

SUBMISSIONS FOR THE 2018-19 BUDGET CONSULTATION

January 2018

Justice Centre Hong Kong is a non-profit human rights organisation working to protect the rights of Hong Kong's most vulnerable forced migrants: refugees, other people seeking protection, and survivors of torture, human trafficking and forced labour. For more information please visit: www.justicecentre.org.hk

Introduction

Justice Centre Hong Kong (Justice Centre) appreciates the opportunity to provide a submission to the 2018-19 Budget, and to participate in its consultation process. Justice Centre considers that the 2018-19 Budget process provides a valuable opportunity to positively engage with civil society, and firmly hopes that our concerns will be closely considered and where possible incorporated into beneficial policy outcomes.

Justice Centre has developed a series of pragmatic recommendations which adopt the strategic financial management principles referred to in the 2018-19 Budget consultation paper. In particular the aspiration to "seize the opportunity and invest for the future", "fiscal policy for economic and social development" and "timely investments as preventative measures".¹ Justice Centre's proposals help to bring about long-term returns for society and to improve the well-being of everyone in Hong Kong.

Justice Centre's proposals involve modest financial expenditure relative to the positive financial results. As the 2018-19 Budget consultation paper notes, in the first eight months of the financial year ending November 30, 2017, Hong Kong recorded a cumulative year-to-date surplus of HK\$57.2 billion.² This translates into fiscal reserves at the period-end of HK\$1,011.1 billion and fiscal reserves at 38.9% of GDP.³

Justice Centre's submission primarily discusses access to justice, including funding for legal assistance sector services. Justice Centre is concerned about the lack of not-for-profit Community Law Centres (CLC's) or their equivalent to provide specialist, free legal advice and representation. Justice Centre's submission also addresses funding to support civil society participation in treaty body processes and the United Nations Universal Periodic Review (UPR) and training for Government officials to combat trafficking in persons. Finally, Justice Centre has concerns with the established consultation processes used by the Hong Kong

¹ Budget Consultation Support Team, Background Information: 2018-19 Budget Consultation, January 2018.

Available at: https://www.budget.gov.hk/2018/consultation18/eng/pdf/Information_Pack.pdf.

² *Ibid.*

³ *Ibid.*

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Government, including with respect to the 2018-19 Budget. Reform should be undertaken to ensure the views, especially from civil society, are addressed and incorporated into policy development.

Justice Centre would be pleased to provide further information and meet with representatives from the Financial Secretary's Office to discuss this submission.

Legal Assistance Sector Funding

Establishment of Community Legal Centres

Hong Kong continues to be an anomaly among fellow common law jurisdictions in its absence of independent, not-for-profit providers of legal assistance, such as CLC's. As demonstrated in numerous jurisdictions, CLC's (or their equivalents) are fundamental to ensuring access to justice, protecting fundamental rights for those otherwise most marginalized and socially/economically disempowered. CLC's would not only empower Hong Kong's communities, but would exist free from the incentive to generate financial profit in the provision of direct legal services. Being without a profit-motive they are cost-effective and preventative – the timely provision of specialist legal representation can increase the prospect of resolving disputes in advance of the need for costly litigation.

CLC's also function to ensure the most efficient delivery of specialist legal services. This aligns with expectations of the Hong Kong community and is cognisant of the efficient use of taxpayer resources. For example, if a CLC can ensure that the cost of a person obtaining access to justice can be reduced by half, then twice as many clients can be provided with a service. Investing in the development of CLC's could yield overall efficiency savings to the Hong Kong economy. For example, a 2012 Australian study found that on average CLC's have a cost benefit ratio of 1:18.⁴ That is, for every dollar spent by government on funding CLC's, they could return a benefit to society that is 18 times that cost.

Finally, CLC's can assist in addressing adverse economic externalities. There are substantial hidden costs, such as homelessness or institutionalism, which may be avoided through the development of CLCs. A 2012 report by the Law and Justice Foundation of New South Wales, the largest legal needs survey conducted in the world, notes that legal problems in Australia often occurred in quick succession and cluster in combinations.⁵ Those clusters include:

- Consumer, crime, government and housing problem groups;
- Credit/debt, family and money problem groups; and
- Employment, health, personal injury and rights problem groups.

