

By email only: cmw@ohchr.org

Attn: Secretariat to the Committee on Migrant Workers

**Written Submission
by
PathFinders Limited
to
The Committee on Migrant Workers (“CMW”)
In advance of its 27th Session (4-13 September 2017)**

Country: Indonesia

Submitted on 14 August 2017¹

¹ PathFinders Limited authorises the publishing of this submission on CMW’s public website.

I. PATHFINDERS AND BACKGROUND

PathFinders² is a Hong Kong-based charitable organization in Special Consultative Status with the Economic and Social Council since 2017.

Our goal 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 was founded in 2008 after rescuing two babies born in poverty to migrant women in Hong Kong. Since then, PathFinders has helped over 4,700 babies, children and women. In a typical year, between 70-80% of the women we help are Indonesian nationals. In 2016 alone, we provided assistance to 198 Indonesian women nationals.

Hong Kong is a major destination for foreign domestic workers (“FDWs”). There are over 360,000³ FDWs in Hong Kong. There are over 153,000⁴ Indonesian nationals in Hong Kong, the vast majority of whom work here as FDWs and who form an integral part of Hong Kong’s families and communities.

In Hong Kong, one in every seven women of reproductive age is a FDW. The fact that some of them become pregnant and give birth while they work here should be anticipated. Indeed, all pregnant employees in Hong Kong, including FDWs, are protected by the law and enjoy employment maternity rights and are protected against sex and pregnancy-related discrimination.

However, once pregnant, the FDW women PathFinders helps are too often unlawfully fired, pressured to leave or resign. Within 2 weeks of losing their jobs, they become ineligible for the social protections they are entitled to when employed and which are afforded to pregnant Hong Kong locals. These FDW women end up without housing, medical and financial support either from Hong Kong or from their home country, in this case, Indonesia. They and their unborn child are utterly poor, homeless and have no means by which to access food, shelter or medical care.

Desperate and without direction, some have self-aborted or committed suicide. Children born to these women are typically undocumented and unsupported by the state. They fall through the cracks of Hong Kong’s otherwise-world-class social welfare and healthcare systems.

The education and protection of FDWs begins at home. The Indonesian government plays an essential role in ensuring that its overseas workers are well-informed, supported and free from exploitation. Despite many progressive efforts on the part of the Indonesian government, there remain several urgent gaps that need to be addressed, especially as they relate to furnishing the women who go to work abroad with the resources they require to help themselves, and Indonesia, to prosper.

² <http://www.pathfinders.org.hk/public/>

³ http://www.news.gov.hk/en/categories/law_order/html/2017/06/20170628_110252.lin.shtml Gov’t Refutes US Report. Accessed 11 August 2017.

⁴ Small number of Indonesian domestic workers radicalised while in Hong Kong, report warns. South China Morning post 26-27 July 2017.

<http://www.scmp.com/news/hong-kong/law-crime/article/2104204/small-number-indonesian-domestic-workers-radicalised-while>. Accessed 11 August 2017.

This submission:

1. draws attention to those areas in which Indonesia's treaty obligations require further development pursuant to the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("**the Convention**"); and
2. specifically draws attention to those provisions of the Convention relevant to pregnant Indonesian FDWs and/or their Hong Kong-born children.

Please note that all paragraph and section numbers and letters used below follow those of the Convention.

II. RELEVANT ISSUES FROM THE LIST OF ISSUES PRIOR TO SUBMISSION OF THE INITIAL REPORT OF INDONESIA⁵

Information and training provided by private employment agencies

"9. Please provide information on the existence of private employment agencies in the State party recruiting migrant workers to work abroad, and on the laws and regulations pertaining to such recruitment, in particular:

- a. ***Measures taken to provide information and training to migrant workers about their rights and obligations, and to protect them against abusive employment situations***⁶

The exploitation of FDWs begins before they leave Indonesia. Agencies regularly mislead workers-to-be about the size of their salary and/or the scale of agency fees.⁷ According to a study by Justice Centre Hong Kong, more than ninety percent of Indonesian FDWs it spoke to in Hong Kong are (illegally) charged more than the Hong Kong-government-mandated agency fee cap.⁸ The fee structures mean that a significant portion of a FDW's early wages goes towards paying employment agency debts. Because FDWs typically must pay a one-time fee every time they sign a new contract, employees who lose their jobs even once are at risk of entering a spiral of debt. Although these fees are illegal in Hong Kong, authorities in Hong Kong are largely powerless to act if the fees are agreed offshore (and therefore outside the legal jurisdiction of Hong Kong) and/or are masked as personal loans.

