

SUBMISSIONS FOR THE 2019-20 BUDGET CONSULTATION

February 2019

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 regarding the 2019-20 Budget, and to participate in its consultation process. Justice Centre considers that the 2019-20 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 takes this opportunity to provide recommendations based upon the fiscal philosophy of the 2019-20 Budget consultation paper, in particular the aspirations 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 also acknowledges the government's commitment to the allocation of resources in areas which contribute to the "building of a caring and just society", "strengthening healthcare and elderly services" and "improving labour welfare".² Justice Centre's proposals will 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 and are measures in line with policy aspirations of the Administration. The 2018-19 Budget speech forecasted a healthy

¹ Budget Consultation Support Team, Background Information: 2019-20 Budget Consultation, 18/12/2018.

Available at: https://www.budget.gov.hk/consultation19/eng/pdf/201920%20Information%20Pack_FA%20Panel.pdf.

² Ibid

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surplus of \$44.01 billion for 2019-20 with fiscal reserves rising higher to approximately \$1,182.6 billion, equivalent to 40.3 per cent of the GDP.³

Justice Centre's submission covers similar issues to its 2018-19 submission, given that they were not addressed in the previous budget.⁴ Justice Centre remains concerned about the lack of not-for-profit Community Law Centres (CLC's) or their equivalent to provide specialist, free legal advice and representation, as well as availability of legal aid for judicial review applications by non-refoulement claimants. Similarly, Justice Centre's submission also outlines the importance of 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 continues to have substantial concerns with the budget consultation processes, which remain ad hoc, lacking transparency and accountability. The ongoing challenges in consultation with the budget processes, such as the failure to set timeframes or provide improve engagement with civil society, indicate that Justice Centre's feedback from the 2018-19 submission has not been taken on board.

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 (CLC's) and Legal Needs Assessment

The absence of independent, not for profit providers of legal assistance in Hong Kong remains a fundamental challenge in ensuring appropriate access to justice and protecting the rights of the most marginal and economically disempowered. Not only would CLC's be important for empowering communities in Hong Kong, they would be cost effective and preventative in their function. This is due to the speed at which legal representation can be provided, ultimately resolving disputes in advance of the need for costly litigation. The continued absence of comprehensive legal assistance, such as CLC's or their equivalents, places Hong Kong as an anomaly compared to other common law jurisdictions who demonstrate more multi-faceted approaches in legal service provision for their local communities.

³ Ibid n1, Appendix A, p7, January 2018. Available at: https://www.budget.gov.hk/2018/eng/pdf/e_budget_speech_2018-19.pdf.

⁴ Justice Centre Hong Kong, Submission for the 2018 – 2019 Budget Consultation, Jan 2018. Available at: <http://www.justicecentre.org.hk/framework/uploads/2013/08/Justice-Centre-Hong-Kong-Budget-2018-19-Consultation-Submission.pdf>.

As noted in our 2018-19 Budget submission, CLC's function to ensure the most efficient delivery of specialist legal services by:

"...align[ing] with expectations of the Hong Kong community and...[being] 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."⁵

The substantial hidden costs associated with adverse economic externalities, such as homelessness or institutionalism, can be also addressed more effectively through the development of CLC's. As stated in the 2012 Legal Australia Wide Survey Report by the Law and Justice Foundation of New South Wales (Legal Australia Wide Survey), clusters of legal problems can occur in quick succession outlining the importance of multifaceted approaches in the handling and outcomes of legal problems.⁶ Such challenges will not be unique to Australia, with overlapping problems likely operating in Hong Kong.

CLC's would help provide a holistic solution that is financially and socially beneficial by addressing clusters of legal problems. As noted in our 2018-19 Budget submission:

"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. 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."⁷

⁵ Judith Stubbs & Associates, Economic Cost Benefit Analysis of Community Legal Centres, June 2012. Available at: http://www.communitylawaustralia.org.au/wpcontent/uploads/2012/08/Cost_Benefit_Analysis_Report.pdf.

⁶ 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).

⁷ Ibid n4.

In addition to legal service provision gaps, there are also data gaps in the demand for legal services. In recent decades there has only been one substantial effort to quantify legal needs in Hong Kong, a Department of Justice Consultancy Study on the Demand for and Supply of Legal and Related Services (Legal Demand Study) in 2008.⁸ The Legal Demand Study comprised two separate surveys, one focusing on the supply of legal and related services in Hong Kong and the other on the demand for legal and related services. While the data provided was valuable, there are several gaps that demonstrate the need for a new and more comprehensive study to be undertaken.

