties should be involved and consulted - including welfare services, hospitals and clinics, schools, the police, the courts, all relevant government departments, consulates, other service providers - and of course the children;
11. Witnessing domestic violence can be as traumatic and damaging for children as suffering it directly and is in itself a form of abuse.<sup>5</sup> Teachers, medical staff, police and welfare officers should be specifically trained to understand and recognise all forms of abuse and in particular the psychological effects on children who witness violence or are themselves victims. There should be a well-defined systems for escalating and reporting suspected domestic violence and the effects on or possible abuse of any children.

## **Recommendations**

PathFinders has presented the above comments in our earlier public submissions to LegCo, the HKSARG and the UN. We take this opportunity to reiterate our key recommendations that HKSARG should:

1. Carry out a comprehensive review of domestic violence- and child abuse-handling procedures putting the child first and to include reference to global best practices;
2. SWD should be responsible for the wellbeing of every child in Hong Kong no matter their ethnicity or immigration status. SWD should be given the vision, resources and authority to follow up on every case where the welfare of a child is in doubt, no matter how minor (such as repeated non-attendance at school) and whether or not the parents refuse access or to engage with services;
3. Establish a dedicated Child Protection Unit. This should be a specialised, fully integrated, cross-sector Unit granted priority investigatory powers to glean information from all departments

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<sup>5</sup> London Safeguarding Children Board. London Child Protection Procedures, 28: Safeguarding Children Affected by Domestic Abuse and Violence 28.4.2. [http://www.londoncp.co.uk/chapters/sg\\_ch\\_dom\\_abuse.html#the\\_impact](http://www.londoncp.co.uk/chapters/sg_ch_dom_abuse.html#the_impact)

and parties involved in a child's life (including police, hospital, MCHC, NGOs, drug treatment agencies, schools, etc) and provide language- and age-appropriate, counselling, evidence gathering and victim support;

4. Introduce enhanced, time-bound and mandatory reporting systems to report and investigate all cases where there is even a slight concern for a child's welfare;
5. Improve and regulate training for social workers, teachers, police, healthcare workers and all those who work with children as to how to identify children who may have witnessed or are at risk from domestic violence;
6. Create an independent mechanism to assess whether there is a conflict between the interests of a parent(s) and those of their child and, if so, ensure that the child is given independent support and advice;
7. Provide for the independent representation of children in legal proceedings: children's solicitor, children's court, etc;
8. Provide for separate and specific consideration of children's asylum status and claims/appeals under the Unified Screening Mechanism;
9. Provide at law that SWD's statutory responsibility to look after our children cannot be abrogated at law in terms of liability through contractual 'outsourcing' to third parties including subvented organisations and NGOs;
10. Increase funding to shelters that provide refuge to victims of domestic violence and especially families with children. Shelters should be monitored by social workers and the children observed and spoken to, to better understand their situation and to ensure that they are safe;
11. Critically, educate our children themselves about their rights and where they can go for help when things go wrong.
12. Set up an anonymous advice and referral hotline for children and concerned individuals similar to the UK's Childline<sup>6</sup> and create online toolkits that are widely publicised;
13. Enact child protection laws to enshrine the principles of child protection and the policies and procedures to safeguard vulnerable children;
14. Highlight, enhance and better resource the role of the Official Solicitor in representing children and appoint formal child representatives - see for example the systems in the United Kingdom, Belgium and South Africa;<sup>7</sup>and
15. Establish specialist child-centred legal practices and courts with specially trained lawyers, both within the DoJ and in private practice, experienced in all aspects of domestic violence and abuse cases, and specifically safeguarding of the children, and child appropriate interview and

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<sup>6</sup> <https://childline.org.uk>

<sup>7</sup> Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access as set out in the Children Proceedings (Parental Responsibility) Bill.

cross-examination techniques, and who understand the importance of acting swiftly to bring cases to court and to prevent further violence and abuse.

**PathFinders' prior written submissions regarding domestic violence and/or child abuse:**

- A. Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access as set out in the Children Proceedings (Parental Responsibility) Bill.  
<http://www.pathfinders.org.hk/public/wp-content/uploads/PF-Public-Consultation-Submission-to-Labour-and-Welfare-Bureau-on-Proposed-Child-Bill-7-April-2016-FINAL-PDF.pdf>
- B. Panel on Welfare Services 'Mechanism for Handling Abuse Cases Relating to Children from High Risk Families and follow-up to the Child Fatality Review Report'.  
<http://www.pathfinders.org.hk/public/wp-content/uploads/PF%20Submission%20on%20mechanism%20for%20handling%20child%20abuse%20from%20high%20risk%20families%20FINAL%20PDF%2023%20May%202016.pdf>
- C. LegCo Subcommittee on Children's Rights: Support Measures for Children from Drug Abusing Families  
<http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-SubCommitteeChildrensRights-22Dec2016-meeting.pdf>
- D. Review of Procedural Guidelines for Handling Child Abuse Cases; Consultation on the Definition of Child Abuse and Handling Approaches.  
<http://www.pathfinders.org.hk/public/wp-content/uploads/2017.04.18-SWD-PF-Submission-on-Definition-of-Child-Abuse-and-Handling-Approaches-FINAL-as-sent.pdf>
- E. Panel on Welfare Services 'Sub-Committee on Strategy and Measures to Tackle Domestic Violence and Sexual Violence'.  
[http://www.legco.gov.hk/yr14-15/english/panels/ws/ws\\_dv/papers/ws\\_dv20150720cb2-1948-5-e.pdf](http://www.legco.gov.hk/yr14-15/english/panels/ws/ws_dv/papers/ws_dv20150720cb2-1948-5-e.pdf)
- F. Panel on Welfare Services 'Sub-Committee on Strategy and Measures to Tackle Domestic Violence and Sexual Violence'.  
<http://www.pathfinders.org.hk/public/wp-content/uploads/PF-LegCo-SV-DV-SubComm-2-March-2015-FINAL-PDF.pdf>

Thank you for considering PathFinders' submission and recommendations.



Kay McArdle  
CEO, PathFinders Limited

**About PathFinders**

PathFinders ensures that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected. PathFinders Limited is incorporated in Hong Kong CR No. 1289039 and is an approved charitable institution under s88 of the Inland Revenue Ordinance, file no. 91/10272. PathFinders is listed on WiseGiving.

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 and is incorporated in Hong Kong. PathFinders Limited is an organisation in Special Consultative Status with the United Nations Economic and Social Council since August 2017.

PathFinders was founded in 2007 after rescuing two babies born in poverty to migrant women in Hong Kong. Since then, PathFinders has helped over 5,200 people of whom over 2,200 are babies and children born in Hong Kong.

More information: [www.pathfinders.org.hk/public](http://www.pathfinders.org.hk/public)

A list of PathFinders' public submissions can be found at:  
<http://www.pathfinders.org.hk/public/policy-submissions/>

#### **PathFinders' Contacts**

CEO: Kay McArdle: [kay@pathfinders.org.hk](mailto:kay@pathfinders.org.hk)

Director of Social Work and Healthcare: Jessica Chow: [jessica@pathfinders.org.hk](mailto:jessica@pathfinders.org.hk)

Office: (+852) 5500 5486