⁴ Judith Stubbs & Associates, Economic Cost Benefit Analysis of Community Legal Centres, June 2012. Available at: http://www.communitylawaustralia.org.au/wp-content/uploads/2012/08/Cost_Benefit_Analysis_Report.pdf.

⁵ Law and Justice Foundation of New South Wales, Legal Australia-Wide Survey: Australia, August 2012. Available at: [http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf).

Developing CLC's, as either broad holistic legal needs CLC's or as smaller subject matter CLC's, could greatly assist in reducing the overall financial impact of adverse externality costs to the Hong Kong budget. This is relevant given increasing public expenditure for welfare services and other livelihood issues, a key need identified in the 2018-19 Budget consultation paper. Hong Kong's ageing population will lead to increasing demand for legal services, such as consumer (debt management, unfair contracts), human rights (elder abuse including financial and discrimination), planning ahead (wills, power of attorney, guardianship) and accommodation matters. There are numerous models of general service CLCs as well as specific service CLC's the Hong Kong Government could draw upon.⁶

Recommendations

Justice Centre recommends the Hong Kong Government:

- Remove regulatory barriers for NGO's and other not-for-profit organisations to employ lawyers in the provision of pro bono/government funded legal representation; and
- Establish independent, not-for-profit Community Law Centres to provide specialist, free legal advice and representation.

Legal Aid Funding

Provision of legal aid is an integral part of the administration of justice and access to justice. Justice Centre is concerned that the number of legal aid certificates granted for judicial review proceedings has dropped significantly in recent years, from 74 out of 266 applications (27.8%) in 2014 to 27 out of 437 applications (6.2%) in 2016.⁷ Additionally, many of Justice Centre's clients who apply for legal aid for judicial review proceedings face severe delay in their legal aid applications. It is not uncommon for an applicant to receive the legal aid decision close to the end of the three-month limitation period for applying for leave to apply for judicial review, and even well after that date has passed. In these cases, lawyers are given little time to properly draft the grounds for applying for leave to apply for judicial review or applicants have to draft them

⁶ For example, Northern Suburbs Community Legal Centre. They provide advice, advocacy, and limited representation in Western Australia, Australia. Northern Suburbs Community Legal Centre also provide a specialist legal service that offers legal assistance & social work to those experiencing Elder Abuse or who are at risk of such abuse perpetrated by people of trust. More information available at: <http://nsclegal.org.au/legal-services/elder-law-services/>. Another example is Seniors Rights Service, which provides free, confidential advocacy, advice, education and legal services to older people in New South Wales, Australia. More information available at: <http://seniorsrightsservice.org.au/about-us/>.

⁷ Home Affairs Bureau & Legal Aid Department, "Measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases", paper for Legislative Council Panel on Administration of Justice and Legal Services, July 2017, available at: <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1386-3-e.pdf>, accessed on 19 January 2018.

themselves without legal representation. Furthermore, any *pro bono* work done to assist claimants cannot at present be retrospectively claimed by legal aid lawyers. Where there are long delays this is unsustainable as lawyers are being compelled to act to protect their clients' rights to comply with the relevant limitation period. They are then unpaid for their valuable assistance.

The refusal of legal aid and the delay in the process of handling legal aid applications is of great concern as an access to justice issue. All persons in Hong Kong have a fundamental right to access legal advice and meaningful legal assistance, regardless of financial means. The failure to provide access to legal services has financial as well as societal consequences. Self-represented litigants can substantially increase court costs and cause delays.⁸ They cannot be expected to master the fine details of the law, compared to lawyers who spend many years studying and working to achieve such knowledge.

Recommendations

Justice Centre recommends the Hong Kong Government:

- Employ more specialist staff to handle legal aid applications to ensure efficiency; and
- Conduct an evaluation of the reasons for the stark decrease in the number and percentage of legal aid certificates granted for judicial review proceedings from 2014 to 2016.

