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**PathFinders Limited**

**Written submission**

**to**

**Hong Kong Special Administrative Region's [HKSAR] Legislative Council Panel on Constitutional Affairs  
in advance of its**

**meeting on 21 May 2018 to discuss**

**Outline of the Fourth Report of the HKSAR to China**

**for China's Ninth Report to the United Nations**

**under the**

**UN Convention on the Elimination of All Forms of Discrimination against Women ['CEDAW']**

<http://www.legco.gov.hk/yr17-18/english/panels/ca/agenda/ca20180521.htm>

Submitted on 11 May 2018

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

## Introduction

PathFinders is a Hong Kong-registered charity with tax-exempt status and is an organisation in Special Consultative Status with the United Nations Economic and Social Council since August 2017.

PathFinders works to ensure that the most vulnerable children born in Hong Kong and their migrant mothers are respected and protected.

From inception in 2007 to date, PathFinders has helped nearly 5,500 Hong Kong-born babies and their migrant mothers. The majority of the mothers are current or former foreign domestic workers (**FDWs**) from Indonesia and the Philippines. In 2017, over 80% of the children PathFinders helped were conceived in Hong Kong.

Given that 1 in 7 women of reproductive age in Hong Kong is employed as a FDW, it should be anticipated and expressly provided for (at contract, visa, policy and ideally also at legislative levels) that some will have children while employed here.

## Comments on HKSARG's Outline of Topics

### **Article 1: Defining discrimination**

#### *(1) Discrimination in employment*

1. In its Outline of Topics, the HKSARG stated that the definition of discrimination remains unchanged.<sup>1</sup>
2. In PathFinders' experience, pregnant FDWs are too often unlawfully dismissed by their employers because of their pregnancy. Some might be replaced by another FDW after they finish their statutory maternity leave. Some employers and/or agents force their FDWs to take contraceptives, report whether they have missed their period, or conduct a pregnancy test. These behaviours are discriminatory and are therefore potentially unlawful under several anti-discrimination ordinances, including the Sex Discrimination Ordinance (**SDO**), Disability Discrimination Ordinance (**DDO**) and Family Status Discrimination Ordinance (**FSDO**).

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<sup>1</sup> Paragraphs 3-4, page 1, Outline of Topics

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3. Unfortunately, FDWs, their employers, employment agents and other stakeholders (such as government departments) are either not aware of or do not understand a pregnant FDW's rights under the various anti-discrimination ordinances in Hong Kong. We therefore urge the HKSARG to make the following amendments or enhancements to the anti-discrimination ordinances:
  - a. To include express reference to the applicability of anti-discrimination ordinances to migrant and domestic workers in the relevant ordinances and contracts;
  - b. To include in the anti-discrimination ordinances express reference to prohibition of discrimination during maternity leave as well as during the whole peri-natal period (i.e. the full period of pregnancy, birth and at least 6-12 months after the birth);
  - c. To include express protection from discrimination on grounds of potential pregnancy;
  - d. To expressly include pregnancy and any physical or mental illness arising from pregnancy during the ante-natal, maternity and post-natal period in the definition of "disability";
  - e. To expressly include breastfeeding women in the definition of "family status";
  - f. To provide for a different test for direct discrimination for pregnancy, i.e. "on the ground of her pregnancy, sickness or other characteristic that pertains generally to women who are pregnant or potentially pregnant, a person treats her unfavourably";
  - g. To provide for a statutory presumption that dismissal of a pregnant employee six months after maternity leave constitutes discrimination unless the employer provides evidence to rebut that assumption; and
  - h. To expressly prohibit harassment on grounds of pregnancy, family status and marital status.