Firstly, the Legal Demand Study commenced almost 15 years ago, starting on 29 July 2004, with survey results based on questionnaires received until November 2006 and the results published in January 2008. Secondly, the Legal Demand Study used a narrow range of questions. More attention is required to develop questions that would prompt respondents to recollect events that could qualify as legal problems. With the Legal Australia Wide Survey, this enabled greater insight into the legal issues and the complexities of each individual experience. Thirdly, while the Legal Demand Study covered civil society organisations in its research, only those who provided legal services were included. More detailed analysis could be drawn from consultation with a range of civil society organisations who do not provide legal services but other services to clients who may have legal issues. Additionally, many civil society organisations which provide legal assistance in Hong Kong have emerged since 2006, including Justice Centre Hong Kong. Fourthly, the administering languages of the survey was limited to English and Chinese. This potentially misses out on a wide range of ethnic minorities who face significant socioeconomic disadvantages and are likely to encounter legal problems more regularly as a result. Such groups would benefit from additional surveying in Hong Kong.

Recommendations

Justice Centre recommends the Hong Kong Government:

- Remove regulatory barriers for civil society organisations and other not-for-profit organisations to employ lawyers in the provision of pro bono/government funded legal representation;
- Establish independent, not-for-profit Community Law Centres to provide specialist, free legal advice and representation; and
- Conduct a comprehensive quantitative assessment of legal needs in Hong Kong.

⁸ Department of Justice, Consultancy Study on the Demand for and Supply of Legal and Related Services, 2008. Available at: <https://www.doi.gov.hk/eng/public/consultancy.html>.

Legal Aid Funding

Provision of legal aid is an integral part of the administration of justice, access to justice and a component of the Administration's commitment in adhering to the rule of law. Justice Centre is concerned with the small number of legal aid certificates granted for judicial review on immigration matters including non-refoulement claims. Data shows that out of 165 applications received in 2016, only 10 certificates were granted and of the 860 applications received in 2017, only 9 were granted.⁹ In our 2018-19 Budget submission we noted that:

"Many of Justice Centre's clients who apply for legal aid for judicial review proceedings face severe delays 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 themselves without legal representation. Furthermore, any pro bono work done to assist claimants cannot at present be retrospectively claimed by legal aid lawyers."¹⁰

The lack of access to legal aid for judicial review proceedings and the systemic problems with the process continue to be of great concern to Justice Centre. Self-represented litigants, including those who are non-refoulement claimants, can substantially increase court costs and cause delays.¹¹ 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 and are likely to face language difficulties in engaging with the court system.

⁹ Legal aid applications for judicial review received and certificates granted by categories', p19. Legal Aid Department Annual Report, 2017. Available at: https://www.lad.gov.hk/documents/annual_rpt_2017_en.pdf.

¹⁰ Ibid n4.

¹¹For 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 2019.

Recommendations

Justice Centre recommends the Hong Kong Government:

- Employ more specialist staff to handle legal aid applications to ensure efficiency; and
- Conduct a review of the reasons for the low number of certificates granted for immigration matters including non-refoulement claims, in close consultation with civil society organisations, legal professionals and other key stakeholders.

Budgetary Impact on Immigration Ordinance Reform Proposals

Justice Centre has expressed concerns about recent amendments being considered by the Security Bureau and Immigration Department to amend the Immigration Ordinance.¹² One proposal put to the Legislative Council in January 2019 is to allow for the removal of claimants from Hong Kong even after an application has been lodged and whilst waiting for an outcome on an application for leave to judicial review. The proposal could have unintended budgetary consequences for which the Financial Secretary should be made aware of. It risks dramatically increasing the burden on the judiciary through a surge in applications of interlocutory injunctions which are resource intensive, adding to the financial burden on the government. It would also create an incentive for applications to be lodged urgently, rather to consider the practical merits and receive relevant advice of pursuing such an application.

To date, the Security Bureau has yet to explain how such an amendment would maintain the effective and appropriate delivery of legal representation or quantify the impact on the judiciary. A cost effective and efficient legal system, which protects fundamental rights and the rule of law, can only come from multifaceted approaches founded on open dialogue with stakeholders. Justice Centre urges further research and analysis is conducted on the budgetary impact. Such a measure is the sort of proposal which would greatly benefit from being subjected to a comprehensive regulatory impact assessment, which is discussed further below in this submission.