Transfer of the Legal Aid Portfolio to the Chief Secretary's Office

Justice Centre supports the development of an independent legal aid authority in Hong Kong, consistent with the views of the Law Society of Hong Kong and the Hong Kong Bar Association.⁹ Justice Centre is disappointed that currently flawed institutional arrangements in the delivery of legal aid, with the risk of Government pressure, continue to persist. A proper institutional structure should be established to ensure that independent and sound decisions can be made without influence from the Government.

⁸ For example, in 2014, the National Audit Office (NAO) of the United Kingdom estimated that the increase in litigants in person in family courts cost the Ministry of Justice an extra £3.4 million. The NAO also highlighted that litigants in person are likely to have more court orders and interventions in their cases, to lack the knowledge and skills required to conduct their cases efficiently and to create additional work for judges and court staff. See National Audit Office, "Implementing reforms to civil legal aid", 20 November 2014, available at: <https://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>, accessed on 19 January 2018, cited in The Law Society of England and Wales, "Legal aid for early legal advice", Parliamentary brief, November 2017, available at: <https://www.lawsociety.org.uk/policy-campaigns/parliamentary-briefings/documents/parliamentary-briefing-early-advice-campaign/>, accessed on 19 January 2018.

⁹ The Law Society of Hong Kong, Independent Legal Aid Authority Submission, 11 June 2013.

Justice Centre does not object to the proposed transfer of the legal aid portfolio from the Home Affairs Bureau to the Chief Secretary's Office.¹⁰ However, we agree with the views of the Hong Kong Bar Association that an explanation should be provided on how operational independence will be enhanced by transferring portfolio responsibility.¹¹

On 20 September 2017, Piya Muqit, Executive Director, Justice Centre, wrote to Lau Kong-Wah, Secretary for Home Affairs seeking a meeting to exchange views with respect to legal aid in Hong Kong, among other matters. However, to date the Secretary has not yet responded to the meeting request. Further details are provided under the 'consultation and engagement with civil society' section below.

Recommendations

Justice Centre recommends the Hong Kong Government:

- Establish and wholly fund an independent legal aid authority to administer the delivery of all legal aid services in Hong Kong; and
- Provide an explanation on how operational independence will be enhanced by transferring portfolio responsibility from the Home Affairs Bureau to the Chief Secretary for Administration's Office; and
- Senior representatives from the Home Affairs Bureau meet with Justice Centre, as well as other civil society representatives, to obtain their views on budgetary and other policy related matters with respect to legal aid.

Funding for Government Bureaus and Departments

Attendance by NGOs at UPR and Treaty Body Hearings

The Constitutional and Mainland Affairs Bureau (CMAB), plays a central role in coordinating responses for the Hong Kong Government with respect to human rights treaty reporting. Justice Centre has been an active participant in this process, for example submitting a shadow report to the Committee against Torture for the 5th Periodic Report Cycle in 2015.¹² Currently, Justice Centre is facilitating Hong Kong civil society with respect to the Third Cycle United Nations Universal Periodic Review (UPR) for China, with specific reference to human rights issues in Hong Kong. The review will take place in November 2018, with a substantial joint civil society response being prepared through the Hong Kong UPR Coalition, spearheaded by a Steering

¹⁰ See Panel on Administration of Justice and Legal Services of the Legislative Council, "(Agenda) 27 November 2017", accessed on 19 January 2018.

¹¹ Chairman Standing Committee on Legal Aid Reform of Hong Kong Bar Association, Panel on Administration of Justice and Legal Services (Meeting on 24 November 2017), 24 November 2017.

¹² Justice Centre Hong Kong, Individual Civil Society Report submitted to the Committee against Torture in response to the 5th Periodic Report, China (Hong Kong), March 2015. Available at:

<http://www.justicecentre.org.hk/framework/uploads/2014/03/Submission-by-Justice-Centre-Hong-Kong-to-the-Committee-against-Torture-54-Session.pdf>.

Committee. The Coalition comprises a diverse range of civil society organisations working on the protection and promotion of human rights in Hong Kong.