(2) *Discrimination in provision of public services*

4. PathFinders' mothers and children often encounter difficulties and discrimination when accessing services in various government departments, including Social Welfare Department, Hong Kong Police Force, Immigration Department, Correctional Services Department, Legal Aid Department, Housing Authority, Hospital Authority (public hospitals), and Education Bureau, whose front line staff can be insensitive, ignorant or unable to respond to the cultural and linguistic needs of migrant workers, despite there being over 380,000 migrant workers in Hong Kong, with that number predicted by the government to increase to 600,000 by 2047. Front line government service workers turn away FDWs who want to access services or make it difficult for FDWs to understand and navigate the process to obtain services. Further, FDWs are denied services because of their immigration or lack of immigration status. Such behaviours are potentially forms of race discrimination under the Race Discrimination Ordinance (RDO).

**5. PathFinders urges the HKSARG to:**

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- a. **Reduce barriers to accessing government services. Learn and understand the cultural sensitivities faced by pregnant FDWs and/or FDWs with children, by providing translators and/or training of front line staff to improve communication and reduce the risk of misunderstanding;**
- b. **Educate front line staff about how they are able to easily obtain information about the rights of FDWs including the services available to them;**
- c. **Improve inter--departmental collaboration, communication and cooperation given the multi---dimensional issues PathFinders' clients face;**
- d. **Review the RDO in order to protect FDWs in the treatment and services they receive from public services and ensure all public authorities have a duty to promote equality and to eliminate discrimination across their functions and by policy.**

#### **Article 2: Obligations of states parties**

5. In its Outline of Topics, the HKSARG states that it will address paragraphs 50-51 of the Concluding Observations with regard to the Women's Commission (**WoC**) and inform the Committee of any significant developments in respect of areas such as relevant provisions in the Basic Law and the Hong Kong Bill of Rights; the four anti-discrimination ordinances and changes in the other areas of the law regarding the protection of women; the work of the Equal Opportunities Commission (**EOC**); and the work of the WoC.<sup>2</sup>

#### **(1) Women's Commission**

6. In its Concluding Observations on the combined seventh and eighth periodic reports of China, the Committee expressed concerns that the WoC has a weak mandate and lacks the necessary resources to undertake gender-mainstreaming and other activities.<sup>3</sup>

7. PathFinders is concerned that the WoC expressly excludes foreign domestic workers from its statistics and reports.

**8. PathFinders urges HKSARG to undertake the following steps with respect to the WoC to strengthen the protection of female migrant workers:**

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<sup>2</sup> Paragraph 5, pages 1-2, Outline of Topics

<sup>3</sup> Paragraphs 50-51, Concluding Observations of the Committee on the Elimination of Discrimination against Women on the combined seventh and eighth periodic reports of China

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- a. **Require the WoC to research and report on the status of FDWs, including pregnant FDWs, in Hong Kong;**
- b. **To review the structure and resourcing of the WoC to ensure its independence and that it has a voice which truly represents and advocates for the full spectrum of women in Hong Kong including FDWs and which is specifically tasked with implementing CEDAW recommendations.**

(2) Basic Law, Hong Kong Bill of Rights, the four anti-discrimination ordinances and other areas of the law regarding protection of women

9. The laws in HK regarding pregnant FDWs, including the four anti-discrimination ordinances and the Employment Ordinance, are lacking and inadequate in protecting the interests of both the mothers and their children. Please refer to the section on *Article 1 Defining Discrimination* (above) and *Article 11 Equality in Employment and Labour Rights* (below) for further details.

(3) Equal Opportunities Commission

10. PathFinders is concerned that EOC's complaint-driven approach jeopardizes the access to equal opportunities of the migrant workers PathFinders assists and who are potentially subject to triple discrimination on the basis of their sex, ethnic background and pregnancy. Pregnant FDWs may not be able to lodge a complaint due to the lack of awareness of their rights, and/or their cultural predisposition to non-confrontation, and/or pressure from their employers/agencies to resign from their job. Further, filling in a complaint form (in a foreign language) and gathering evidence of discrimination are beyond the knowledge and skill of an FDW.