⁵ List of issues prior to submission to the initial report of Indonesia, CMW/C/IDN/QPR/1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fIDN%2fQPR%2f1&Lang=en

⁶ List of issues prior to submission to the initial report of Indonesia, CMW/C/IDN/QPR/1 at par. 9(a) (Numbering as according to the original UN document).

⁷ Au, Mabel, *Stop allowing employment agencies to exploit Indonesian helpers*, South China Morning Post, 21 November 2015. <http://www.scmp.com/comment/insight-opinion/article/1362035/stop-allowing-employment-agencies-exploit-indonesian-helpers>. Accessed 13 July 2017.

⁸ Justice Centre Hong Kong, *Coming Clean: The Prevalence of Forced Labour and Human Trafficking for Purpose of Forced Labour Amongst Migrant Domestic Workers in Hong Kong*, March 2016. <http://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>. Accessed 13 July 2017. 46.

Workers also report that employment agencies encourage non-compliance with the law, by instructing the workers to state that they are being paid fully even when they are being underpaid or not paid at all.⁹

PathFinders' clients have also reported compulsory pregnancy testing by employment agency staff in Indonesia. Compulsory regular medical check-ups also include pregnancy tests.¹⁰ There have also been reports of employment agencies forcing FDWs not to leave the training centres with a view to preventing them from meeting their husbands before leaving the country in case they become pregnant. PathFinders' clients also recount stories of being forced to take contraceptives against their will in order to avoid pregnancy.

Recommendations to the CMW to include in the concluding observations:

- To maximise compliance with the Convention, the government of Indonesia should increase oversight of private employment agencies, to prevent exploitation and to increase the education of workers so as to reduce their risk of being exploited when working abroad.
- Further, establish standard operating procedures for monitoring private employment agencies and to publicize the results of inspections.
- The government of Indonesia should ratify ILO C181, Private Employment Agencies Convention and adhere to the principle of "zero placement fees" for FDWs.
- The government of Indonesia should collaborate with the government of Hong Kong and in establish a joint Task Force with a mandate to prevent agency exploitation of FDWs in both countries.

Cases of racism and xenophobia, discrimination, ill-treatment and violence directed at migrant workers and members of their families returning to Indonesia.

"12. Please inform the Committee about any cases identified in the State party of racism and xenophobia, discrimination, ill-treatment and violence directed at migrant workers and members of their families, and provide information about normative, institutional and procedural measures adopted by the State party to prevent and combat all forms of racism, xenophobia, discrimination, ill-treatment and violence to protect the rights of the victims, including their right to access to justice. Please include quantitative and qualitative information on the types of discrimination and xenophobic cases identified in the State party. Please additionally provide information about such cases identified against Indonesian migrant workers abroad and the measures taken by the State party, if any, in response."¹¹

In 2010, the Australian government's Refugee Review Tribunal observed the discriminatory origins of many refugee claims by Indonesians. It noted,

"unmarried mothers are discriminated against, shunned and stigmatised as immoral and bad and viewed as a disgrace to their families. Having a baby alone is viewed as sinful and

⁹ Justice Centre Hong Kong, 43-44.

¹⁰ Paul, Anju M. (2017). "Am I Allowed to Be Pregnant?": Awareness of Pregnancy Protection Laws Among Migrant Domestic Workers in Hong Kong. Manuscript submitted for publication. 6.

¹¹ List of issues prior to submission to the initial report of Indonesia, CMW/C/IDN/QPR/1 at par. 12 (Numbering as according to the original UN document).

unacceptable. In addition, divorcees and remarried widows are perceived as having failed as wives, as mothers and as women and their negative perception is similar to that associated with former prisoners and ex-prostitutes.”¹²

PathFinders’ experience is consistent with the above assessment. Unmarried, migrant mothers report fear of returning to Indonesia because of the social alienation they will suffer. Clients report that this discrimination is particularly acute when they return with mixed-race children. In 2016, fifty-two percent of PathFinders’ Indonesian clients had non-refoulement claims pending under Hong Kong laws.