Participation in treaty body processes is resource intensive process for Hong Kong civil society organisations, both financially and in terms of human capacity. A particular challenge is the ability for civil society representatives to attend treaty body hearings in Geneva. While several officials may be present from CMAB and other relevant departments, it is often not possible for civil society to attend. Funding should be allocated to CMAB to support Hong Kong civil society participation in treaty bodies, whereas such action would be in furtherance of the principles contained in the Declaration on the Rights of Human Rights Defenders and Human Rights Council resolution 32/31 'Civil society space'.¹³

Recommendations

Justice Centre recommends the Hong Kong Government:

- Provide funding for civil society organisations to actively participate in treaty body and UPR processes, including support for joint coordination efforts including participation in hearings.

Training for Government Officials to Combat Trafficking in Persons

Justice Centre notes that the Government "attaches great importance to combatting trafficking in persons."¹⁴ Justice Centre further notes that the Government references the definition of human trafficking from *the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime* which defines trafficking as being for the purpose of exploitation including forced labour or services, slavery or practices similar to slavery.

In response to the US Department of State's 2017 Trafficking in Persons Report, the Government asserted that Hong Kong has "been taking vigorous enforcement actions against employers in breach of various labour legislations in seeking to protect the rights of workers, including FDHs [Foreign Domestic Helpers]." In addition, the Government maintains that it "spares no effort in safeguarding the rights and benefits of over 360 000 FDHs in Hong Kong," that "FDHs enjoy the same statutory protection under the labour law as local employees" and that the Labour Department has undertaken "a string of publicity and promotional

¹³ United Nations Human Rights Council, A/HRC/32/L.29, 27 June 2016, available at: <https://documents-ddsny.un.org/doc/UNDOC/LTD/G16/132/22/PDF/G1613222.pdf?OpenElement>.

¹⁴ Security Bureau, Trafficking in Persons, last revision date 4 October 2017. Available at: <http://www.sb.gov.hk/eng/special/bound/iimm.htm>

programmes in raising FDHs' awareness of their rights and channels for seeking redress."¹⁵ Justice Centre notes that one of the principal channels for FDHs seeking redress is the Labour Tribunal where FDHs can challenge breaches of their employment contracts.

Justice Centre understands that the Hong Kong Police Force, the Immigration Department and the Customs and Excise Department have implemented "enhanced mechanisms" for screening and identifying potential victims of human trafficking and that screening is undertaken on vulnerable persons, including sex workers, illegal immigrants and FDHs who "are arrested or who put themselves forward to the authorities with a view to ascertaining whether they are TIP victims."¹⁶ Justice Centre also understands that the Government maintains an Inter-departmental Joint Investigation Team which "enables intelligence exchange and joint investigation" on human trafficking cases.¹⁷

Justice Centre notes that in other common law jurisdictions there are instances where victims of human trafficking seek redress through employment-focused tribunals like the Labour Tribunal (for example, in the United Kingdom).¹⁸ Justice Centre also notes that in many instances victims of human trafficking do not identify themselves as victims and therefore may not come forward as victims of trafficking. Instead, they may seek assistance for matters related to their trafficking experience.¹⁹ It is likely therefore that victims of human trafficking in Hong Kong will seek redress through the Labour Tribunal since the Labour Department promotes the Labour Tribunal as one of the principal mechanisms for redress, particularly for FDHs. It is also likely that many of these victims will not identify themselves as victims of human trafficking. Justice Centre understands that there is currently no established referral mechanism between the Labour Tribunal and the Inter-departmental Joint Investigation Team.

In its efforts to combat trafficking, the Government notes that over 1,000 government officials from the Security Bureau, the Department of Justice, the Police, the Immigration Department, the Labour Department, the Customs & Excise Department and the Social Welfare Department received training on identifying and

¹⁵ Government of the Hong Kong Special Administrative Region, Press Release, HKSAR Government rejects findings in US Trafficking in Persons Report, 27 June 2017. Available at:

<http://www.info.gov.hk/gia/general/201706/27/P2017062700934.htm>

¹⁶ Government of the Hong Kong Special Administrative Region, Press Release, Combatting and preventing trafficking in persons, 21 June 2017. Available at:

<http://www.info.gov.hk/gia/general/201706/21/P2017062100698.htm>

¹⁷ *Ibid*, n14.