Recommendations

Justice Centre Recommends the Hong Kong Government:

- Reject considerations to amend the immigration ordinance that allow the removal of non-refoulement claimants waiting for an outcome of an application for leave to judicial review; and

¹² Justice Centre Hong Kong, Submission to the Panel on Security of the Legislative Council, January 2019. Available at: <http://www.justicecentre.org.hk/framework/uploads/2019/01/Justice-Centre-Hong-Kong-Submission-to-Panel-on-Security-20190108.pdf>.

- Conduct a study on the resources required to ensure effective legal aid assistance for those removed from Hong Kong who are still waiting for an outcome for leave to judicial review and the financial impact upon the judiciary.

Development of an independent legal aid authority

Justice Centre continues to support an independent legal aid authority in Hong Kong.¹³ The current arrangements, even with the 1 July 2018 transfer of the legal aid portfolio from the Home Affairs Bureau to the Chief Secretary's Office, remain institutionally flawed, with the risk of government pressure persisting. Justice Centre supports the development of a proper institutional structure to ensure that independent and sound decisions can be made without influence. Justice Centre is disappointed that there was no consultation or explanation either before or after the transfer on how operational independence was to be enhanced by transferring portfolio responsibility.

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;
- Provide an explanation of how operational independence has been enhanced by transferring portfolio responsibility from the Home Affairs Bureau to the Chief Secretary for Administration's Office; and
- Develop, in consultation with relevant stakeholders, relevant KPIs to help assess the effectiveness of the transfer of the portfolio for the Chief Secretary for Administration's Office.

Funding for Government Bureaus and Departments

Attendance by Civil Society Organisations at UPR and Treaty Body Hearings

In the 2018-19 financial year, Justice Centre remained an active participant in human rights reporting processes. Notably, Justice Centre continued to facilitate 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. Justice Centre facilitates the Hong Kong UPR Coalition, an alliance of over 45 civil society organisations advocating for the protection and promotion of human rights in Hong Kong through the UPR.¹⁴

¹³ Ibid n4.

¹⁴ For further information on the work of the Hong Kong UPR Coalition visit: www.justicecentre.org.hk/policy-advocacy/universal-periodic-review/.

Participation in treaty body processes continues to be resource intensive process for Hong Kong civil society organisations, both financially and in terms of human capacity. In the 2018-19 financial year, in addition to the UPR process, Justice Centre also provided submissions to the Committee on the Elimination of Racial Discrimination.¹⁵ Civil society organisations find attendance at treaty body hearings in Geneva and participation in UPR pre-session activities challenging. Justice Centre reiterates our call in our 2018-19 Budget submission for funding to be allocated to CMAB to support Hong Kong civil society participation human rights treaty body and UPR activities.¹⁶

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 has welcomed the 21 March 2018 announcement of an Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong ('the Action Plan').¹⁷ We welcome the acknowledgment in the Action Plan of the need to tackle trafficking in persons on all fronts, requiring the effort of multiple policy bureaux and departments, as well as the emphasis on developing partnerships with civil society representatives. Justice Centre has long called for the development of an Inter-departmental National Plan of Action as a roadmap for action to deal with prevention, prosecution and protection.¹⁸

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

¹⁵ Justice Centre Hong Kong, Submission to the Committee on the Elimination of Racial Discrimination, July 2018. Available at: <http://www.justicecentre.org.hk/framework/uploads/2014/03/Justice-Centre-Hong-Kong-CERD-20180713.pdf>.

¹⁶ Ibid n4.

¹⁷ Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong. Available at: <https://www.sb.gov.hk/eng/special/pdfs/Action%20Plan%20to%20Tackle%20TIP%20and%20to%20Protection%20FDHs.pdf>.

¹⁸ 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/>.

immigrants and migrant domestic workers.¹⁹ We are aware that this will now also include the appointment of “dedicated and professional officers to the handling of cases relating to trafficking in persons and exploitation of migrant domestic workers as outlined in the Action Plan”.²⁰ This is a welcome measure. However, Justice Centre remains concerned that the screening mechanism has not been made available for civil society organisations to provide feedback and there has been insufficient outreach on how these appointments will be undertaken or what new activities will be handled by these officers.