In parts of Indonesia, the stigma attached to sexual intercourse outside wedlock is extremely negative. The fear pregnant FDWs and FDWs returning with mixed-race children born out of wedlock is both significant and predictable. In PathFinders’ experience, the ensuing and ongoing ostracization of these women and their babies leads to terrible suffering and breaks families apart.

The government of Indonesia’s stated position is that FDWs are “foreign exchange heroes,”¹³ and PathFinders respectfully submits that offering support to these extremely vulnerable babies and women on their return would be a much more preferable and humane solution than the current social denigration and ostracisation.¹⁴

Recommendations to the CMW to include to its concluding observations:

- In conjunction with other education (see below), the government of Indonesia should take steps to ensure that unmarried parents, parents of mixed-race children, and the children themselves, are integrated properly when they return from working abroad.

Registration and documentation of children of migrant workers born abroad.

“21. Please provide information on the measures taken by the State party to ensure the right of children of migrant workers abroad, including children of migrant workers who are undocumented or in an irregular situation, to be registered at birth and to have their nationality of origin recognized in law and in practice. Please also provide information on the measures taken to ensure that births of foreign migrant children are registered in the State party.”¹⁵

In its 2014 reply to the States parties report on the Convention on the Rights of the Child, the government of Indonesia stated,

¹² Australian government Refugee Review Tribunal, Country Advice Indonesia (21 July 2010) <http://www.refworld.org/pdfid/4f4b82cc2.pdf>. Accessed 13 July 2017.

¹³ “Pahlawan Devisa” in Bahasa Indonesia.

¹⁴ Chan, Carol, Gendered Morality and Development Narratives: The Case of Female Labor Migration from Indonesia, *Sustainability* 2014, 6, 6949-6972; doi:10.3390/su6106949. 6951.

¹⁵ List of issues prior to submission to the initial report of Indonesia, CMW/C/IDN/QPR/1 at par. 21 (Numbering as according to the original UN document).

“The Government, through its Embassies and Consulates abroad, has enhanced services for Indonesian children, including children of Indonesian migrant workers, among others to ensure access for Indonesian children to obtaining birth certificates.”¹⁶

That same year, it was reported that the Indonesian Consulate in Hong Kong would provide free Indonesian birth certificates to children born to foreign domestic workers in Hong Kong.¹⁷

However, Indonesian mothers currently or previously employed as FDWs in Hong Kong still report that they face major hurdles with the Indonesian authorities when they seek to register the birth of their Hong Kong-born children and/or obtain passports for them.

They report that the treatment in relation to obtaining national identity documentation varies depending upon whether the mother is married or unmarried, an asylum claimant or not. Some of PathFinders’ clients report that the Indonesian consulate in Hong Kong just provides a consular document that must first be taken back to Indonesia in order to register the birth of the child and telling them that they must obtain the birth certificate in Indonesia. Others report receiving a complete Indonesian birth certificate from the consulate. Yet others still report being given no documents at all.

Obtaining the consular document is also difficult. The Indonesian consulate in Hong Kong typically requires FDWs to bring both a Hong Kong birth certificate and hospital documentation. In cases where the child is not born in hospital (an all-too-common occurrence with PathFinders’ cases), the FDW is required to produce a DNA test proving maternity.¹⁸

Further, many of PathFinders’ clients also report that the birth registration system in Indonesia is often unable to accommodate a foreign-born child’s place of birth. Consequently, officials tend to record the place of birth as the mother’s place of birth, rather than the actual place of birth which is Hong Kong. PathFinders clients also report that attempting to acquire family cards and passports with foreign birth certificates or marriage documents can mean paying the Indonesian government additional, unforeseeable fees.

For unmarried women, the problem, and attendant discrimination, is even more acute. Children of unmarried mothers will not receive a normal birth certificate. Instead, the certificate states that the child is illegitimate.¹⁹ In 2012, the National Child Protection Commission estimated that as many as fifty percent of Indonesian children do not have birth certificates, one reason for which is unregistered marriage.²⁰

¹⁶ List of issues in relation to the combined third and fourth periodic reports on Indonesia, CRC/C/IDN/Q/3-4/Add.1, par. 46.

¹⁷ Mega, Veby, *KJRI akan gratiskan keterangan lahir*, Suara, 21 February 2014.

<http://www.pathfinders.org.hk/public/wp-content/uploads/SUARA-21-FEB-2014-KJRI-will-provide-a-free-birth-certificate.pdf>. Accessed 13 July 2017.