¹⁸ Duncan-Bosu, Jamila. "Taking Cases for Victims of Domestic Servitude to the Employment Tribunal." *Human Trafficking Handbook: Recognising Trafficking and Modern-Day Slavery in the UK*. London: LexisNexis, 2011. p. 303.

¹⁹ Brunovski and Surtees. *Vulnerability and exploitation along the Balkan route: identifying victims of human trafficking in Serbia*. Fafo, 2017. p. 21.

combatting human trafficking in 2016 and 2017.²⁰ Justice Centre understands that these trainings did not include operational staff from the Labour Tribunal. Justice Centre notes that the Labour Tribunal is currently staffed by 1 Principal Presiding Officer, 8 Presiding Officers and 28 Tribunal Officers.²¹ Justice Centre further notes that the recurrent expenditure for the Judiciary in the 2016/2017 fiscal year was HK\$1,513,559 million. Establishing a referral mechanism between the Labour Tribunal and the Inter-departmental Joint Investigation Team and conducting training for Labour Tribunal officials would represent a modest increase to the budget of the Labour Tribunal but could significantly increase the number of human trafficking victims identified and reduce the number of victims who do not receive assistance in Hong Kong.²²

Recommendations

Justice Centre recommends the Hong Kong Government:

- Build the capacity and authority of relevant government departments at the front-line, including the Police, Immigration Department, Labour Department, Department of Justice and Social Welfare Department, to proactively identify and assist victims of forced labour and human trafficking;²³
- Develop an Inter-departmental National Plan of Action as a roadmap for concrete action from the prevention, prosecution and protection perspectives, in order to expand and improve enforcement of existing legislation and foster inter-agency and civil society cooperation;²⁴
- Establish a referral mechanism between the Labour Tribunal and the Inter-departmental Joint Investigation Team;
- Conduct training on identifying and combatting human trafficking for the Principal Presiding Officer, the Presiding Officers and the Tribunal Officers currently staffing the Labour Tribunal; and
- Issue public directions to Labour Tribunal staff to encourage staff to be alert to potential victims of human trafficking and to use the established referral mechanism when potential victims are identified; and
- Provide compulsory, free and standardised training, including periodic "refreshers" for both FDHs and their employers on Hong Kong's labour laws, each party's rights and responsibilities in the employer-employee relationship and where and how they may seek assistance from authorities where there is a dispute.²⁵

²⁰ <http://www.info.gov.hk/gia/general/201706/27/P2017062700934.htm>

²¹ See: http://www.judiciary.hk/en/other_info/fc_questions/pdf/ja_e_1718.pdf

²² For more details, see Justice Centre, 'Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong', March 2016. Available at: <http://www.justicecentre.org.hk/comingclean/>.

²³ *Ibid*, recommendation 2.

²⁴ *Ibid*, recommendation 3.

²⁵ *Ibid*, recommendation 13.

Consultation and engagement with civil society

Civil Society Concerns about consultation process for the Budget 2018-19

While Justice Centre appreciates the opportunity to provide this submission, we have concerns with the Government's approach towards consultation. According to Justice Centre's phone conversations with representatives from the Budget Consultation Support Team, submissions will be forwarded onto the relevant department when pertinent issues are raised. However, there are no requirements on those departments to respond to either the Financial Secretary's Office, the organisation which has lodged the submission or stakeholders as a whole. This process appears to be an established practice and aligns with the approach taken towards to the 'study' undertaken for the Policy Address 2017-18.

There are issues with this approach to consultation. Firstly, the lack of feedback leads to diminished interest from stakeholders. Organisations and business are less likely to contribute, in a substantive manner or at all, if they perceive that their views will not be considered. Secondly, it reduces the level of government accountability. There is no way of knowing a department's view on the funding proposal through the budget consultation. These concerns are further compounded by the approach of the Budget Consultation Support Team not to make submissions public.