Justice Centre also acknowledges the announcement of training and other preventative measures in the Action Plan, which we recommended in our Budget 2018-19 submission. However, we remained concerned about the lack of information on accountability for measures in the Action Plan or detail on funding, either new or existing, which relate to the Action Plan. Some of these concerns are shared by the U.S. State Department. The U.S. Department of State’s 2018 Trafficking in Persons Report (TIP Report) acknowledged the efforts made under the new Action Plan. However, they expressed concerns that the government did not demonstrate increased efforts compared to the previous reporting period and as a result Hong Kong remained on the Tier 2 Watch List.²¹ As the TIP Report notes, some law enforcement officers did not properly investigate incidents with clear trafficking indicators reported to them by civil society organisations. Of the several thousand individuals screened through in the reporting period, only nine were identified as trafficking victims.

The 2018 TIP Report recommends the Hong Kong government to enact a comprehensive anti-trafficking law that criminalises all forms of trafficking, which Justice Centre has also long supported. A comprehensive law should include substantive victim support, a notable gap in Hong Kong. As outlined in our 2018 – 19 Budget submission:

“...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).”²² Justice Centre also notes that in many instances victims of human trafficking

¹⁹ 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>

²⁰ Ibid.

²¹ U.S. Department of State, Trafficking in persons report, 2018. Available at: <https://www.state.gov/j/tip/rls/tiprpt/2018/index.htm>.

²² Duncan-Bosu, Jamila. “Taking Cases for Victims of Domestic Servitude to the Employment Tribunal.” Human

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.²³ 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.”

Establishing a referral mechanism between the Labour Tribunal and the Interdepartmental 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, while reducing the number of victims who do not receive assistance in Hong Kong.²⁴ This is in line with the Action Plan’s objectives of enhancing partnerships and exchanging “views on smooth referral (processes) of potential cases to suitable authorities”.²⁵

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;²⁶
- Engage with Justice Centre and other civil society organisations, in line with the objectives of the Action Plan, to discuss and establish a referral mechanism between the Labour Tribunal and the Inter-departmental Joint Investigation Team;
- Consult with civil society organisations on the kinds of training stated in the Action Plan designed to identify and combat human trafficking;
- 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

Trafficking Handbook; Recognising Trafficking and Modern-Day Slavery in the UK. London: LexisNexis, 2011. p. 303.

²³ Brunovski and Surtees. Vulnerability and exploitation along the Balkan route: identifying victims of human trafficking in Serbia. Fafo, 2017, p21.

²⁴ Ibid n20

²⁵ Ibid n21.

²⁶ Ibid n20, recommendation 2.

- The High Level Steering Committee overseeing the Action Plan should steer the implementation of the training objectives into the provision of compulsory, free and standardised training, including periodic “refreshers” for both migrant domestic workers 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.²⁷

Consultation and engagement with civil society

Civil Society Concerns about consultation process for the Budget 2019 - 20

While Justice Centre appreciates the opportunity to provide submissions, we remain concerned with the government’s approach towards consultation. Even though the Chief Executive and the Administration have stated that their goal is to ‘connect’ and enhance dialogue with civil society,²⁸ it is the view of Justice Centre that there has not been a substantive improvement in engagement in recent years.

For example, certain gaps highlighted in Justice Centre’s 2018-19 submission remain of concern. Firstly, the lack of feedback in the consultation process. There is no response provided by the administration to submissions made nor are submissions made public. This 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, there is no information provided on deadlines for feedback. The office of the Financial Secretary advised Justice Centre staff in a phone call on 29 January 2019 that there was no deadline and that comments can be provided at any time. However, without details as to how stakeholders can fit into the timeframes of decision processes, it makes it difficult to determine how to have a positive effect. Thirdly, there is a lack of transparency as to who the Financial Secretary and senior members have met in advance of the Budget 2019-20. Justice Centre is aware that several industry stakeholders, including the Hong Kong Bar Association and the Law Society of Hong Kong, were asked by the Financial Secretary in a meeting approximately six months ago to provide their views. Unfortunately, Justice Centre has not been provided such an opportunity, despite our consistent attempts to engage constructively with the Administration. Further, there is no information available on other civil society organisations who have been approached in meetings. Consultation in this manner only serves to give an impression that views are sought on budgetary proposals from a narrow selection of stakeholders in Hong Kong.

²⁷ Ibid, recommendation 13.

²⁸ Chief Executive Carrie Lam, The Chief Executive’s 2017 Policy Address: We Connect for Hope and Happiness’, October 2017. Available at: <https://www.policyaddress.gov.hk/2017/eng/pdf/PA2017.pdf>

The use of Facebook as a means of gaining public opinion for the 2019-20 Budget is a welcome addition to the government's consultative process. Unfortunately, the Facebook page was only made available in Cantonese, which limits the accessibility for English speakers. All government Facebook pages should be made available in the official languages of Chinese and English as applies with websites.