11. **PathFinders urges HKSARG to:**

- a. **Require the EOC to take a more proactive approach to promoting and educating relevant parties about equal opportunities and especially regarding vulnerable groups including pregnant FDWs;**
- b. **Require the EOC to take a more proactive educational, investigative and leadership role in identifying and dealing with claims for alleged pregnancy, sex and race discrimination. This should include making recommendations for criminal prosecutions, where appropriate.**

(4) Human Rights Mechanism/Department

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11. PathFinders urges the HKSARG to establish a government department tasked with ensuring coordination among government agencies to ensure the needs and rights of all Hong Kong-born children and their migrant mothers are identified and adequately protected and to monitor the implementation of all UN applicable conventions in HK (eg. International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), CEDAW, and UN International Labour Organization (ILO) Domestic Workers Convention).

### **Article 3: Appropriate measures**

12. In its Outline of Topics, the HKSARG stated it will update the Committee on developments on studies, research and data collection about women including the collection of sex-disaggregated statistics, surveys and researches conducted by the WoC<sup>4</sup>.
13. PathFinders urges HKSARG to require the WoC to research, collect data and report on the status of FDWs, including pregnant FDWs, and their Hong Kong-born children.

### **Article 4: Temporary special measures**

14. **PathFinders most strongly urges HKSARG to take special measures in the next 6-12 months to clarify and explain how a FDW's statutory maternity leave should be handled in the best interests of the new baby's life, the mother and the employer.** With HKSARG itself forecasting<sup>5</sup> that the majority-female FDW population will increase by 240,000 to 600,000, taking special measures now provides a major opportunity to ameliorate or even avoid the dire and burgeoning humanitarian crisis that Pathfinders sees and tries its best to deal with every day. Please also see our comments below regarding Article 11 (paragraphs 24-26).
15. **PathFinders strongly urges HKSARG within the next 12 months to catch up with the rest of the developed world by updating its antiquated, pro-employer, anti-child-mother-bonding, 10-week statutory maternity leave provision.** By increasing the leave to 14 weeks, HKSARG would finally be on a par with China and in compliance with International Labour Organisation recommendations.<sup>6</sup> If the cost is in issue, then HKSARG might consider applying its significant reserves on an immediate, interim, transition basis to allow HKSARG, employers and insurers to consult, transition and ultimately prepare for the need to pay for the

<sup>4</sup> Paragraph 6, page 2, Outline of Topics

<sup>5</sup> South China Morning Post <http://www.scmp.com/news/hong-kong/community/article/2118462/hong-kong-will-need-600000-domestic-helpers-next-30-years> accessed 11 May 2018

<sup>6</sup> ILO <http://www.ilo.org/global/topics/equality-and-discrimination/maternity-protection/publications/maternity-paternity-at-work-2014/lang--en/index.htm> accessed 10 May 2018

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**additional four weeks of statutory maternity leave. Hong Kong has the fourth lowest Total Fertility Rate<sup>7</sup> in the world and so relative risk of pregnancy and insurance risk are low.**

#### **Article 5: Stereotyping and prejudices**

15. PathFinders is concerned at the overall lack of societal understanding and support for pregnant FDWs. In particular, employers and employment agencies act to ensure that FDWs are not aware of their rights and/or seek to obfuscate and/or misinform them about their rights. The lack of societal understanding and support for FDW protections and rights extends to government service providers, including public hospitals and other government departments (e.g. Social Welfare Department, Immigration Department, Labour Tribunal) where front line staff can be insensitive and hostile to, ignorant of, or simply not equipped personally or professionally to respond to the situational and cultural needs of foreign domestic workers.
16. **PathFinders urges HKSARG to:**
- a. **Educate FDWs, their employers and employment agencies about their respective rights and obligations, for example require employers to attend an educational session on the rights and obligations of employers of FDWs as a contractual precondition of hiring a worker as is the case in Singapore with its mandatory Employers' Orientation Programme<sup>8</sup>;**
  - b. **Address the barriers pregnant FDWs experience accessing government services by providing translators and better training the front line staff to improve communications, to reduce the service gaps and bias, and to improve understanding and tolerance;**
  - c. **Provide a hotline specifically for FDWs and ensure they are protected against whistleblowing and abuse when reporting abusive employers and unlawful acts;**