¹⁸ Constable, Nicole, *Born Out Of Place: Migrant Mothers and the Politics of International Labor* (Los Angeles: University of California Press, 2014). 152.

¹⁹ Nurcahyani, Ida, *Illegitimate child rights and its problems in Indonesia*, Antara News, 29 February 2013, <http://www.antaraneews.com/en/news/80263/illegitimate-child-rights-and-its-problems-in-indonesia>.

Accessed 13 July 2017.

²⁰ Nurcahyani.

In Indonesia, mothers also find it difficult to register children born out of wedlock onto their own family card. This affects the child's rights to education and healthcare, among other benefits.

Recommendations to the CMW to include to its concluding observations:

- The challenges in obtaining a birth certificate for children born overseas should not be difficult to overcome. The government of Indonesia can and should make Indonesian birth certificates and first-time passport issuances available through its consular services in Hong Kong and elsewhere.
- Facilitate the designation in Indonesia of a representative for migrants working and living abroad, who would act for them in relation to legal and administrative matters such as divorce.
- Birth registration systems/forms/facilities should be amended to permit accurate birthplace registration for foreign-born children.
- The family card registration system can and should be improved so that a child born out of wedlock can be registered on his/her mother's family card.
- Fees for the passports of overseas-born children of FDWs should be waived.

Pre-departure programmes and prevention campaigns.

*"24. Please provide information on pre-departure programmes for the State party's nationals considering emigration, including information on their rights and obligations in the State of employment. Please indicate which Government institution is responsible for providing such information and if any coordinated policies, programmes or legislation have been developed to ensure transparency and accountability in this process."*²¹

and

*"33. Please provide information on the measures taken to intensify and allocate adequate financial and other resources to prevention campaigns aimed at countering misleading information relating to emigration and raising awareness among its nationals, including unaccompanied children, about the dangers of irregular migration. Please also provide information on cooperation efforts with countries of transit and destination, with a view to ensuring the safety of the State party's migrant workers abroad, including migrant children, whether accompanied or not, in transit through third States and upon arrival in the countries of destination."*²²

Although the government of Indonesia mandates pre-departure orientation for nationals going abroad for domestic work, Indonesian FDWs report significant gaps in the quality of the education they receive prior to departing for Hong Kong. The pre-departure orientation sessions are not conducted by qualified trainers. Further, the curriculum is not fully adapted to specific countries of destination. Also, the methodology is not interactive or practical.

The government is aware of this deficit in rights education and has taken some steps to rectify it. In the initial report of States parties, the government of Indonesia noted that President Widodo's Nine

²¹ List of issues prior to submission to the initial report of Indonesia, CMW/C/IDN/QPR/1 at par. 24 (Numbering as according to the original UN document).

²² List of issues prior to submission to the initial report of Indonesia, CMW/C/IDN/QPR/1 at par. 33 (Numbering as according to the original UN document).

Priorities 2015-2019 lists among its goals the improvement of the rights and safety of migrant workers.²³ Welcoming Programmes are now organised by several Indonesian diplomatic missions abroad, including Hong Kong.²⁴

PathFinders welcomes the development of Welcoming Programmes in countries of destination. PathFinders values the ongoing and excellent collaboration it has with the Indonesian consulate in Hong Kong, where PathFinders provides information about maternity rights to FDWs who have recently arrived in Hong Kong²⁵.

However, more need to be done. Research points to the existence of a rights-awareness deficit. A continuing Yale-NUS study examined the perceptions of FDWs in Hong Kong regarding their maternity rights. It found that misconceptions about the law are rife among Hong Kong's FDW community. Only thirty-three percent of respondents fully understood their maternity rights.²⁶ A third of interviewees thought that they had "no pregnancy protections whatsoever."²⁷ Many thought becoming pregnant at all was illegal. Most tellingly, the study found that rights awareness correlated strongly with being Filipino.²⁸ An Indonesian FDW is therefore less likely than a Filipino FDW to be educated effectively about her legal rights before leaving to work abroad.