Another issue is that there is no information on the Consultation website²⁶ or in the press release accompanying the public consultation²⁷ as to the deadlines for contributions. The website states:

The Hong Kong Special Administrative Region Government is collecting views from members of the public on the 2018-19 Budget. Members of the public can send in their views by email (budget@fstb.gov.hk), by phone (2810 3768), by fax (2147 5770) or by post to Budget Consultation Support Team, 24/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong.

Upon seeking information from the Budget Consultation Support Team, Justice Centre was advised that submissions could be made at any time, including after the Budget 2018-19 was handed down on 28 March 2018. Upon further questioning, Justice Centre was advised that submissions should be made before the end of January 2018, so as to be considered for the purpose of any measures to be implemented in the Budget 2018-19. Details on deadlines should be placed on the consultation website and in press releases.

²⁶ See: <https://www.budget.gov.hk/2018/consultation18/eng/index.html>

²⁷ The Government of the Hong Kong Special Administrative Region, Budget public consultation launched, 4 December 2017. Available at: <http://www.info.gov.hk/gia/general/201712/04/P2017120400327.htm>.

Civil society challenges in engaging with Government

Civil society organisations have long had difficulties in engaging with the Hong Kong Government when it comes to the development of policy or fiscal expenditure. As noted in Justice Centre's submission to the 2017-18 Policy Address Consultation:²⁸

Engaging with the Government has always been a challenge for civil society in Hong Kong. Many civil society organisations, particularly those that take a human rights-based approach, including Justice Centre, receive replies to letters or emails with no substantive information. It is also quite common for requests for meetings or policy questions to be ignored.

This form of engagement is not conducive to building a positive and constructive relationship with civil society. Nor is it a good approach towards policy development for the Government, given that civil society organisations, such as Justice Centre, have access to a wide range of information that could ensure more effective policy implementation.

The lack of willingness to engage with civil society is particularly concerning given the importance with which the Government places on the rule of law as part of Hong Kong's success. Civil society and human rights defenders play an integral role in the promotion of human rights, democracy and the rule of law. Special emphasis should be given to measures to assist in the strengthening of a pluralistic civil society through policy development.

On 20 September 2017, Piya Muqit, Executive Director, Justice Centre, wrote to Lau Kong-Wah, Secretary for Home Affairs, to express congratulations on his appointment and seek a meeting to discuss legal aid policy and community legal centres, among other measures. These policy proposals involved fiscal expenditure and have the potential to increase administrative efficiency and enhance access to justice, as discussed in more detail below.

Two months later, on 22 November 2017, a response was given by an Assistant Secretary in the Home Affairs Bureau, which did not address the questions Justice Centre put forward, either with respect to legal aid or community legal centre policies, or even a meeting with the Secretary for Home Affairs. Responses such as this are frustrating for civil society who aim to engage in a constructive manner with the Hong Kong Government.

²⁸ Justice Centre Hong Kong, Submissions for the 2017-18 Policy Address Consultation, September 2017. Available at: http://www.justicecentre.org.hk/framework/uploads/2014/03/Justice-Centre-Hong-Kong-Policy-Address-Consultation-Submission_updated.pdf.

Proper consultation delivers better fiscal outcomes

Chief Executive Lam identified the critical role of public engagement in her election manifesto:

To govern effectively, politically appointed officials and civil servants at all levels must interact and communicate effectively with the Legislative Council and District Council members of all political groups, professional bodies, NGOs, Government committees and the general public. We also need to allow different stakeholders to participate in public affairs, and resolve major issues in society through public engagement.²⁹

Consultation plays a valuable role in making sound fiscal and policy decisions. According to the Australian Government Guide to Regulation (the Guide),³⁰ benefits include:

- Understanding the attitudes and likely reactions of the people affected
- Making sure every practical and viable policy alternative has been considered
- Confirming the accuracy of the data on which your analysis was based
- Ensuring there are no implementation barriers or unintended consequences
- Affected groups will feel you have listened and considered their views

Transparency encourages genuine dialogue and builds trust in the policy process. For a consultation process to be credible and effective, the Government should engage with stakeholders in a way that is relevant and convenient.³¹ Consultation should not be presented as an afterthought and should complement well established lines of communication and existing relationships.