#### **Article 6: Exploitation of women**

16. In PathFinders' experience, FDWs are highly vulnerable to abuse and exploitation. PathFinders has clients who suffer from exploitation, and/or physical, sexual or emotional abuse initiated by their employers, or by someone in the employer's family or network. Such abuse has included

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<sup>7</sup> CIA World Fact Book <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html> accessed 11 May 2018

<sup>8</sup> Singapore Ministry of Manpower <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/employers-orientation-programme-eop> accessed 10 May 2018

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rape, sexual assault, physical assault, withholding of identification documents, withholding and non-payment of salary, and verbal threats of abuse.

17. Further, pregnant FDWs who are unlawfully dismissed are highly vulnerable to trafficking and/or abuse as they and their child are rendered immediately homeless and without food or income after being dismissed.
18. In PathFinders' experience, these victims of domestic, sexual violence, and/or exploitation do not report to the authorities for fear of losing their jobs, pressure from employers, agents or other parties, debts, or lack of knowledge about what assistance is available. Further, even if victims report to police, the police or other authorities do not necessarily do anything further to protect them (victim protection), or to prosecute the perpetrators. Instead, and tragically, we see the victim being prosecuted as an immigration criminal. The consequence is a disastrous start in life for her unborn child, and especially if a prison sentence is involved: the child then spends its formative first few years in prison with its mother.

### **Domestic and Sexual Violence**

19. **PathFinders urges the HKSARG to:**
  - a. **Educate FDWs that sexual and domestic violence are crimes: design and implement a culturally and linguistically appropriate communication plan to educate FDWs, employment agencies and employers that violence in all its forms is a crime in Hong Kong;**
  - b. **Review, clarify and enhance forms of victim support: communicate clearly--publicised guidelines about what forms of victim support including criminal compensation and protection against whistleblowing are available for FDWs; ensure FDW victims are afforded the same level of victim protection and support as other victims including alternative safe-shelter options;**
  - c. **Enable reporting through other media: develop and publicize media, including social media, hotline and SMS avenues that operate 24 hours, through which FDWs can report allegations of rape and other criminal acts of violence to the police and other appropriate crisis intervention services;**
  - d. **Review and revise immigration policy: allow FDWs who are victims of sexual violence and who become pregnant to remain in Hong Kong on a visa that categorizes her as a resident for the specific purpose of accessing public health and welfare services; and**

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- e. **Relax or waive the live-in requirement for an FDW who lodges a complaint of domestic / sexual violence against her employer pending completion of the police investigation and prosecution.**

### **Trafficking in persons**

20. **PathFinders echoes the Committee's last Concluding Observations regarding this issue and in particular urges HKSARG to:**
  - a. **Identify the root causes of trafficking in women and girls and ensure the rehabilitation and social integration of victims, including providing victims with access to shelters, legal, medical and psycho-social assistance, and alternative income generating opportunities;**
  - b. **Undertake a comprehensive study with a view of collecting data on the extent and form of trafficking in women and girls;**
  - c. **Intensify efforts aimed at bilateral, regional and international cooperation to prevent trafficking;**
  - d. **Extend the applicability of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) to Hong Kong SAR. Currently it sits only in the prosecution code and has not been ratified; and**
  - e. **Adopt comprehensive anti-trafficking legislation in order to criminalize the perpetrators and protect the victims.**

### **Article 9: Equality in Nationality Laws**

21. **When an FDW marries a Hong Kong resident, there exists currently a requirement for the husband to have a reasonable income before the FDW is permitted to remain in Hong Kong on a normal visa (unlike her usual foreign domestic worker visa which has many restrictions on her conditions of stay in Hong Kong).**
22. **PathFinders urges HKSARG to:**
  - a. **Review barriers to dependent visa applications, in particular to prioritise the right to family reunion over any financial concerns and to consider the family as a whole in handling dependent visa applications by families. There should not be any discrimination on the basis of the applicants' or their sponsors' or their family**