Civil society challenges in engaging with Government

Justice Centre has highlighted concerns with the challenges it has faced in engaging with government in numerous submissions, including to the:

- 2018-19 Policy Address consultation;²⁹
- Joint Civil Society Submission from the Hong Kong UPR Coalition for the United Nations Universal Periodic Review Third Cycle;³⁰
- 2018-19 Budget consultation; and³¹
- 2017-18 Policy Address consultation.³²

In discussing budgetary measures, challenges continue to remain in engaging government as demonstrated by the following example. 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 Gabriel Pak, Assistant Secretary, 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.

²⁹ Justice Centre Hong Kong, Submissions for the 2018-19 Policy Address Consultation, October 2018. Available at: <http://www.justicecentre.org.hk/framework/uploads/2018/11/Justice-Centre-Hong-Kong-Policy-Address-2018-Submission-final.pdf>.

³⁰ Hong Kong UPR Coalition, Joint Civil Society Submission from the Hong Kong UPR Coalition, March 2018. Available at: http://www.justicecentre.org.hk/framework/uploads/2018/UPR/HKUPRC_Submission_MARCH2018.pdf.

³¹ Ibid n4.

³² 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.

Further correspondence was sent to seek a meeting with the Secretary, including a letter on 15 December 2017, follow up emails on 15 January 2018, 15 March 2018, 13 April 2018 and 28 May 2018. In a reply of 28 May 2018, an Assistant Secretary in the Home Affairs Bureau sent a letter in response advising that the Secretary was "unavailable to meet". However, no detail was provided on why the Secretary was unavailable nor were alternative dates provided on when a meeting could take place. After further email correspondence, a positive response was received on 20 June 2018 indicating that principal officials from the Home Affairs Bureau could meet to discuss legal aid and legal assistance issues. That meeting took place on 26 June 2018, which was a helpful discussion. Further follow up questions from the meeting were sent on 3 August 2018 covering the legal aid system and legal needs. Even with several follow up emails, it took more than two months from someone to respond via email on 5 October 2018.

The above example demonstrates the challenges civil society have in attempting to engage with government. Justice Centre has faced similar experiences in other settings in attempted to provide constructive advice on policy and legislative issues.

Proper consultation delivers better fiscal outcomes

Justice Centre has consistently raised the need and benefit of improving consultation mechanisms. As noted in our submission to the 2018-19 budget submission:

"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. Consultation should not be presented as an afterthought and should complement well established lines of communication and existing relationships."³³

Improvements in the 2019-20 budget consultation and future consultations could be achieved via opening channels of greater dialogue with stakeholders. Such channels can comprise of many different approaches including, direct meetings with civil society organisations, public meetings and briefings, direct communication to affected entities, media and advertising as well as sectorial meetings and briefings.³⁴ All of which can be done in

³³ Ibid n4.

³⁴ 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.

an official capacity and well in advance of the budget being handed down, helping to ensure more constructive engagement and increasing

Best practice regulation efforts by the Hong Kong Government

Justice Centre reiterates its concerns expressed in previous submissions regarding the deterioration of the “Be the Smart Regulator” Programme (the Programme). Justice Centre remains concerned that it is of a non-binding nature and is not applied consistently, including to the bureaus that sit underneath the Financial Secretary. We note the 2019-20 Budget submission from the Hong Kong General Chamber of Commerce, which states:

“We continue to stress the need for the incorporation of a proper regulatory impact assessment (RIA) scheme as part of the policymaking process. As had been pointed out in our previous submissions, the benefits from doing so are considerable, and can have positive knock-on effects that extend beyond the business sector to also encompass social and livelihood matters.”

“By adopting a systematic and evidence-based approach to regulating, the Government would be better placed to explain its rationale and objectives to the public, stakeholders and legislators on new laws that are being considered. An RIA would help reduce or alleviate the friction currently associated with the legislative vetting process, while enabling the Government to provide a strong and defensible account of its decisions.”³⁵

Justice Centre supports a critical and systemic review of the Programme to help put in place a proper and effective Regulatory Impact Assessment mechanism. 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 consultation.

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;

³⁵ Hong Kong General Chamber of Commerce, HKGCC Budget Proposals for 2019-20, 24 January 2019. Available at http://www.chamber.org.hk/en/advocacy/policy_comments.aspx?ID=483.

- 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.