In its 2012 concluding observations, the UN Committee on the Elimination of All Forms of Discrimination against Women expressed concerns about

*"the insufficient provision of comprehensive education on sexual and reproductive health and rights, which is limited, in practice, to married couples and does not reach women domestic workers"*²⁹

and had called upon Indonesia to

*"widely undertake education on sexual and reproductive health and rights, including to unmarried women and women domestic workers."*³⁰

PathFinders notes that there is an ongoing absence of general women's health and reproductive education for FDWs before going abroad. In PathFinders' experience, a startling number of clients have received no women's health education at all. This can, and in several cases has, led to tragedy. Women's health education is neither particularly expensive nor difficult to learn.

²³ Indonesian States' Parties Report, CMW/C/IDN/1, par. 26.

²⁴ Indonesian States' Parties Report, CMW/C/IDN/1, par. 132.

²⁵ In 2016, PathFinders conducted 7 workshops at Indonesia Consulate with approx. 700 attendees.

During the first half year of 2017, PathFinders conducted 7 workshops at Indonesia Consulate with approx. 570 attendees.

²⁶ Paul, Anju M. (2017). "Am I Allowed to Be Pregnant?": Awareness of Pregnancy Protection Laws Among Migrant Domestic Workers in Hong Kong. Manuscript submitted for publication. 9.

²⁷ Paul, 9.

²⁸ Paul, 6.

²⁹ Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/IDN/CO/6-7, par. 41(c).

³⁰ Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/IDN/CO/6-7, par. 42(c).

Recommendations to the CMW to include to its concluding observations:

- The education of FDWs before going abroad should include clear instructions about the discrimination, employment, migration, and maternity laws of the destination country. It is imperative that the government of Indonesia include women's reproductive health education and maternity rights in mandatory pre-departure orientation programme curricula; women's reproductive education and maternity rights should also be made mandatory in the welcoming programmes in all receiving countries.
- Consular officials should continue to work closely with FDWs and local non-governmental groups to maximize FDWs' knowledge about their rights and obligations as well as enforcement options.
- Embassies and consulates should more openly accept and disseminate information concerning the realities of maternity.

Resettlement and reintegration in Indonesia.

“32. Please provide information on the measures taken to assist returning migrant workers and members of their families in resettlement and reintegration into the economic and social life of the State party, including the Business Empowerment for Former Indonesian Labour Migrants Programme. Please provide information on measures taken by the State party to ensure the rights of migrant children and their protection from all forms of exploitation, particularly those unaccompanied and/or in an irregular situation, in or in transit through the State party, including the allocation of sufficient resources for the effective enforcement of labour laws. Please provide information on the steps taken to protect children from hazardous work, including through the implementation of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) and the strengthening of the labour inspection system.”³¹

and

“34. Please provide information on measures taken to promote conditions that facilitate the resettlement and reintegration of migrant children who are nationals of the State party upon their return to the State party.”³²

In its States parties report, the government of Indonesia stated that local governments play a large role in the reintegration of FDWs returning from abroad.³³ It also pointed to several programs designed to help retrain and to build support structures, such as the Community Learning Centres and the Social Safe Houses for Children.

PathFinders welcomes these structures, but they are little-known, mostly centralised in Jakarta and those that have been established at provincial or district level are insufficient and underfunded.

³¹ List of issues prior to submission to the initial report of Indonesia, CMW/C/IDN/QPR/1 at par. 32 (Numbering as according to the original UN document).

³² List of issues prior to submission to the initial report of Indonesia, CMW/C/IDN/QPR/1 at par. 34 (Numbering as according to the original UN document).

³³ Indonesian States' Parties Report, CMW/C/IDN/1, par. 33(b).

PathFinders' clients report being worried about whether they can find work in Indonesia. The majority have only a primary school-level education. Many believe that a long-term, adequately-paid job in Indonesia requires at least a high school education. They comment that there is little information about how a returning FDW can find work in Indonesia.

Recommendations to the CMW to include to its concluding observations:

- As the entity responsible for FDWs while abroad, the government of Indonesia must play a larger role in helping its FDW citizens returning from abroad to resettle. The government should provide, if necessary, greater support for retraining and resettlement.
- The government of Indonesia should collaborate with its consulates in Hong Kong and elsewhere to give greater publicity to its resettlement and support programmes. Collaboration with NGOs, and the use of social media should be prioritized to help expand awareness.
- The government of Indonesia should provide resources to returning FDWs to build knowledge of job searches.

PathFinders thanks this Committee for considering the above recommendations.

PathFinders Limited, Hong Kong, August 2017