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**members' sex as a woman, or occupation as foreign domestic worker or housewife.**

**Article 11: Equality in Employment and Labour Rights**

*Please also refer to our above comments under Article 4 regarding Temporary Special Measures*

23. FDWs are protected from employment termination and pregnancy discrimination under the Employment Ordinance (EO) and the four anti-discrimination ordinances, and are eligible for statutory maternity leave and maternal health care in public hospitals. From the nearly 5,500 babies, children and women in crisis that PathFinders has helped, there exists an acute lack of awareness of those rights and obligations among FDWs, their employers and employment agents. There exists no clear guidance from HKSARG as to how the pregnancy and maternity of a FDW should be successfully and lawfully managed to the benefit and protection of all impacted parties and in particular the unborn and newborn child. More particularly, the absence of clear guidance/policy as to whether or not the so-called live-in rule (the “**live-in rule**”) is to apply during statutory leave periods is especially troublesome. And thus, when an FDW becomes pregnant, she all too often suffers unlawful dismissal or is forced to resign from her employment because of the uncertainty surrounding each parties’ rights and obligations.
24. A pregnant FDW who wishes to make civil and/or criminal claims against her former employer may not be granted the ability to work (if she is pregnant, it is almost impossible for her to find a job) or, alternatively, be provided with housing and social security payments to cover her living and visa extension expenses pending hearing or trial. This lack of practical support severely impedes and, indeed, often disables this group from making claims in practice. The reality is that they cannot afford to stay in Hong Kong to pursue their legal claims.
25. **PathFinders urges HKSARG to:**
- a. **Set out explicitly within the standard FDW’s contract itself that FDW are entitled to maternity leave and protections;**
  - b. **Review or clarify the live-in rule and its waiver/application to pregnant FDWs and FDWs on statutory maternity leave. The guidance<sup>9</sup> from the Labour Department merely sets is inadequate and has no regard for the practical arrangements;**
  - c. **Educate key stakeholders (employers, employment agencies, government departments etc), both locally and in collaboration with consulates and Governments of FDW-sending countries, that it is both a civil and criminal offence to terminate pregnant employees including foreign domestic workers;**

<sup>9</sup> Chapter 6 Practical Guide for Employment of Foreign Domestic Helpers  
<http://www.labour.gov.hk/eng/public/wcp/FDHguide.pdf> accessed 11 May 2018

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- d. **Track and publicly report the number of civil and criminal cases brought against defaulting, including recidivist, employers of FDWs, setting out how the cases are settled and whether criminally convicted and/or abusive employers (and their households) are tracked and prohibited from employing again;**
- e. **Ensure that those seeking legal redress have effective access to adequate support, such as food, transportation, shelter and interpretation services, at all stages of redress, including specifically the conciliation process at the Labour Department and Labour Tribunal and in the preparation for criminal proceedings; and**
- f. **Waive the costs of visa extensions for FDWs who seek legal redress and compensation for human and labour rights abuses.**

**Article 12: Equality in access to health facilities**

Access to healthcare by pregnant FDWs who are unlawfully dismissed

27. Once an employer notifies the Immigration Department of the termination of the pregnant FDW's employment, even if unlawful, the pregnant FDW loses her access to our public healthcare system, despite the fact that she is the aggrieved party and carries the health risks associated with being pregnant. Her entitlement to access the public healthcare system stops within 2 weeks of her employment being terminated. She can only access the hospital in an emergency. She and her baby have no access to public perinatal care and cannot afford private healthcare. When the FDW does access the public healthcare system in an emergency, she will be charged at least HK\$90,000 for giving birth which she is unable to pay. All this pain and suffering on the mother and child is results from the employer's unlawful act of firing a pregnant employee. The woman (and baby) has done nothing wrong.
28. **PathFinders therefore urges HKSARG to review of this public healthcare system and policy anomaly we set out at 27. and to:**
- a. **Review the access of FDWs to the public healthcare system;**
  - b. **Conduct a public healthcare risk assessment of this population (both mother and baby) which are denied perinatal care including checks and immunisations for communicable and preventable child care diseases;**
  - c. **Waive the hospital fees charged to FDWs for giving birth and to provide mother and baby with same level of perinatal care as all female employees in HKSAR;**
  - d. **Require the WoC to research and report on the health and welfare status of FDWs and babies born to them in the HKSAR; and**