Justice Centre recommends that full public consultation should be adopted as the default form of consultation. The advantage is that it increases trust and ensures that there are no unintended consequences following implementation. Examples of full public consultation include:³²

- Public meetings and briefings
- Calls for submissions
- Sectorial meetings or briefings
- Direct communication to affected entities

²⁹ Carrie Lam, Connecting for Consensus and A Better Future: Manifesto of Carrie Lam Chief Executive Election 2017, 27 February 2017, p41, available at:

https://www.carrielam2017.hk/media/my/2017/01/Manifesto_e_v2.pdf.

³⁰ Australian Government, The Australian Government Guide to Regulation, 2014, p40, available at:

https://www.pmc.gov.au/sites/default/files/publications/Australian_Government_Guide_to_Regulation.pdf.

³¹ *Ibid*, p41

³² *Ibid*, p43.

- Media and advertising
- Social media activities

The consultation process for the Budget 2018-19 could be greatly improved by looking at measures, such as direct meetings with key stakeholders, including civil society organisations, well in advance of the Budget 2018-19 being handed down.

Best practice regulation efforts by the Hong Kong Government

Justice Centre reiterates its concerns expressed in the Policy Address 2017-18 submission³³ regarding the “Be the Smart Regulator” Programme (the Programme), which has the aim of promoting Hong Kong’s reputation as a business-friendly city.³⁴ The Programme includes a push towards smart regulations that incorporated consultation which was “open and inclusive” and ensured that regulatory impact assessments were undertaken.³⁵ However, Justice Centre has observed a deterioration in the practice of the Programme. Justice Centre holds similar concerns to the Hong Kong General Chamber of Commerce (the Chamber) with the Programme, in that it is of a non-binding nature and is not applied consistently.³⁶ This includes the bureaux that sit underneath the Financial Secretary.

Justice Centre supports the recommendation by the Chamber for the Hong Kong Government to carry out a critical and systemic review of the Programme for the purpose of putting in place a proper and effective Regulatory Impact Assessment mechanism.³⁷ In particular, Justice Centre supports a proposal that complies with the principles of transparency, accountability, proportionality and consistency. Given the challenges civil society face in engaging with the Government, enhanced emphasis should be placed on the consultation stage.

United Nations Universal Periodic Review

As noted above, in 2018 the Hong Kong Government will be under greater scrutiny by the United Nations, particularly through the UPR. Issues such as, the refusal to meet with civil society organisations and the failure to implement considered and meaningful consultation processes in the development of fiscal policies will be raised in the civil society submission by the Hong Kong UPR Coalition. Justice Centre urges the

³³ *Ibid*, n24.

³⁴ Financial Secretary’s Office, Be the smart regulator, 2007, p1, available at: <https://www.gov.hk/en/theme/bf/pdf/BTSRPamphlet.pdf>.

³⁵ *Ibid*, p3.

³⁶ Hong Kong General Chamber of Commerce, Policy Address Submission, 5 September 2017, p1, available at: http://www.chamber.org.hk/FileUpload/201709061138241428/policy_address_submission2017.pdf. w

³⁷ *Ibid*.

Government to substantially reform its consultation models to provide greater capacity for civil society to participate in fiscal policy development.

Recommendations

Justice Centre recommends the Hong Kong Government;

- Issue public directions to all bureaus and departments which encourage face to face meetings with civil society organisations;
- Adopt a default position of full public consultation for all forms of policy and legislative development;
- Develop new forms of consultation, which are empowering, participatory and consistent with international best practice principles;
- Prior to the next Budget Consultation, engage in a comprehensive public consultation with civil society, including face to face meetings with relevant stakeholders by senior representatives from relevant bureaus and departments; and
- Implement a Regulatory Impact Assessment mechanism to enhance transparency and deliver better policy outcomes.

Please contact Simon Henderson, Senior Policy Advisor (simon@justicecentre.org.hk) with any questions regarding this submission.