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- e. **Require Hong Kong government hospitals (in collaboration with the WoC) to record data on the specific health needs of FDWs, including those that access family planning, pregnancy termination and birthing services.**

#### Sexual and reproductive health rights

29. Unplanned or crisis pregnancies can be prevented by providing all women in HKSAR with free access to sex education and contraceptives.
30. HKSARG figures show that one in every 7 women of child-bearing age in the HKSAR is working as an FDW.
31. **PathFinders therefore urges HKSARG to:**
  - a. **Increase knowledge dissemination to the migrant and FDW communities about the Family Planning Association (FPA) and women's health clinic services that are available, the terms and days on which they are available and how to access them;**
  - b. **Ensure that all vulnerable groups, including FDWs, other imported migrant workers, ethnic minority women and girls have access to easily accessible, user-friendly, and linguistically and culturally sensitive sex education including the proper use of contraceptives; and**
  - c. **Require FDA and women's clinics to make their services more linguistically, culturally and practically accessible to these vulnerable groups of women (for example all of these clinic close on Sundays which is the only rest day of FDWs).**

#### Equality and Non-Discrimination in using public health services

31. PathFinders' mothers and children encounter discrimination when accessing public health services, largely due, we believe, to a lack of education about and understanding of their cultural and linguistic needs by HKSARG department front line staff.
32. **PathFinders urges HKSARG to:**
  - a. **Provide mandatory cultural sensitivity training to all public health service providers and to all officials who come into contact with these vulnerable women and children in order to deal with them in a non-judgmental, culturally sensitive way, in their own language and/or with the help of a suitably trained interpreter; and detect indicators**

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of abuse that may present differently due to cultural and/or language differences;  
and

- b. **Improve inter--departmental collaboration, communication and cooperation given the multi-dimensional issues PathFinders' clients face, for example between the Hospital Authority, Immigration Department, Birth Registry, police, courts, prisons, and the Labour and Welfare Bureau.**

### **Article 13: Women in Economic, Social and Cultural Life**

33. As stated above, a pregnant FDW who wishes to make civil and/or criminal claims against her former employer may not be granted the ability to work (if she is visibly pregnant, it is almost impossible for her to find a job anyway) or, alternatively, be provided with housing and social security payments to cover her living and visa extension expenses pending hearing or trial. This lack of practical support severely impedes and, indeed, often disables this group from making claims in practice. Simply put, FDWs cannot afford to live in Hong Kong to pursue their legal claims. HKSAR's legal and administrative systems and structures conspire effectively and consistently to deny their access to justice.

### **Article 15: Equality in Legal and Civil Matters**

#### Treatment of women in court and access to legal aid

34. In PathFinders' experience, pregnant FDWs and their children face significant barriers in accessing legal advice, legal assistance, and the courts (in particular the Labour Tribunal where parties are not allowed to be represented). HKSAR's current legal and administrative systems and structures conspire effectively and consistently to deny their access to justice.
35. **PathFinders urges HKSARG to:**
  - a. **Review the services provided by the Duty Lawyer Service and Legal Aid Department to ensure that Hong Kong-born children of migrant mothers have access to pro bono legal advice and assistance and to publicly-funded legal assistance;**
  - b. **Provide legal representation and remedies to children born in Hong Kong and especially to those who have returned to their mother's home countries but still have a legal claim against their biological fathers who are based in Hong Kong, and also for those children who are involved in care and protection cases;**
  - c. **Review procedures of the Labour Tribunal to ensure they enhance, not inhibit, FDWs' access to justice. For example, to open Labour Tribunal office on a Sunday (often the only rest day of an FDW), employ full-time Indonesian speaking officers; and**

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- d. **Monitor and review the adjudication process of tribunals and courts that handle cases involving ethnic minorities and FDWs, in particular in the Labour Tribunal where legal representation is not permitted and claimants are often unduly pressured by the Presiding Officers to settle their claims without understanding their legal rights.**

### Women and children in prisons

32. The statutory Prison Rules (Cap.234A)<sup>10</sup> are woefully insufficient. They do not provide for any support for female prisoners and their children in prison with them, except for clothing.

33. **PathFinders urges HKSARG to:**

- a. **Review and extend the Prison Rules to cover all typically required supplies from newborn to 3 years of age including educational and social stimulation in the best interests of the child as well as immunisation and other medical support;**
- b. **Provide for maternal and child education and support in prison in a culturally and linguistically appropriate manner, specifically birth registration, national documentation, legal, health, nutritional and child development information;**
- c. **Put in place in all correctional institutions, referral and support networks for ethnic, linguistic, religious and cultural minorities; and**
- d. **Require a detailed and full assessment be made of child care options available well in advance of the time when the child is to leave the prison, focussed absolutely on the best interests of the child. Specifically for children born to ethnic minority women, such assessment should include consideration of family and other care options in the mother's home country and should be done in conjunction with the consular officials.**

### **Article 16: Equality in Family Law**

#### Mothers of HK Permanent Resident Children

33. Based on PathFinders' experience, in situations where a FDW is a single mother (or was formerly married to a Hong Kong resident but is now divorced), and her child has permanent Hong Kong residency status by virtue of the birth father's Hong Kong residency status, the mother and her child can both be removed from Hong Kong if the mother loses her residency status or overstays her visa. When issuing removal and/or deportation orders against the

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<sup>10</sup> Prison Rules (Cap.234A) section 21

[https://www.elegislation.gov.hk/hk/cap234A?xpid=ID\\_1438402869554\\_004](https://www.elegislation.gov.hk/hk/cap234A?xpid=ID_1438402869554_004) accessed 11 May 2018

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

women, the Department of Immigration fails to take into account the best interests of the child.

**34. PathFinders urges the HKSARG to allow the mothers of these children with Hong Kong permanent residency status to remain in Hong Kong with their children.**

*Guardianship, wardship, adoption of children born to FDWs*

35. PathFinders has encountered cases where: 1. the child has been abused and neglected, is living in a brothel and left to roam the streets alone; 2. where the mother of siblings is in a coma and the father is serving a long prison sentence; and 3. 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 both parents is/are no longer around and/or no longer capable of being an adequate parent, be that for substance abuse, 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 heard and that the child's best interests are prioritised when the court exercises its wardship jurisdiction.

36. In PathFinders' experience, relying on Hong Kong's existing, cumbersome and antiquated legislation (it is, broadly speaking, akin to English child law in the 1980s) to protect children whose parents are inadequate or whose involvement is minimal or non-existent, fails adequately, promptly and, sometimes, at all, to protect their best interests.

**37. PathFinders urges HKSARG to:**

- a. **Conduct an urgent, full and in-depth review of current child-related protection practices, policies and laws; and**
- b. **Create a suitable authority (e.g., a Children's Commission/Court/Public Guardian) mandated to consult and consider other stakeholders' recommendations and to prepare a time-bound action plan to identify, address and close the current systemic gaps, be they policy or law related.**

**Close**

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Thank you for considering PathFinders' above submission. We look forward to reading HKSARG's Fourth Report to China for China's Ninth Report to the United Nations under UN CEDAW and hope to see included in that, the points PathFinders has made above.



Kay McArdle

CEO, PathFinders Limited.

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#### About PathFinders

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 almost 5,500 people of whom over 2,400 are babies and children born in Hong Kong.

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